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**Course 3 (A&B)**

**GENERAL & RESIDENTIAL**

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## MiniCram Real Estate Exam Course 3

### Study Notes & Practice Questions

### Updated – 2019 Exams

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## INTRODUCTION

Dear Reader,

Congratulations on purchasing our **MiniCram** for Ontario Real Estate License Exam preparation. The purpose of this booklet is to provide you with last minute review of important theory and math concepts for the exam.

This booklet has been compiled so that you can focus on key areas of study as well as practice sample questions to overcome the most common mistakes that students make on the actual exam.

### How to Use This **MiniCram**

You do not have any time to waste. This **MiniCram** booklet is designed in such a way that your review for the exam is fast paced. It is suggested that you go through each topic one by one. It is assumed that you have already covered the topics either in the actual class or by self-study.

### We Want to Hear from You

This book is written by a practicing *Real Estate Broker*. If you have feedback for the author, want to submit a question, report any mistake in the book, need more information or have general comments, please send an email to [minicram@outlook.com](mailto:minicram@outlook.com).

We hope that this booklet will prove to be helpful for your exam preparation. Good luck for the exam!

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## REAL ESTATE TRANSACTION – GENERAL & RESIDENTIAL

This 3-hour exam consists of a total of 50 Multiple Choice questions from both books. Minimum 75% marks are required to pass the exam. For your reference, a blank or completed *Agreement of Purchase and Sale (Offer)* form would be provided in the exam.

The breakup of marks is as follows:

<b>First 12 Questions</b>	<b>1 Mark Each</b>	<b>12 Marks</b>
<b>Next 26 Questions</b>	<b>2 Marks Each</b>	<b>52 Marks</b>
<b>Last 12 Questions</b>	<b>3 Marks Each</b>	<b>36 Marks</b>
<b>Total Questions – 50</b>		<b>100 Marks</b>

In case of paper exam, the exam booklet is separate from the answer sheet, which is a machine-readable *Scantron®* sheet. The answer sheet is to be filled up with pencil only. On an iPad exam, you may navigate the pages using the 'Next' and 'Previous' buttons.

For more information on the exam, visit the official website at [www.orea.com](http://www.orea.com).

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## 10 TIPS FOR THE EXAM

1. **RELAX.** Too much anxiety, panic, stress and fear are big distractions. Focus on the question and choose the best answer.
2. **GAME OF WORDS.** All multiple-choice exams are merely variation of words. If you know your course materials, it's only a matter of interpreting the question and then selecting a correct option.
3. **EASY ONES FIRST.** In this exam, the first 12 questions are easy, simple and straightforward questions. Do these questions first.
4. **READ ALL OPTIONS.** Even if you think A is the correct answer, read options B, C and D to make sure that they are incorrect.
5. **MANAGE YOUR TIME WISELY.** Divide your 3-hour time according to marks for each question. Do not spend too much time on 1-mark questions. Skip the question that you think is difficult to answer. Mark it for review and proceed to the next one.
6. **EXTREME PHRASES.** Beware of absolute words in any option. These words are *ALL, NONE, ALWAYS, NEVER, MUST, EVERY, EXACTLY, ONLY*, etc. In most cases, the options that include any of these words are rarely correct.
7. **HEDGE PHRASES.** When a question asks you to conclude something and includes words such as *MAYBE, LIKELY, OFTEN, ALMOST, USUALLY, GENERALLY, TYPICALLY, SOMETIMES*, etc., do not pick any answer that does not leave room for any exception.
8. **ALWAYS.** Make it a habit to read the question twice. You must know what information is given and exactly what is being asked. More than one choice may seem to be correct if you do not understand the question properly. If that is the case, use the method of elimination.
9. **REMEMBER.** Your first instinct is mostly a correct answer. Be careful when changing your answer but don't be afraid if you have to change it.
10. **REVIEW.** Make sure you did not skip any question and the answer sheet is neatly filled in. Never mark more than one answer. If you need to change a marked answer, erase the previous one nicely. Otherwise, the machine may not be able to scan your answer.

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## PART I – STUDY NOTES - GENERAL

### 1. THE CONTRACT LAW

#### 1.1 Contract

##### Contract Basics

- A *Contract* is a legally binding agreement between two or more parties who are legally competent, to do something lawful or not to do something, for a consideration or for a promise.
- There must be six (6) elements in a contract - (i) *Capacity*, (ii) *Legal Object*, (iii) *Consideration*, (iv) *Offer and Acceptance*, (v) *Genuine Intention*, and (vi) *Definite & Clear*.
- If some element of the contract is missing, the contract may be *void*, *voidable* or *illegal*.
  - A *Void* contract is that which never existed and cannot be enforced.
  - A *Voidable* contract is that which is valid when signed but gives one of the parties the right to reject. It is enforceable and binding until voided by that party.
  - An *Illegal* contract that which cannot be enforced by law or by courts.

##### Documents

- The *Statute of Frauds* requires that certain contracts, including those related to real estate trading, must be in writing to be enforceable by law.
- For real estate purposes, the preprinted *Representation Agreements*, *Customer Service Agreements*, *Agreement of Purchase and Sale*, *Agreement to Lease*, their schedules and other related forms are treated as contract documents.
- REBBA 2002 requires all agreements for trading in real estate to be in writing. Copies of agreements must be provided to parties as soon as possible. The exception is *Representation Agreement* where a copy must be provided *immediately* upon signing.
- *Parol Evidence Rule*: According to this rule, a written agreement can only be modified in writing. Alterations, amendments, variations must be written and should not be verbal.

##### Privity of Contract

- Only parties to a contract are bound by the contract and can enforce the contract terms on each other.
- For example, the *Agreement of Purchase and Sale* is between sellers and buyers, but the brokerage is only a witness.
- If a breach occurs, the seller can only take legal action against the buyer (or vice-versa).
- The brokerage may be subject to a separate legal action for providing misleading information, misrepresentation of facts, failure to fulfill its obligations, etc.

##### Termination of Contract

- *Mutual Agreement*: When parties agree to terminate contract.
- *Performance*: When the contract obligations have been fulfilled (e.g. the sale is closed).
- *Impossibility of Performance*: When it is not possible to complete the contract (e.g. death or damage to the property).
- *Operation of Law*: When a court orders termination or cancellation of a contract.



## 1.2 Breach of Contract

### Breach

- *Breach of Contract* occurs when one party fails to fulfill obligations under the contract.
- The party breaching the contract is the *Offending Party* (breaching party) and the party which suffers loss is the *Injured Party*.
- The *Injured Party* may approach a court for taking legal action against the *Offending Party*.
- *Tort Liability*: This refers to liability for breach of a duty *other than* breach of contract. For real estate purposes, this liability typically arises when a registrant neglects his/her *Duty of Care*.

### Remedies for Breach

- *Rescission*: Revoking or cancelling the contract or setting it aside.
- *Damages*: Financial compensation for losses suffered by the injured party. Just breach of contract is not adequate to claim damages and the injured party must prove the actual financial loss.
- *Quantum Meruit*: Reasonable amount for partial work performed. The amount is determined by courts.
- *Specific Performance*: This remedy is a *Discretion of Courts*, and *not an absolute right* of the injured party. In certain cases, a court may order that the breaching party must do what was promised in the contract. This remedy is used only when *Damages* is not an adequate remedy.
- *Injunction*: Refers to stopping the breaching party from continuing to breach. This remedy is used when the contract was to *refrain from doing something*.

## 1.3 Elements of a Contract

### Capacity

- Most individuals, partnerships and corporations have the legal capacity to enter into contracts. Certain individuals may have limited capacity to sign a contract.
- *Mental Incompetence*: Contracts with mentally incapacitated persons are considered void.
- *Intoxicated Persons*: A person who does not understand the agreement terms because of excessive use of alcohol or drugs. Two conditions must be satisfied –
  - the two parties must know each other, and
  - the individual was so intoxicated that he/she did not understand what he/she is signing.
- *Illiterate*: A person who is unable to read or write.
- *Minors*: Contracts with minors (less than 18 years of age) are *Generally Voidable, Sometimes Void* and *Never Binding*.
  - The contract cannot be enforced on the minor, but the minor can enforce it on the other party.
  - The contract can be voided by the minor, not by the other party. The contract remains valid if not voided by the minor.
  - If the minor avoids the contract for a reasonable time after attaining the age of majority, the right to void by the minor is lost.



- *Exception:* If an adult is a co-signer, or if it can be proven that the minor received independent legal advice before signing, then the contract cannot be voided even by the minor.

### Legal Object

- If object of the contract is illegal, the contract is *Void & Unenforceable*.
- Examples are - contracts for criminal activity, price fixing, bid rigging, perverting justice, tax evasion, contrary to public policy, commission of criminal offences/civil wrong, etc.

### Consideration

- Each party receives something to make the contract binding.
- Consideration may be some *value*, an *act in return of an act* or a *promise for a promise*.
- *Value:* When either party receives some amount. In case of a dispute, only existence of value matters. It does not matter whether the amount is adequate or not.
- *Lawful:* The consideration must be lawful. Consideration cannot be stolen money, stolen goods, illegal substances, etc.
- *Past Consideration:* Past consideration is no consideration. It must be *present* or *future*.
- *Seal:* If the contract is signed under *Seal*, it does not need the consideration element. In other words, a *Seal* is considered substitute for the *Consideration* element.

### Offer and Acceptance

- Also known as *Mutual Agreement* between parties.
- The *Offer* must be complete and definite in terms, must remain open for a reasonable time for consideration (known as *Irrevocability* of offer) and must be communicated to the *Offeree*.
- *Acceptance* must be unconditional, communicated to the *Offeror*, be made in the required manner and be made within time period specified in the *Offer*.

### Genuine Intention

- One of the parties may have been induced by *improper means* to sign the contract.
- Mistake, misrepresentation, undue influence and non-disclosure of material facts may be one of the reasons to prove that genuine intention is missing.

Mistake: Not every mistake makes a contract void.

- *Common Mistake:* It occurs when parties know and accept the intentions of each other but are unaware of some *underlying fundamental fact* regarding the property or the transaction.
- *Mutual Mistake:* It occurs when both parties *misunderstand* each other and then enter into a dispute.
- *Unilateral Mistake:* It occurs when one party knows that the other party is mistaken concerning a fundamental fact but does not make the other party aware of the mistake.

Misrepresentation: A false statement or assessment made by one party to the other party.

- *Innocent Misrepresentation:* A statement that is untrue but is honestly believed. In this case, *Damages* cannot be recovered by injured party.

- *Negligent Misrepresentation*: A statement made by a person in a position of trust. This person knows that the other party is relying on the information provided. If the information is subsequently found to be untrue, and the other person suffers financial loss due to wrong information, the person making the statement may be sued for *Damages*. This typically happens when a registrant neglects his duties and provides information without verifying the facts.
- *Fraudulent Misrepresentation*: A statement made with knowledge of its falsity or reckless disregard of truth. The purpose must be to induce the other party into a contract. The injured party may resist enforcement of the contract and has the right to recover *Damages*.

Undue Influence (Duress): Involves threat or violence, force or pressure so that the other party signs a contract against will. It may also happen due to improper use of person's power or knowledge.

Failure to Disclose: Non-disclosure of material facts or defects may make a contract void.

- A *Patent Defect* is that which is readily visible upon reasonable vigilance/inspection.
- A *Latent Defect* is some physical deficiency/defect not readily visible through reasonable vigilance/inspection.
- A *Material Latent Defect* is something that is judged essential for enjoyment of the property, or renders the property dangerous to occupants, or makes it unfit for habitation, or makes it unfit for the purpose for which it is purchased, or concerns local regulations, or does not have required municipal permits.

#### Definite and Clear

- If essential terms are missing from the contract or if something is unconcluded, the contract does not exist.
- An exception is a contract in which parties agree to decide certain matters by *Arbitration* at a later date.
- Uncertainty and disputes arise when certain things are supposed to be negotiated at a later date.
- Certain contracts include the phrase - '*Time is of essence*'. In these contracts, if important dates are missing (e.g. start date, expiry date, etc.), the contract may become invalid.

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## 2. REBBA 2002 CODE OF ETHICS

### 2.1 General Obligations

#### Dealing with Clients and Customers

- All registrants should treat every person fairly, honestly and with integrity.
- Registrants should use reasonable skills and judgment to provide *Conscientious and Competent Service* to both *Clients* and *Customers*.

#### Best Interests

- Registrants should protect and promote the best interests of their clients.
- Personal interests of the registrant should not interfere with this duty.
- Representation duties under REBBA 2002 are deemed to include the *Fiduciary Duties* under the *Agency Law*.

#### Opinions

- When asked for opinions and information, the registrants should demonstrate reasonable competence.
- Registrants are not supposed to provide *value opinions* if they do not have necessary knowledge and education which is required for valuation.

#### Dealing with Third Parties

- Registrants should not interfere with contracts or clients of other registrants.
- Clients of other registrants should also not be induced to breach their contracts.

#### Services from Other Professionals

- If a registrant does not have knowledge, skills, judgment and competence in a matter, or if the registrant is not authorized by law to provide such services, he/she should not provide expert advice on that matter.
- The registrant should encourage them to seek expert services from other better qualified people.
- Registrants should also not discourage them from obtaining expert advice.

### 2.2 Advertising and Promotions

#### Advertisements

- *False Advertising*: Advertisements by registrants must be in compliance with REBBA 2002. No registrant shall make false misleading or deceptive statements in advertisements. Registrants must also not help others in falsifying information in trade related documents. The Registrar of RECO may order cessation (withdrawal) of advertising material, order the registrant to retract the statement and publish a correction notice.
- *Registrant Name*: Registrants must advertise their name as registered with RECO. The name of the employer brokerage and its contact number must be included in all

advertisements. Registrants must also disclose their registration status such as “Salesperson”, “Broker” or “Brokerage”.

### **Promoting the Property**

- *Details of Property, Parties and Agreement:* Advertisements must not identify a property, a party or particulars of any agreement without the written consent of the party involved.
- *Inaccurate Representations:* Registrants shall not knowingly make any inaccurate representations regarding their services.
- *Error, Misrepresentation and Fraud:* Registrants shall take reasonable steps to avoid and prevent error, misrepresentation and fraud or any unethical practice.

## **2.3 Showings and Offers**

### **Working with Buyers**

- *Buyer's Search Criteria:* A buyer should be informed about all available properties that meet buyer's search criteria; without any regard to the commission to the registrant.
- *Seller Property Information Statement (SPIS):* If the seller has given an SPIS to the brokerage, potential buyers must be informed about its existence and it must be made available upon request.
- *Material Facts:* Material fact refers to any information that could change a buying or selling decision. Registrants must take reasonable steps to determine material facts. Any material facts *known* to the registrant must be disclosed.

### **Offer Presentation**

- *In Writing:* All agreements related to conveyance of interest in real estate must be in writing.
- *Written Offers:* All written offers received by the registrant must be presented to the clients as soon as practically possible. This should be done without any bias towards the person making the offer, the contents of the offer or the commission that would be earned.
- *Multiple Offers:* In case of multiple and competing offers the registrant must disclose the existence of all competing offers to every person interested in making an offer. But the details of any competing offer should not be disclosed to any competing buyer.
- *Commission Related Agreement:* If the commission is based on seller's net and different offers affect this amount, the seller must be fully informed about all offers that have different offer price. If there is any further commission negotiation between the brokerage and the seller client, this must be disclosed to buyers from other co-operating brokerages.

### **Copies, Referrals and Deposit**

- Copies of the accepted offers must be delivered to all parties to the agreement *at the earliest practical opportunity*.
- Referral fees from lenders or others received by the registrant as a result of the transaction must be disclosed.
- Deposits and trade related documents for clients and customers must be delivered promptly and according to the agreement.

## 2.3 Trust Accounts

### Real Estate Trust Account

- Real estate brokerages are required to keep the trust funds (deposits) separate and maintain a *Trust Ledger*.
- Bank charges for the trust account must be paid from the *General Account* of the brokerage and not from the trust account.
- Commission payments to other brokerages, salespersons and brokers are made from *Commission Trust Account*.
- The transactions from the *Real Estate Trust Account* must be authorized by the *Broker-of-Record*.
- Only one *Real Estate Trust Account* may be used by a brokerage unless additional accounts are approved by the Registrar of RECO.
- *Interest Must be Disclosed*: Interest received on trust funds, if any, must be disclosed and paid to the buyer, unless otherwise specified in agreement.
- *Monthly Reconciliation* of the trust account must be done, and shortfalls must be addressed immediately.

### Deposit Funds

- *Within 5 Days*: Brokerage must deposit the funds in its *Real Estate Trust Account* within 5 business days. Business days exclude Saturdays, Sundays & statutory holidays.
- *Delay by Other Brokerage*: The 5-day provision is for the *Listing Brokerage*. If the co-operating brokerage has delayed the deposit, it may also be held responsible.
- *Return of Deposit*: Deposit can only be returned if –
  - The agreement fails, and the brokerage receives a *Mutual Release* (consent) signed by all parties, or
  - A *Court Order* authorizes the disbursement.
- *Unclaimed Funds*: If the brokerage is not able to locate the person within 1 year, it must forward all unclaimed trust funds (over \$25) to the *Real Estate Council of Ontario*.

### Commission Trust Account

- A *Commission Trust Account* is not mandatory as per REBBA 2002 and brokerages may still hire salespersons and brokers.
- Some real estate boards require brokerages to have a *Commission Trust Account* as a requirement for membership.
- This trust account is used for payment of commission to salespersons and other brokerages.
- RECO *Commission Protection Insurance* does not cover a salesperson/broker when the brokerage fails to maintain a *Commission Trust Account* and the salesperson or broker is aware of it.

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### 3. REPRESENTING THE SELLER

- **Note:** To understand this chapter completely, please refer to the **Listing Agreement** provided in the text book.

#### 3.1 Seller Representation

##### Agreement

- The *Seller Representation Agreement (Listing Agreement)* establishes an agency relationship between the seller and the listing brokerage and sets out obligations of each party during the agreement.
- Under this agreement, the seller gives authority to the brokerage to market and sell the property for a specific period of time, known as the *Listing Period*.
- *REBBA 2002 Code of Ethics* requires that the agreement must be reduced to writing and signed by the registrant prior to any offer submitted by a buyer.
- Copy of the agreement must be delivered to the seller *immediately* after signing.

##### Types of Listings

- *Open*: The seller may ask many brokerages to sell the property without any liability to compensate any of them, except that brokerage which brings in a buyer and sells the property. In this case, the seller is also free to sell privately in order to save commission.
- *Exclusive*: The seller gives the sole right of selling the property to a single brokerage as per terms of the *Listing Agreement*, for a specified period of time (*Listing Period*). This type of listing is a measure of confidence from the seller and there is assurance of commission to the brokerage.
- *MLS®*: This is a special form of *Exclusive Listing* with the added advantage of exposure on the MLS® database. Commission is typically shared between the listing brokerage and the co-operating brokerage.

##### REBBA 2002: Minimum Requirements

- There must be an *Effective Date (Date of Commencement)* and one definite *Expiry Date*.
- Both dates must be on the first page of the agreement.
- The agreement must include the amount of total commission, how it is calculated and paid.
- The commission for co-operating brokerage (if any) must be mentioned.
- The agreement must include the services that will be provided.
- *More than 6 Months*: If agreement period is more than 6 months, the client's written consent is required next to the expiry date on the 1<sup>st</sup> page.

##### Seller's Obligations

- *Indemnification*: To compensate the brokerage for loss or damage incurred when carrying out lawful duties under the agreement. The duty to pay the brokerage for expenses incurred during performance of duties does not apply because the brokerage is being paid *Remuneration*. The seller also indemnifies the brokerage for the losses incurred during performance of duties. This does not apply when the loss to the seller is due to gross negligence of the brokerage.
- *Remuneration*: It is set out as the *commission* paid to the brokerage for securing valid agreement to purchase the property.



## 3.2 Provisions in the Listing Agreement

### The Commission Clause

- This clause specifies the total commission as a percentage of sale price or as a flat fee.
- The seller agrees to pay commission if the sale does not close due to seller's default.
- The brokerage has the right to apply the deposit first to reduce the commission obligation of the seller.
- The seller pays the deficiency between the deposit and the total commission.
- The seller agrees to pay applicable taxes on commission.

### Enquiries and Offers

- The seller agrees to refer all enquiries during listing period to listing brokerage.
- Seller agrees to forward all offers to listing brokerage that come directly to him.

### Family Law Act and Spousal Consent

- The seller must get *Spousal Consent* if the property is a matrimonial home and only one spouse is on the title.
- Otherwise, the seller provides a warranty in the *Family Law Act* clause that *Spousal Consent* is not required.

### Contact After Expiry

- This box provides an option to the seller when the listing period expires and the property does not sell.  
The seller initials one of the two options –
  - *Does*: The seller consents to other brokerages to contact him after expiry to discuss listing of the property.
  - *Does Not*: The seller does not consent to other brokerages to contact him after expiry to discuss listing of the property.

## 3.3 Negotiating the Commission

### REBBA 2002 Compliance

- *Commission Calculation*: Commission can be a fixed amount (flat fee) or a percentage of sale price, or a combination thereof.
- *Several Percentages*: A combination of various percentages (in descending order only) may be used as sale price increases.
- *Commission Entitlement*: All agreements related to commission must be in writing. No commission can be claimed if a written agreement does not exist.
- *Claim for Commission*: The person making a claim for commission must be either registered or be exempted from registration. Otherwise, no claim or legal action can be taken for commission.
- *Existing Unexpired Agreement*: No action can be taken for commission if the registrant knows that the client has an unexpired agreement with another brokerage, unless the client gives a written consent.
- *Payment of Commission*: Brokerages cannot pay commission to employees of other brokerages or any unregistered persons (*Bird Dog Fee*).

### Commission Disclosures

- *Additional Fees:* The brokerage must disclose any direct or indirect financial benefit from other parties to its clients. For example, any referral fee from a lender for financing must be disclosed.
- *Two Commissions from Same Trade:* A brokerage cannot collect commission from one party and then collect commission from the other party under a different agreement for the same trade unless a written disclosure is made to all parties.

### Holdover (Commission Clause)

- As per the wording of this provision, commission is payable if the property is shown to a buyer during the listing period but is subsequently sold *privately* to the same buyer after expiry of the agreement but during the holdover period.
- If the property is subsequently listed with a different brokerage, the difference in commission applies.
- The holdover period is typically 60 to 90 days or as agreed by the parties.
- The obligation of the seller under *Holdover* to pay commission applies even if the agreement period has expired. The closing date of the sale is not irrelevant in this case.

*Example:* Seller Smart lists his home with Cram realty Inc. at 5% total commission. The listing period is from April 1<sup>st</sup> to June 30<sup>th</sup>. The holdover period is 90 days after expiry. Buyer Bright is shown the property on June 20<sup>th</sup>, which is during the agreement period.

- *Commission Payable:* The seller waits for expiry of the listing period and sells it *privately* to buyer Bright on July 5<sup>th</sup>. may claim full commission.
- *Difference in Commission Payable:* After expiry of the listing period on June 30<sup>th</sup>, the seller lists the property with Power Realty Inc. at 4% commission. The same buyer Bright buys the property on July 5<sup>th</sup>. may claim the difference in commission, which is 1%.
- *No Commission Payable:* After expiry of the listing period on June 30<sup>th</sup>, the seller lists the property with Power Realty Inc. at 6% commission (higher commission). The same buyer Bright buys on July 5<sup>th</sup>. cannot claim any commission because the new commission is higher than the old commission.

### 3.4 Seller Property Information Statement (SPIS)

- Completion of this form is not mandatory but if the seller has completed an SPIS, the listing brokerage must inform all prospective buyers of its existence and it must be provided to them upon request.
- The seller specifically states that the *information is believed to be true, based on his personal knowledge and as of the date of signing.*
- SPIS does not provide any information on *Psychological Stigmas* attached to the property.
- The seller is not obliged to disclose certain information but must disclose *Latent* and *Material Latent Defects*.
- The form clearly states that the information provided in the form is not a warranty. The buyer must still make his own enquiries.

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## 4. REPRESENTING THE BUYER

- **Note:** To understand this chapter completely, please refer to the **Buyer Representation Agreement** provided in the text book.

### 4.1 Agency Agreements

#### Creating Agency Relationship

- The *Buyer Representation Agreement* establishes an *agency relationship* between the brokerage and the buyer.
- It sets out the obligations of both parties and time limits for the authority given by the buyer.
- *REBBA 2002 Code of Ethics* requires that the agreement must be reduced to writing and signed by the registrant prior to any offer submitted by the buyer.
- Copy of the agreement must be delivered to the buyer *immediately* after signing.

#### REBBA 2002: Minimum Requirements

- There must be an *Effective Date (Date of Commencement)* and one definite *Expiry Date*.
- Both dates must be on the first page of the agreement.
- The agreement must include the amount of total commission, how it is calculated and paid.
- The agreement must include the services that will be provided to the buyer.
- *More than 6 Months:* If agreement period is more than 6 months, the buyer's written consent is required next to the expiry date on the 1<sup>st</sup> page.

### 4.2 The Buyer Representation Agreement

#### Understanding Key Provisions

- This agreement establishes an *Exclusive Buyer Representation* relationship between the brokerage and the buyer.
- The pre-printed wording provides general description of property and location.
- The agreement states that the buyer may not be shown all available properties that may be of interest to the buyer.
- The buyer may sign representation agreement with more than one brokerage if *Geographic Location* or if the *Property Type* is different.
- The buyer agrees that *Multiple Representation* may occur. In this case, the brokerage will get written consent of the parties at the earliest practical opportunity but before an offer is presented.
- The agreement includes a *Disclaimer* that the brokerage shall not be held responsible for environmental conditions, hazards and other physical conditions of land or improvements. The information provided by the seller is also not warranted as accurate and the buyer must take expert advice in these matters.
- The buyer is informed that a *Credit Report* may be referred to in connection with this transaction to comply with *The Consumer Reporting Act*.

#### Commission Details

- The *Buyer Representation Agreement* includes commission arrangements and buyer responsibilities if case the commission is not paid by the seller or the listing brokerage.

- Commission is typically payable *either* by the seller/listing brokerage or the buyer.
- The brokerage shall inform the buyer how much commission is being paid by the sellers.
- The buyer agrees that if the seller or listing brokerage does not pay commission then buyer will be responsible to pay the agreed commission.
- The buyer is also responsible for any difference between the commission paid by the seller and the commission specified in the agreement.

#### **Other Obligations of the Buyer**

- The buyer agrees to submit all offers through the brokerage during agreement period.
- The buyer is obligated to pay commission if the sale does not close due to buyer's default.
- The brokerage has the right to apply the deposit first to the commission.
- The commission obligation in *Holdover Period* applies.
- The buyer agrees to pay the deficiency in commission if the commission received from the other brokerage is less than commission specified in the agreement.
- The buyer agrees to pay applicable taxes on commission.

### **4.3 Negotiating the Commission**

#### **REBBA 2002 Compliance**

- *Commission Calculation*: Commission can be a fixed amount (flat fee) or a percentage of sale price, or a combination thereof.
- *Several Percentages*: A combination of various percentages (in descending order only) may be used as sale price increases.
- *Commission Entitlement*: All agreements related to commission must be in writing. No commission can be claimed if a written agreement does not exist.
- *Claim for Commission*: The person making a claim for commission must be either registered or be exempted from registration. Otherwise, no claim or legal action can be taken for commission.
- *Existing Unexpired Agreement*: No action can be taken for commission if the registrant knows that the client has an unexpired agreement with another brokerage, unless the client gives a written consent.
- *Payment of Commission*: Brokerages cannot pay commission to employees of other brokerages or any unregistered persons (*Bird Dog Fee*).

#### **Commission Disclosures**

- *Additional Fees*: The brokerage must disclose any direct or indirect financial benefit from other parties to its clients. For example, any referral fees from a lender for financing must be disclosed.
- *Two Commissions from Same Trade*: A brokerage cannot collect commission from one party and then collect commission from the other party for the same trade unless a written disclosure is made to all parties.

#### **Holdover (Commission Clause)**

- As per the wording of this provision, commission is payable if the property is shown to a buyer during the agreement period, but the same property is subsequently purchased *privately* by the buyer after expiry of the agreement period but during the holdover period.

- If the buyer signs a *Buyer Representation Agreement* with a different brokerage, the difference in commission may be payable.
- The holdover period is typically 60 to 90 days or as agreed by the parties.
- The obligation of the buyer under *Holdover* to pay commission applies even if the agreement period has expired.
- The closing date of the sale is not irrelevant in this case.

*Example:* Buyer Bright has signed a *Buyer Representation Agreement* with Power Realty Inc. The agreement period is from April 1<sup>st</sup> to June 30<sup>th</sup>. The holdover period is 90 days after expiry. The agreement specifies a commission of 2.5% if the brokerage does not receive any commission from the seller/listing brokerage. Buyer Bright is shown a property on June 20<sup>th</sup>, which is during the agreement period.

- *Commission Payable:* The buyer waits for expiry of the agreement period and later buys the same property *privately* from the seller on July 5<sup>th</sup>. Power Realty Inc. may claim full commission.
- *Difference in Commission Payable:* After expiry of the agreement period on June 30<sup>th</sup>, buyer Bright signs another *Buyer Representation Agreement* with Cram realty Inc. at 1% commission. Bright buys the same property which was earlier shown to him by Power Realty Inc. property on July 5<sup>th</sup>. Power Realty Inc. may claim the difference in commission, which is 1.5%.
- *No Commission Payable:* After expiry of the agreement period on June 30<sup>th</sup>, the Bright signs another *Buyer Representation Agreement* with Cram realty Inc. at 3% commission. Bright buys the same property which was earlier shown to him by Power Realty Inc. property on July 5<sup>th</sup>. Power Realty Inc. may not claim any commission because the new commission is higher than the old commission.

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## 5. MULTIPLE REPRESENTATION & CUSTOMER SERVICE

### 5.1 Representation Terms

- *Single Representation*: This refers to a relationship where a brokerage represents only one client (buyer or seller) in a transaction and the other party is a third party or a *Customer*.
- *Sequential Representation*: This happens when the same client first sells a property through a brokerage and then buys another from the same brokerage.
- *Concurrent Representation*: This happens when a brokerage represents more than one client (buyer or seller) but not for the same trade. This may lead to competing buyers or sellers and conflicts of interest may arise.
- *Multiple Representation*: This happens when the same brokerage represents more than one client for the same transaction. It may also occur when more than one buyer client is represented by the same brokerage for the same property.

### 5.2 Information and Disclosures

#### Disclosure Before Representation Agreement

- *REBBA 2002 Code of Ethics* requires that information about agency relationships must be provided to the parties at the earliest practical opportunity but before an offer (of *representation*) is presented.
- This information includes service alternatives available through brokerage. Examples – *Representation (Client)*, *Customer Service (Customer)* or *Multiple Representation (More than one Client in a Transaction)*.
- *Working with A REALTOR®*: This brochure provides service alternatives and options to the party
- A signed written *Acknowledgment* must be obtained and kept by the brokerage.

#### Before Actual Offer

- As per *REBBA 2002 Code of Ethics*, a brokerage cannot represent more than one party in a trade unless informed written consent is obtained from all parties.
- A written disclosure of representation must be made, and informed written consent of clients be obtained at the earliest practical opportunity but before an offer is made.
- The pre-printed wording of *Representation Agreements (Listing Agreement and Buyer Representation Agreement)* also fulfils certain the requirements regarding *Information Before Agreement*. This includes information about *concurrent representation* and *multiple representation*, and consent of the sellers/buyers for such representation.
- *Confirmation of Co-operation and Representation*: This form is signed by all parties before presentation of an offer. It has provisions to get *Informed Written Consent* of the clients in case of *Multiple Representation*.
- Brokerages should disclose to the clients the difference in obligations when multiple clients are represented as compared to when only one client is represented.



## 5.3 Multiple Representation

### More than One Client

- *Multiple Representation* refers to any situation where two or more *clients* are represented by the same brokerage for the same trade.
- Examples -
  - A single brokerage represents both the buyer and the seller.
  - Different salespersons from the *same* brokerage (or branch offices) represent both the buyer and the seller.
  - Different salespersons of the *same* brokerage represent multiple buyers for the same property.
- *Written Disclosure*: Multiple representation occurs *after* an agreement with a client has been signed. It must be disclosed, and *Informed Written Consent* of both parties must be taken before entering into agreements.
- *Competing Interests*: The brokerage must protect the best interests of both clients. Multiple representation puts a brokerage in a difficult situation as interests of both parties cannot be simultaneously protected.

### The Multiple Representation Clause

- This clause in the *Listing Agreement* and the *Buyer Representation Agreement* states that in case of *Multiple Representation*, the brokerage will not disclose:
  - That the seller will accept less than the listed price.
  - That the buyer will pay more than the offered price.
  - The motivation or personal information of the buyer or the seller, *unless* written consent is given.
  - The price that the buyer should offer or the price the seller should accept.
  - The listing brokerage will not disclose the terms of any other offer (if competing offers are received).

## 5.4 Providing Customer Service

### Customer

- The *Customer Service Agreement* makes a party *Customer* of the brokerage.
- The brokerage has a *non-agency* relationship with the customer.
- A customer is *not represented*; *fiduciary duties are not owed* but must be dealt with *fairly, honestly and with integrity*.
- Duties of the brokerage are limited to giving information, responding to questions and doing whatever functions are agreed.

### REBBA 2002 Code of Ethics

- The brokerage must meet requirements about *Information Before Agreement* and *Disclosure of agency relationships*.
- Demonstrate reasonable knowledge, skill, judgment and competence.
- The brokerage must make reasonable efforts to determine and disclose known material facts about property.
- Requirements about competing offers, conveying offers and delivering copies of agreements and documents also apply.

## 5.5 Customer Service Agreements

- **Note: Please refer to the Buyer and Seller Customer Service Agreements provided in the text book.**

### Provisions

- The *Customer Service Agreement* must be in writing and copies must be delivered *immediately* after signing.
- The customer is not obliged to sign the agreement.
- Duties of the brokerage under the standard agreement include -
  - *Ethical Duty* to deal fairly, honestly and with integrity.
  - *Legal Duty* to exercise due care when answering questions and providing information.
  - *Legal Duty* to avoid misrepresentation.

### Seller Customer Service Agreement

- This agreement is *Non-Exclusive*.
- This form is commonly used to provide *customer service* to a seller when the buyer is already a client of the brokerage (has signed a *Buyer Representation Agreement*).
- Since the seller has not listed the property (*it is a private sale*), the agreement is called *Commission Agreement for Property Not Listed*.
- The agreement confirms that the seller is not a client of the brokerage and is *not represented*.
- The agreement includes a warranty that the seller has not listed the property with any other brokerage.
- Commission rate or amount of commission is given in the form.
- The seller agrees that commission is still payable if the sale does not close due to seller's default.

### Buyer Customer Service Agreement

- This is a *Non-Exclusive* agreement.
- This form is commonly used to provide *customer service* to a buyer when the seller is already a client of the brokerage (has signed a *Listing Agreement* with the brokerage).
- The agreement confirms that the buyer is *not a client* of the brokerage and is *not represented*.
- The agreement includes a warranty that the buyer has not signed any *Buyer Representation Agreement* with any other brokerage.
- The agreement confirms that *no commission* is payable by the buyer.
- The buyer is informed that a *Credit Report* may be referred to in connection with this transaction to comply with *The Consumer Reporting Act*.
- *Indemnification*: The buyer agrees that he has been advised to make his own enquiries about the condition of the property.

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## 6. MARKETING AND ADVERTISING

### 6.1 Obtaining a Listing

#### Obtaining a Saleable Listing

- Obtaining an *Exclusive Listing* shows that the seller has confidence in the salesperson and brokerage.
- The listing brokerage is assured of payment of commission.
- An *MLS® Exclusive* listing is posted on the *Multiple Listing Service®*. It provides wide market exposure and assures co-operation from other member brokerages.

#### Comparative Market Analysis (CMA)

- Providing value opinions for a property needs good knowledge of the *Appraisal* profession.
- Registrants are discouraged to undertake these assignments.
- Instead, registrants should use a *Comparative Market Analysis (CMA)* to provide estimate of reasonable listing price to sellers.
- CMA is not an *Appraisal* of the property but is used only to estimate a reasonable listing price.

#### Problems with Overpriced Property

- Qualified and motivated buyers may not seriously consider the property.
- The property may become stale with too many days on the market.
- People may think that something is wrong with the property.
- Advertising expenses and marketing efforts by salespeople may be lost if the property is not sold.
- The seller may have to reduce the price drastically or may have to sell later under undue pressure.
- The seller may blame the salesperson for not making sincere efforts for selling.

### 6.2 The Competition Act

- The federal *Competition Act* ensures fair marketing practices by businesses, including real estate registrants.
- Registrants must not make false, misleading or deceptive statements in advertisements.
- Proof of intention to deceive is not required for charges under the *Competition Act*. *Due Diligence* must be used to correct the error.
- *Material Fact* refers to any information that may affect a buying or selling decision by a consumer.
- *General Impression Test*: The definition of “*Misleading*” includes non-literal impressions given by advertisements. The actual wording of the advertisement may be technically correct, but its *General Impression* may still be false.
- *REBBA 2002 Code of Ethics* includes advertising standards for real estate registrants.

### 6.3 Property Details

- Adequate knowledge of the property helps demonstrate that the salesperson has personally inspected the property before listing.

- Registrants must rely on original documents to obtain information about the property.
- Any information provided by the seller must be verified from source documents such as the *Title* and the *Survey*.
- Registrants must take reasonable steps to obtain *Material Facts* about the property.
- Registrants should look at the property as well as the neighbourhood and watch for factors which may affect value.
- Any alterations, modifications or structural changes done by the seller must be with appropriate building permit.
- Registrants should pay attention to deterioration of the structure, outdated systems and identify *chattels included* and *fixtures excluded*.
- Environmental issues, hazards, water wells, septic systems and fuel tanks need special attention in rural properties.

## 6.4 Marketing and Advertising

### Minimum Requirements

- *Identification*: Brokerages, brokers and salespersons should advertise their names exactly as registered with RECO (legal name or trade name).
- *Individuals*: Salespersons and brokers must use their name exactly as registered.
- *Identification of Brokerage*: All salespersons and brokers must include the name of the employing brokerage exactly as registered with RECO.
- *Description*: The designation of the registrant must be included. Acceptable designations –
  - Salesperson or Sales Representative
  - Broker or Real Estate Broker
  - Broker of Record
  - Brokerage or Real Estate Brokerage
- Specialty designations (e.g. *Condo Specialist*) are prohibited.

### Advertising Guidelines

- The *Competition Act* and RECO *Registrar's Advertising Guidelines* prohibit false and misleading advertising and deceptive business practices in promotion of services.
- The abbreviations used in advertisements should not be confusing but only those that are standard in local trading areas.
- Registrants must not knowingly make any inaccurate representations about trades or services.
- Registrants are prohibited from furnishing false Information and they should not assist others in falsifying information.
- Registrants must make best efforts (take reasonable steps) to avoid errors, misrepresentation and fraud.
- Registrants should not, as an inducement to purchase or sell real estate, make any promise that the registrant or anyone else will purchase/sell the real estate. This does not apply when the registrant has a written contract to whom the promise is made.
- Promises made must be in writing and delivered to the person to whom they are made.
- Free offerings should not include any conditions.
- Awards, honours and promotional claims must be supported by evidence such as source and date. Purchased honours and awards cannot be advertised.

- All promotional claims must be accompanied with necessary *Disclosures*.

### **Promoting the Property**

- MLS® listings are considered advertisements under the *Competition Act*.
- All information in listings and advertising must be accurate and should not be false or misleading.
- Identification of the property, party to a contract or agreement details cannot be advertised without the written consent of the client.
- The registrant must take reasonable steps to verify material facts about the property to avoid errors, inaccurate information and misrepresentation.
- Reduction of price must be clearly identified and must not be misleading.
- Fine print should be clearly visible. Minimum font size for printed advertisements is 7 points.
- Disclaimers, if any, must accompany the advertisement and be clearly visible or readable. The message in the wordings of the advertisement and the disclaimer must be consistent.
- If pictures or illustrations are not exact, then the advertisement should include disclaimers words such as: 'Artist's Concept Only', 'For Illustration Purposes Only', 'Actual Home May Not Look Like the One Shown', etc.

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## 7. THE AGREEMENT OF PURCHASE AND SALE

- **Note:** To understand this chapter completely, please refer to the **Agreement of Purchase and Sale** (Form 100) provided in the text book.

### 7.1 Agreement of Sale

- When an *Agreement of Sale* is used, the seller retains the title to the property and the buyer is only given possession.
- Title of the property is not transferred until a future date, or –
  - Until the payment is made in full.
  - When sufficient payments have been made.
  - When the sale involves *Seller Take Back* mortgage and the buyer has made sufficient down payment.
- The buyer has a *contractual interest* in the property until the title is transferred.
- In case of default in payment, the buyer loses all rights to the property.

### 7.2 Analyzing the Agreement of Purchase and Sale

#### Buyer and Seller Names

- *Individuals*: Full legal names of the buyers and the sellers, as shown on their identification documents or on title.
- *Names on Title*: The names that would be registered on the title may be different from the names shown on the agreement. It is up to the buyers to decide whose names would be registered on the title.
- *Matrimonial Home*: A property may be purchased by a single buyer and it can still become a matrimonial home.
- *Corporations*: Legal name of the corporation, as given in the *Article of Incorporation*, is inserted.
- *Power of Attorney*: When the sellers have given this authority to someone to sell the property on their behalf. This document is registered in *Land Registry Office*. The listing brokerage must obtain a copy of this document.
- *Partners*: All partners must be fully identified and sign the agreement.

#### Trust and Estate Sales

- There are two types of *Estate Trustees* –
  - *Estate Trustee with a Will (Executor)* is someone appointed in a Will.
  - *Estate Trustee without a Will (Administrator)* is someone appointed by courts.
- A person signing '*In Trust*' cannot be held liable if the agreement is signed under *seal*.
- *Individual*: The name to be inserted reads: '*Jim Cram in Trust*' or '*Jim Cram in Trust for a Corporation yet to be Formed*.'
- *Estate Trustees*: All *Estate Trustees* must sign the agreement and copies of documents showing their authority must be seen by the listing brokerage. The *Certificate of Appointment of Estate Trustee* should be seen.

### 7.3 Property Details

- *Address*: Full municipal address including name of the town and the region.



- *Frontage/Depth*: Insert the frontage and depth of the lot including units (metres or feet). The words 'More or Less' are used to avoid minor discrepancies.
- *Legal Description*: Complete legal description, as given in the title/deed or the survey, must be inserted. Reference to any easement, mutual driveway, etc. must also be given.

#### 7.4 Purchase Price and Deposit

- *Purchase Price*: Also called the *Offer Price*. The amount is written in words and figures. For acreage/frontage, the amount is given as *Per Front Foot*, *Per Front Metre* or *Per Acre*.
- *Deposit*: The *Deposit Holder* is typically the listing brokerage. Deposit is to be held in *Trust Account* until completion or other termination of the agreement.
- There are three options for the buyer to pay deposit -
  - *Herewith*: The deposit is given with the offer.
  - *Upon Acceptance*: The buyer agrees to give the deposit within 24 hours of signing the *Confirmation of Acceptance*.
  - *As Otherwise Described in this Agreement*: If some other arrangement is to be made, a clause may be inserted in the Schedule A. Additional deposits are given in *Supplementary Deposit* clause in Schedule A.
- The clause wording clarifies that if nothing else is specified in the agreement, the deposit holder does not earn any interest on deposit and no interest would be paid.

#### 7.4 Summary of Preprinted Clauses

##### Irrevocability

- The time period given by the offeror (buyer or seller) to the other party to consider the offer.
- The offer cannot be withdrawn by the *offeror* until the given date and time.
- The party making the offer may withdraw the offer only before it is communicated to the other party.
- The offer becomes *Null and Void* if this time period expires. During negotiations, the other party may extend this date and time.

##### Completion Date

- This date must not be Saturday/Sunday or a statutory holiday.
- If nothing else is agreed the buyer will be provided *Vacant Possession* of the property on completion.

##### Notices

- The parties authorize their brokerages to send and receive notices on their behalf.
- Fax numbers and/or email addresses of the listing brokerage and the co-operating brokerage are provided for delivery of documents.
- Notices are deemed delivered when sent electronically by fax or email.
  - This section is left blank – (i) if the buyer is a *Customer* of the listing brokerage, (ii) if there is *Multiple Representation*, and (iii) when so instructed by parties.

##### Chattels Included

- List of chattels that are to be included with sale. The seller has the right to remove all chattels *if not specifically included* in the agreement.

### Fixtures Excluded

- List of items fixed to the property that the seller does not want to give.
- Salespersons must be careful about 'built-in' items such as the dish-washer.
- The seller cannot remove any fixture *if not specifically excluded* in the agreement.

### Rental Items

- Rental items that are not owned by seller and cannot be included in the agreement.
- The wording of the clause specifies that the buyer agrees to assume the lease of such rental items.

### HST

- This section must not be left blank. Most residential *resales* are exempted from HST.
- 'Included In': Means that the seller is responsible, in case HST applies.
- 'In Addition To': Means that the buyer is responsible, if HST applies.

### Title Search

- *Requisition Date*: This date should be after the date in conditional clauses. The buyer's lawyers must report title issues to seller's lawyer before this date.
  - *Root of Title* objections are fundamental issues related to the title; e.g. seller cannot transfer title because a previous *severance* was not legal under the *Planning Act*. Another example is an objection for existing *mortgage lien*, but the seller can pay off.
  - *Matters of Title* objections are issues that the seller cannot remove, e.g. an easement registered on title.
- *Present Use*: The permitted use of the property such as 'Single Family Residential' is inserted here. If this space is left blank, then it implies that the seller represents that the present use of the property may be lawfully continued, and it may be insured against risk of fire.

### Title

- The buyer is assured that the title is good and free from all restrictions, charges, liens and encumbrances *other than* those specified in the agreement.
  - *No Objection* - Registered *Restrictive Covenants (Deed Restrictions)* that run with land and complied with, registered easements for public utilities and any *minor* easements that do not materially affect the use of property are not an objection to title.
  - *Valid Objection* - If the property cannot be insured against risk of fire, there is any *deficiency notice* or *work order* against the property or the *present use* may not be lawfully continued.
- The buyer's solicitor must send the objections to the seller's lawyer before the *Requisition Date*.
- If the seller is unwilling or unable to remove the objections and the buyer is unwilling to waive the objections, the buyer may terminate the agreement.

### Documents and Discharge

- The seller is *only* required to produce documents (title/deed, survey, etc.) that are under his possession or control.

- *Survey*: The seller must provide a survey if it is in his possession. If the seller does not have a survey, the buyer has several options - (i) accept the survey provided by seller, (ii) insert a clause that the seller will arrange a new survey, (iii) the buyer may arrange a new survey at buyer's cost, (iv) arrange *Title Insurance*, or (v) complete the sale without a survey.
- *Mortgage Discharge*: The buyer accepts *Personal Undertaking* of seller's lawyer to discharge the mortgage using funds received from sale.

### **Inspection**

- The buyer acknowledges that he has inspected the property and observed any patent defects.
- If a *Home Inspection* clause is not included in the agreement, the buyer will not be permitted to inspect the property again.

### **Insurance**

- The seller is responsible to keep the property insured until the completion date. Insurance coverage is not transferred on sale.
- If some major damage happens the buyer has two options –
  - (i) terminate the agreement, or
  - (ii) take proceeds from seller's insurance to complete the sale.

### **Planning Act**

- The agreement is invalid if the transfer does not comply with the *Planning Act*.
- In case of land, which is subject to severance, the seller can accept an offer, but the agreement will be completed only after receiving *Consent for Severance* before completion.

### **Residency**

- Non-resident sellers must pay *Capital Gains Tax* within 10 days of completion of sale.
- If the seller fails to pay, the buyer becomes responsible.
- The seller has various options –
  - Deliver a certificate from the *Minister of Revenue* after paying necessary taxes, or
  - Credit the buyer for the amount of *Capital Gains Tax*, or
  - Provide a *Declaration* that the seller is not a non-resident.

### **Property Assessment**

- Buyers and sellers cannot make any claim against each other or the brokerages for assessment matters.
- Property assessments are done by municipalities on an annual basis.

### **Tender**

- Parties tender their obligations under the contract (documents and funds) at the time of completion.
- If one party breaches the contract, the other party can still tender documents or funds *on the day of completion* but not before completion.

### **Family Law Act**

- The seller warrants that spousal consent is not required under the provisions of the *Family Law Act*.

### **UFFI**

- *UFFI (Urea Formaldehyde Foam Insulation)* was used in properties built during 1970's.
- This clause is a disclosure and warranty from the seller that the seller has not installed UFFI in the building, and UFFI was never used as insulation in the building.

### **Legal, Accounting and Environmental Advice**

- The parties agree that the information provided by the brokerages is not to be considered as any such advice.

### **Consumer Reports**

- This disclosure is required under the *Consumer Reporting Act*. The buyer is informed that a consumer report may be obtained in connection with this agreement, if it is appropriate.

### **Agreement in Writing**

- This clause states that if a conflict arises between a pre-printed clause and an inserted clause, the inserted clause takes priority.
- Parties agree that nothing has been "*said or done*", other than specifically given in the agreement.

## **7.6 Signatures and Dates**

### **Offer Date**

- The '*Offer Date*' is the date when buyers sign the offer and not the date on the first page.
- The dates on first page of the offer and when buyers sign the offer need not be the same.

### **Buyer and Seller Signatures**

- All parties to the agreement must sign and insert date.
- For a property in *Joint Tenancy*, both owner spouses should sign as Sellers.
- *Spousal Consent* is required if the property is a *matrimonial home* and one of the spouses is not on title.
- The parties must understand that they are *signing under seal*.
- If the buyer/seller is a corporation, the officer must sign and use *Seal* or write "*I/We have the authority to bind the corporation*".
- In partnership, all partners should sign the agreement.

### **Witness**

- Any competent person can sign as witness. If a dispute arises, the witness may be called to testify.
- The witness must be - (i) physically present, (ii) must have attained the age of maturity, and (iii) must be a third party (must not be a party to the contract).
- Typically, the salespersons for each party insert their signatures as witness.

- In case of multiple representation, the same salesperson or salespersons from same brokerage sign as witness.

#### Confirmation of Acceptance

- The last party to accept all changes signs here.
- This section must be completed before the *Irrevocable* date and time given on Page 1.
- If the seller accepts the original offer without any changes, then this section is signed by one of the sellers.
- If this is a counter offer where the seller has made changes; and buyer accepts the changes, then this section is signed by one of the buyers.

#### Acknowledgement

- Each party acknowledges that they have received a *Signed* copy of *Accepted* agreement.
- This section is completed after the *Confirmation of Acceptance* has been signed.
- The lawyers' information may be completed right away or may be completed later.

#### Commission Trust Agreement

- The salespersons of each brokerage sign on behalf of their brokerages.
- The *Commission Trust Account* protects the commission of the brokerages and salespersons in case of misuse of funds or bankruptcy of the brokerage.

### 7.7 Schedules

#### Reference

- Names of the buyers, the sellers and the property address are inserted as reference.
- The date on this page is same as on Page 1 of the agreement.
- More *Schedule* pages may be added if additional clauses are required or to attach other documents.

#### Balance Due on Completion

- This clause is inserted as the first clause in Schedule A.
- If there is *Supplementary Deposit* clause, then that clause becomes the first clause.

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## 8. PREPARING AN OFFER

- **Note:** To fully understand this chapter, please refer to the completed **Agreement of Purchase and Sale** provided in the text book.

### 8.1 Preliminaries

#### Client Identification

- The *Proceeds of Crime (Terrorist Financing) and Money Laundering Act* is enforced by the *Financial Transactions and Analysis Center of Canada (FINTRAC)*.
- This law applies to all businesses including real estate brokerages.
- Each brokerage must identify their clients as soon as practically possible and retain the identification documents for a minimum period of 5 years.
- The co-operating brokerage must identify their buyer clients, at the latest, when an offer is submitted and/or deposit is taken.
- The listing brokerage must identify their seller clients, at the latest, when an offer is accepted by them.
- If any party is a customer, the brokerage must try to obtain identification information. If the individual or party refuses the brokerage must make a note on identification documents and may complete the transaction.
- For identification of corporations, the brokerage must check appropriate documents such as the *Article of Incorporation* to verify that the corporation exists. The authority of the person signing on behalf of the corporation must also be verified.

#### FINTRAC Compliance Forms

- *Risk Assessment:* This form is completed by every real estate brokerage every 2 years and the record is retained for a minimum period of 5 years.
- *Individual Identification:* This form is used for identification of buyers and sellers.
- *Corporate /Entity Identification:* This form is used for identification of corporations.

#### Receipt of Funds

- This form is required for every real estate transaction where a deposit is received by the brokerage.
- The form must be retained by the brokerage for a minimum period of 5 years.
- This record is not required when –
  - Funds are received from financial entity (bank) or a public body,
  - The deposit does not go into the *Real Estate Trust Account* of a brokerage, and
  - A *Large Cash Transaction* (\$10,000 or more in cash) is involved and this is reported to *FINTRAC*.

#### Large Cash Transaction Report

- This report is required when deposit funds are more than \$10,000 in cash within 24 hours (or several cash payments made by the same client within a 24-hour period exceeding \$10,000).
- This report must be sent to *FINTRAC* within 15 days of receipt of cash.
- This report not required if funds are received from a public body or from a financial entity.



## 8.2 Clauses in the Schedule

### Balance Due on Completion

- Six Elements of the clause:
  1. *By Whom*: The buyer agrees to pay
  2. *Amount*: A further sum of ....
  3. *Adjustments*: Subject to adjustments
  4. *To Whom*: To the seller
  5. *When*: On completion of this transaction
  6. *How*: By certified cheque or by bank draft Or by wire transfer
- **Balance = Purchase Price – Seller Take Back – Assumed Mortgage – Deposits**
- The amount of *New mortgage* is not subtracted whether it is *First* or *Second*.

### Supplementary or Additional Deposit

- This clause is used when the buyer pays additional deposit or alternate deposits in addition to the deposit shown on the first page of the agreement.
- This amount is also to be kept by listing brokerage in *Real Estate Trust Account*.
- The clause specifies the date when this deposit is to be paid.

### Representation and Warranty

- *Representation* is a statement made at the time of agreement. If it turns out to be false, the buyer has the right to terminate (rescind) the agreement.
- *Warranty* is also a statement made at the time of agreement. If it turns out to be false, the buyer *cannot* terminate the agreement but can sue for *Damages*.
- The standard clause has two parts – (i) the actual *Representation and Warranty*, and (ii) that the representation and warranty *survives* the closing date and *does not merge* (extinguish) on completion.
- The clause wording applies to the state of the property *only at the time of completion*. This means that there is *no warranty* after the completion.
- If the *Representation and Warranty* clause includes the wording '*To the Best of My Knowledge and Belief*', then it should not be considered as complete assurance.

### Clause Wordings

- *Balance Due on Completion*: '*The buyer agrees to pay a further sum of ...*'
- *Supplementary Deposit*: '*The buyer agrees to pay a sum of...*'
- *Representation and Warranty*: '*The seller represents and warrants that...*'
- *Agreement*: '*The parties to this agreement agree that...*'
- *Acknowledgement*: '*The buyer/seller acknowledges that...*'
- *Disclosure*: '*The seller discloses and the buyer acknowledges that ...*'

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## 9. UNDERSTANDING CONDITIONS

- **Note:** To fully understand this chapter, please refer to the completed **Agreement of Purchase and Sale** and **Example Clauses** provided in the text book.

### 9.1 Formats of Conditional Clauses

#### Condition Precedent

- The clause wording starts with – ‘*This offer is conditional upon ....*’
- The agreement is not legally binding when *Confirmation of Acceptance* is signed.
- There is something yet to be done within specified date and time. For example, the buyer has to arrange a mortgage loan.
- The *Waiver* provision in the clause provides that the buyer may waive the condition before the specified time.
- The buyer must either send a *Notice of Fulfillment of Conditions* or a *Waiver* within given date and time. This makes the agreement a legally binding contract.
- If the buyer does not send any notice to the seller within given date and time, the offer automatically becomes null and void.

#### True Condition Precedent

- The wording of this condition is similar to the *Condition Precedent*, but the *Waiver* provision is not included. The condition must be fulfilled for the contract to become legally binding.
- The agreement is not legally binding when *Confirmation of Acceptance* is signed.
- There is something yet to be done within specified date and time.
- A *True Condition Precedent* is typically used in following situations -
  - *Mortgage Assumption*, which is conditional upon approval of the buyer by seller's lender.
  - Sale of a parcel of land, which is conditional upon *Consent to Sever* by the municipality.
  - A condition that the seller needs to be released from a previous offer.
- The agreement becomes legally binding when the *Notice of Fulfillment of Conditions* is sent by the party who needs to fulfil the condition.

#### Condition Subsequent

- The wording starts with – ‘*The buyer may terminate this agreement ...*’
- The agreement becomes legally binding when *Confirmation of Acceptance* is signed.
- No *Waiver* is necessary as a binding contract already exists.
- The buyer still has to do something before the date and time given in the condition.
- The buyer must send the *Notice of Termination* if he wants to terminate the agreement within the given time limits.
- No action or notice is required if the buyer wants to make the agreement a legally binding contract.

#### Stacked Conditions

- Several conditions can be stacked one over another when they have the same date and time for fulfillment.

- All stacked conditions must be either *Precedent* type or *Subsequent* type.
- The conditions are written in the sequence of the things to be done.
- *Typical Format*: "This offer is conditional upon....:
  - The buyer arranging a new first mortgage....
  - The buyer arranging inspection of the subject property...

This is followed by: "*Unless the buyer gives notice in writing...*"

## 9.2 Standard Conditions

### Home Inspection

- The home inspection condition is used so that the buyer may hire a professional home inspector to check the condition of the property. The buyer pays for the inspection.
- The clause wording specifies that the inspection report must be satisfactory to the buyer, in buyer's *sole and absolute discretion*.
- The seller agrees to provide access to the property for the purpose of this inspection.
- Typical residential home inspection covers the physical structure, electrical system, roofing, plumbing, heating, air conditioning, insulation, and general interior/exterior condition.
- The report specifically includes general and property specific limitations of inspection.
- The home inspection is not done according to the *Ontario Building Code*.
- A standard home inspection does not cover *Water Well* or *Septic Tank* in rural properties.

### Sale of Buyer's Property (SBP)

- This condition makes the agreement conditional upon sale of buyer's property.
- This condition might include a lengthy time period to fulfill (e.g. 60 or 90 days).
- An agreement with such a condition is generally accepted by seller in very slow market or if the property is unique.
- Typically, the SBP clause is followed by an *Escape Clause* included.

### Escape Clause

- An *Escape Clause* is typically used when there is a lengthy condition in the agreement such as a condition involving *Sale of Buyer's Property*.
- The seller can continue to market the property after the *Confirmation of Acceptance* has been signed.
- In case the seller receives a better offer, he would give 48/72 hours' notice to the buyer to waive conditions and make the agreement firm.
- If the buyer does not respond within the given time period, the offer becomes null and void.
- The seller can now sell the property to the other buyer with a better offer.

### New First Mortgage

- This condition is included for arrangement of *New First Mortgage* by the buyer at *Buyer's Own Expense*.
- The given amount includes the wording '*Not Less Than*' to specify the minimum loan.
- If there are two mortgage loan conditions included in the offer, then the amount should be written as '*Not More Than*' in order to prevent over-financing of the property.
- The annual interest rate includes the wording '*Not More Than*' to specify the maximum interest rate.

- The words '*Calculated Semi-annually, Not in Advance*' are written to comply with *The Interest Act*.
- The repayment amount is approximate and typically given as '*Blended Monthly*' payments.
- The term is given as '*Not Less Than*' to specify the minimum term of the loan.
- The name of the lender need not be specified in the condition and the *Amortization* period is optional.

### Mortgage Assumption

- This is a *True Condition Precedent* and as such, the *Waiver* provision is not included. The buyer must send a *Notice of Fulfillment of Conditions* to make the agreement a legally binding contract.
- The first part is an agreement that the buyer is assuming seller's existing mortgage.
- The second part is a condition that the buyer needs to be approved by seller's lender.
- The third part of the clause is an agreement that the buyer will proceed immediately to make an application to lender and provide required documents.
- The clause must include the name of existing lender, the amount of loan to be assumed, the annual interest rate, the payment amount and the due date.

### Seller Take Back (STB)

- This clause is used when the seller gives a mortgage loan to the buyer and takes back mortgage of the same property. This is an *Agreement* clause and not a conditional clause.
- The *Seller Take Back* mortgage is typically a second mortgage. In some cases, the STB is first mortgage while the buyer may arrange a second mortgage from another lender.

### Postponement Clause

- This clause is used when there are two mortgage clauses in the agreement.
- Typically, this clause is used with the second mortgage (not with the first mortgage).
  - *Required*: If the first mortgage (New or Assumed) *expires* before the second mortgage.
  - *Not Required*: If the first mortgage *does not expire* before the second mortgage.

### Prepayment

- Prepayment is a privilege given to a mortgagor to pay the loan before the maturity date.
- If nothing is provided in the mortgage document, the mortgagor can only make regular payments during the term.

### Credit Worthiness Clause

- This clause may be required with *Seller Take Back (STB)* mortgage if the seller wants to ensure repayment credibility of the buyer.
- The clause specifies that the seller must be satisfied with personal information and credit-worthiness of the buyer.
- This condition is for the benefit of the seller and may be waived by the seller.

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## 10. OFFER NEGOTIATIONS

### 10.1 Offer Presentation

#### Conveying the Offer

- The brokerage must convey all written offers to the client as soon as practically possible.
- The registrant cannot withhold any offer based on identity of the person who sent it or because of the contents of the offer.
- The registrant cannot decide to accept or reject the offer on behalf of the client.

#### Multiple/Competing Offers

- Offers must be presented in the order they are received.
- In case of competing offers, the listing brokerage must –
  - Disclose the existence of all competing offers to each buyer, and
  - Must not disclose the content of any competing offer to any buyer.
- *Competing Offers and Multiple Representation*: If there are competing offers and one offer is from the buyer client of the listing brokerage; and there is some commission negotiation with the seller, this must be disclosed to the buyers from other co-operating brokerages. Also, the disclosure of *Multiple Representation* must be made to all parties.

#### Three possibilities

- The seller has three options in case of multiple offers and each has different consequence.
- Possible actions by sellers during offer negotiations -
  - *One Offer Accepted* – It may be conditional, and the condition may not be fulfilled.
  - *One Offer Countered* – This buyer may wait until the *Irrevocable* time expires and the offer becomes Null and Void.
  - *All Offers Rejected* – All buyers may look for other properties.

#### Real Risk

- The seller must not counter more than one offer at a time.
- More than one buyer may accept the counter offer. This may result in competing contracts and law suits as the seller cannot sell the property to two buyers.
- This strategy should never be seriously considered.

### 10.2 Negotiations

#### Seller's Options on Receiving an Offer

- *Accept the Offer*. This must be done before the specified *Irrevocable* time.
- *Counter the Offer*. This must be done before the specified *Irrevocable* time.
- *Reject the Offer*. The seller need not do anything, and the offer automatically becomes null and void when the specified *Irrevocable* time expires.

#### Seller Accepts the Original Offer

- The seller initials at the bottom of all pages and inserts signatures.
- The salesperson signs as a witness.
- The *Confirmation of Acceptance* is signed by one of the sellers.

- All this must be completed before the specified *Irrevocable* time.

### Counter Offer

- A counter offer is a new offer from the seller to the buyer.
- The seller now makes it *Irrevocable* for the buyer. The word '*Buyer*' in the *Irrevocable* clause is replaced with the word '*Seller*'.
- The seller may extend the *Irrevocable* time, if required.
- There are three methods to counter the offer –
  - Make changes in the original offer, initial all changes, sign the offer and send it back to the buyer.
  - Use the *Counter Offer* form. In this case, the seller does not sign the original offer but signs the *Counter Offer* form. *Confirmation of Acceptance* and *Acknowledgement* are still signed on the original offer.
  - Make a new offer and send it to the buyer. In this case the seller takes a risk as the buyer may reject the seller's new offer.

### Seller Counters the Original Offer

- Changes are made to the original offer and initials are inserted on all changes.
- The seller may extend the original *Irrevocable* date, if required.
- The seller initials on the bottom of all pages, inserts signatures and the salesperson signs as witness.
- The sellers do not sign the *Confirmation of Acceptance*.
- The offer is sent back to the buyer before the specified *Irrevocable* time.
- Assuming that buyer accepts these changes, the buyer initials all changes confirming the acceptance of changes.
- The *Confirmation of Acceptance* is now signed by *one of the buyers*.

### Acknowledgement

- The parties *Acknowledge* that they have received copies of the *Accepted* agreement.
- Typically, the last party to accept the terms of the offer signs the *Confirmation of Acceptance* and then signs the *Acknowledgement* section.
- The *Address for Service* section is completed.
- Lawyer's information may be completed at this time or at a later date.
- Salespersons of the listing brokerage and the co-operating brokerage sign the *Commission Trust Agreement*.

### 10.3 Trade Record Sheet

- A *Trade Record Sheet* is mandatory as per REBBA 2002 for every transaction.
- It is signed by both the salesperson or the broker and the *Broker of Record*.
- Each transaction is assigned a sequential trade number.
- The file is kept open until completion of the transaction (closing date).
- *Transaction Report*: This is an optional internal document used as an input form for *Trade Record Sheet*. It is not treated as a substitute for the *Trade Record Sheet*.



## 10.4 Other Standard Forms

### Amendment to Agreement of Purchase and Sale

- This form is used by parties to make changes to an accepted agreement.
- This form must be signed by all parties.

### Notice to Remove Conditions

- This notice is sent by the seller if there is an *Escape Clause* in the agreement.
- The seller gives the buyer 48 or 72 hours' notice to remove all conditions.
- If the buyer does not respond within given time, the agreement becomes *Null and Void*.

### Notice of Fulfillment of Conditions

- This form is sent by the buyer before expiry of conditional date to notify the seller that the conditions have been fulfilled. This makes the agreement a legally binding contract.
- This form can be used with *Condition Precedent* as well as with *True Condition Precedent*.

### Waiver

- This form is used by the buyer before expiry of conditional date to remove all conditions in the agreement. This makes the agreement a legally binding contract.
- This form *cannot be used with True Condition Precedent*. It is not required in *Condition Subsequent*.

### Termination of Agreement by Buyer

- This form is used when the buyer initiates the termination of a legally binding agreement.
- This form is typically accompanied by *Mutual Release* form.

### Termination of Agreement by Seller

- This form is used when the seller initiates the termination of a legally binding agreement.
- This form is typically accompanied by *Mutual Release* form.

### Mutual Release

- This form is used by parties when –
  - The agreement fails due to non-fulfillment of conditions, or
  - When the parties want to terminate a legally binding agreement.
- The *Mutual Release* form releases the parties from the obligations under the contract (*Agreement of Purchase and Sale*).
- This form also authorizes the listing brokerage to withdraw the deposit from its *Real Estate Trust Account* and return it to the buyer.

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## 11. CLOSING PROCEDURES

### 11.1 Closing Procedures

#### Title Search

- Buyer's lawyer performs the *Title Search* to verify that the title is good and in marketable condition.
- If the title is registered under the *Registry Act*, the title search is performed for a period of 40 years on *Chain of Title*. Any gap or error in the chain is called *Cloud on Title*.
- If the title is registered under the *Land Titles Act*, the title search is done only on current records.
- *Title Related Searches*: These include - Outstanding encumbrances/liens, restrictive covenants (deed restrictions), non-resident status of the seller, expropriations, matrimonial home status and seller's compliance with the *Planning Act*.
- *Non-Title Related Searches*: These may include – zoning conformation, work orders, executions, unregistered easements, personal property under the *Personal Property Securities Act*, outstanding amounts for utilities, status of realty taxes, survey documentation, compliance with subdivision or site plan agreements, etc.
- *Rural Properties*: Additional searches are done on local health and municipal records for well water, septic tanks, fuel oil tank, waterfront improvements, etc. to ensure compliance with applicable regulations.

#### Requisition Date

- Buyer's lawyer must complete the title search before the *Requisition Date* given in the agreement.
- An additional search (*sub-search*) may be done *Earlier of*:
  - 30 days from the *later of* - the requisition date **or** the date when the conditions are fulfilled or waived.
  - 5 days before the completion date.
- The buyer's solicitor ensures that –
  - There are no *Work Orders*,
  - There are no *Deficiency Notices*,
  - The property can be insured against risk of fire, and
  - The *Present Use* of the property can be lawfully continued by the buyer.

#### Requisition Letter

- This letter is sent by buyer's solicitor and the seller's solicitor prepares a response.
- Seller's insurance is not transferred to the buyer and is not a part of adjustments. It is not a part of the *Requisition Letter*.
- Requisitions may include the following -
  - Declaration that the seller is not a *non-resident*.
  - Declaration that the seller possessed the property during the ownership period.
  - Seller's direction for payment of funds upon closing.
  - Seller's undertaking to settle payments and provide vacant possession upon closing.
  - Evidence from the seller or his solicitor that there are no tax arrears, no construction liens, no *executions*, no contraventions of the *Planning Act*, no unregistered liens, no rights-of-way, no expropriations, etc.

- Evidence that the building complies with applicable zoning by-laws.
- Declaration from the seller that the sale is not subject to HST.

### Undertaking by Solicitor/Client

- An *Undertaking* is a personal assurance given by a lawyer or a client (through a lawyer) to resolve any last-minute issues.
- Undertakings typically relate to unanswered requisitions concerning outstanding liens, encumbrances, an encroachment, etc. may otherwise delay the closing.
- For example, the seller's lawyer typically gives an undertaking that he will diligently take the necessary steps to discharge seller's existing mortgage lien using funds received from the buyer.

### Reporting the Completion

- After the completion of the sale each lawyer prepares a *Final Reporting Letter* for his respective client and the brokerage.
- This letter reports successful closing of the transaction and includes the *Statement of Adjustments*.
- *Statement of Adjustments*: This document provides the details of financial transactions (adjustments, payments, commission deducted, legal fees, etc.).

## 11.2 Title Problems

### Title Insurance Policies

- *Title Insurance* is different from property insurance and from *Land Titles Assurance Fund*.
- It provides a method to address various errors that could potentially occur through fraudulent activity or simple errors made by solicitors when preparing documentation.
- Seller may avoid the cost of a new survey in many cases, but it is not a substitute for a survey.

### Typical Coverage

- Title Insurance may not cover all issues related to the title.
- Title insurance does not cover personal problems of the property owner.
- Two primary coverages are the *Duty to Indemnify* (covers actual loss) and the *Duty to Defend* (covers legal costs).
- There are two types of policies – (i) *Owner Policy*, and (ii) *Lender Policy*.
- Most policies state what risks are covered, what is excluded and what are exceptions.
- Separate policies exist for commercial and residential properties.
- Title insurance typically covers following issues –
  - A document registered on title is defective or improperly signed.
  - Some fraud or forgery in documentation affects the title.
  - The property may not be legally accessible by road or by a vehicle.
  - A violation of zoning by-law such as a setback requirement is uncovered, or a structure was made without a building permit.
  - Some construction lien is discovered.
  - Certain restrictive covenant is discovered, and it affects use of land.

### 11.3 Commission Payments

- The listing brokerage receives a *Notification of Completion of Sale* from the solicitor.
- The seller signs a direction to the solicitor for use of funds from the *Real Estate Trust Account* for payment of commission.
- The deposit in *Real Estate Trust Account* is first transferred to the *Commission Trust Account*.
- If there is surplus money, it is sent to seller's solicitor.
- If there is any discrepancy, the seller's solicitor sends the money to the brokerage.
- Commission is typically disbursed in following order:
  - *Distribution* – Payment to the Co-operating Brokerage.
  - *Split* - Payment to the salesperson/broker.
  - Payment to the listing brokerage itself.

#### The Commission Trust Account

- This account is used by brokerages for disbursement of commission.
- The account ensures payment of commission in the event of bankruptcy or misuse of funds by a brokerage.
- This trust account is not mandatory as per REBBA 2002 and brokerages may still hire salespersons/brokers.
- Some real estate boards may require real estate brokerages to maintain this account as a pre-requisite for getting membership.
- RECO's *Commission Protection Insurance* does not cover any salesperson or broker when the brokerage fails to maintain a *Commission Trust Account* and the salesperson/broker is aware of this fact.

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## PART II – STUDY NOTES - RESIDENTIAL

### 1. RESIDENTIAL BUILDINGS

#### 1.1 Options for Single Family Homes

##### Configurations

- *Dwelling Unit*: For the purpose of zoning, a *dwelling* refers to a single-family structure with at least one bedroom and a kitchen.
- *Detached Dwelling*: A building having one dwelling unit.
- *Duplex Dwelling*: A building that is divided horizontally or vertically into two attached units on a single lot, each having a separate entrance.
- *Linked Dwelling*: Two or more buildings, each having one unit, attached below grade by a common concrete wall.
- *Semi-Detached*: A building that has two attached units, each having separately deeded lot and divided vertically by above grade wall.
- *Street Townhouse*: More than two attached units that are divided vertically by party walls and each having frontage on a public street.
- *Private Road Townhouse*: More than two attached units divided vertically by party walls and having frontage on a private road. The private road is considered a *Common Element Condominium (CEC)*.
- *Triplex and Fourplex Dwelling*: A building that has three or four separate units, each having a separate entrance.

##### Multi-Family Dwellings

- Multi-family refers to more than one dwelling unit on a property.
- Zoning designation such as *RM* is used for such properties.
- *Ontario Building Code* Part 9 specifies construction requirements for such buildings which are up to three storeys in height.
- Tenancies in multi-family buildings must adhere to the *Residential Tenancies Act*.

#### 1.2 Home Based Business

##### Advantages

- Lower operational cost as compared to commercial office space.
- Ability to work from home and time saved in commuting to and from work.

##### Zoning Provisions

- Zoning by-laws dictate the use of a property and they vary by municipality.
- *Deed restrictions* may still prohibit a specific use which is permitted by zoning by-laws.
- Municipalities may make special rules for health professionals to permit their practice in a residential building.
- *Typical Requirements*: These include maximum floor area, no outside storage of business equipment, deliveries by courier only, limited number of visitors, no sign on the property and employees can only be the permanent residents of the home.

- *Business Restrictions:* Restrictions on certain types of businesses may also be applicable. For example, manufacturing, repairs, food preparation, fabrication activities, etc. may not be permitted.
- *Insurance Requirements:* Typical home insurance does not cover business equipment, supplies and inventory, personal injury liability for clients or employees.
- *Tax Considerations:* *Canada Revenue Agency* permits business deductions for expenses based on proportion of the total square footage of the home used for business.

### **1.3 Land Lease Communities**

- Land lease communities are popular with mature adults.
- These are governed under the *Residential Tenancies Act*.
- The *Residential Tenancies Act* does not apply to a site which is intended for vacationing or a *Trailer Park* that is occupied only seasonally by travelers.
- The land lease varies from a minimum of 20 years up to a maximum of 99 years.
- The landlord retains the possession of land, structures, services and other facilities for common use.
- *Land Lease Home:* This refers to a permanent structure built on the leased land.
- Residents pay the amount of *Land Lease* as well as a monthly *Maintenance Fee*.
- *Mobile Home Park:* This land lease community may have a mix of temporary structures built without wheels or trailers with wheels.

### **Factory Built Housing**

- *Pre-Fabricated Homes:* This refers to a home built off-site in a factory.
- *Manufactured Home:* These are mobile homes and trailers. These are built in a factory, transported to the site and installed on cement pylons or concrete block piers.
- *Modular Homes:* These are built in sections in a factory, transported to the site and assembled there.

### **Rights & Responsibilities**

- The landlord is responsible for keeping the land lease community in good repair, meet health and safety requirements, garbage disposal, water supply and sewage, drainage, electrical system and, maintenance of grounds, etc.
- The tenants are responsible for keeping the premises clean and repairing any damage caused by them or by their guests.

### **Key Considerations for Sale**

- The tenant has the right to sell or lease the home or mobile home without landlord's consent.
- Any land lease agreement that requires landlord to be the agent of the tenant is invalid.
- *Signage:* The tenant may place a sign only on the window of his mobile home. The landlord may prohibit this sign if –
  - The prohibition is for all tenants,
  - The landlord provides a bulletin board for the '*For Sale*' advertisement, and
  - The bulletin board is provided free of charge and located in a public place.



- *Landlords First Right of Refusal*: If this clause is included in the land lease agreement, the home owner gives 72 hours' notice to the landlord to buy the home on terms and conditions agreed with the buyer. If the landlord does not agree, the tenant (home owner) can sell the home to that buyer.

### The Agreement of Purchase and Sale

- The land lease is assigned to the buyer upon sale and the buyer agrees to abide by the rules and regulations of the community.
- If consent of the landlord is required, the seller agrees to apply immediately.
- The agreement becomes null and void if landlord's consent is not received.
- *Residential Tenancies Act* provides that the landlord cannot refuse consent to assign the land lease without prior permission of the *Landlord and Tenant Board*.

## 1.4 Housing Alternatives for Mature Adults

### Life Lease Communities

- Life lease communities are *non-profit*, and they are governed by the *Contract Law*.
- Life lease projects allow the resident to purchase the *Right to Occupy* (lease) a unit during the life of that occupant or the survivor.
- The tenants pay a monthly maintenance fee
- The tenants are responsible for their own insurance coverage.

### Care Homes

- Care homes are governed by the *Residential Tenancies Act*.
- Residents receive care services such as health, rehabilitation, nursing care, bathing, feeding, ambulatory, personal hygiene, emergency response, etc.
- Key provisions in the *Residential Tenancies Act* include –
  - A written tenancy agreement must be provided outlining what services are provided.
  - The tenancy agreement must state that the tenant has the right to cancel the agreement within 5 days of signing.
  - The tenant has the right to seek third party advice.

## 1.5 Co-operative Buildings

### Co-operative Corporations Act

- Co-operative corporations are owned and controlled by their members.
- These are regulated by the *Financial Services Commission of Ontario (FSCO)*.
- The *Co-operative Corporations Act* does not regulate day-to-day business of the co-operatives or its by-laws.
- The act does require that *One Member Equals One Vote*, regardless of the amount invested.
- Registration of the corporation must be done by a specific number of individuals who file the *Article of Incorporation*.
- *Equity Co-operatives*: These co-operatives have share capital. The buyer buys shares in the corporation and also gets an *Occupancy Agreement (Lease)*. These are regulated under the *Residential Tenancies Act*.

- *Non-Profit Co-operatives*: These corporations do not have share capital and are funded by federal and provincial governments.

### **Financing Difficulties**

- *Blanket Mortgage*: The entire property is financed as opposed to individual units.
- *Proportionate Share*: The buyer of a unit must assume liability of the existing *Blanket Mortgage*, proportionate to their share.
- *Secondary Mortgage*: The mortgage on individual unit becomes a second mortgage and many lenders may not be ready for such financing.
- *Joint Liability*: The buyers may be liable for obligations of other owners when they fail to meet their financial obligations.

### **The Agreement of Purchase and Sale**

- In resale of a co-operative unit, no interest in land is transferred but the *Land Transfer Tax* is payable by the buyer.
- The buyer of a unit is actually buying shares of the corporation, proportionate to the value of the unit.
- The lease of the subject unit is assigned to the buyer.
- The following documents are provided to the buyer:
  - Share certificate (only in *Equity Co-operative*).
  - Assumption of the *Occupancy Agreement*.
  - Particulars of rights being acquired (suite and any exclusive use areas).
  - The amount of the mortgage to be assumed.
  - The amount of common expenses (maintenance fee), parking space and locker charges, etc.

### **1.6 Co-ownership**

- In *Co-ownership* of property, all owners become *tenants-in-common* of the property.
- Each co-owner has proportionate interest in the property.
- The operation and governance of the property is in control of the co-owners.
- Co-owners decide the rules and regulations of operation of the property.
- Co-ownership is entirely different from *Condominiums* and *Co-operatives* where the entire property is owned by a corporation.

### **1.7 Timeshare**

#### **Fractional Interest**

- Timeshare is division of property rights into *Fractional Interests* based on time.
- They are found in condominiums, co-operatives and co-ownerships.
- It is popular in sale of recreational properties such as vacation resorts.

#### **Fee Ownership Interest**

- A condominium corporation is created and registered with pages for each time interval.
- Individual weeks are registered under the unit and the total interest must be 100%.

### Right-to-Use Interest

- A condominium need not be created. The title to land and improvements remains with the developer.
- Buyers get their interest through a lease which specifies the units (weeks).
- The buyers of the right enter a *Contractual Arrangement (Lease)* to enjoy the use of property.

### The Consumer Protection Act

- The *Consumer Protection Act* has the following provisions regarding timeshares –
  - *Written Agreement:* The agreement must be in writing and be delivered to the consumer.
  - *Cooling Off Period:* A consumer may cancel a timeshare agreement anytime within 10 days of the *date of receiving* a signed copy of the agreement.
  - *Copy Not Provided:* A consumer may also cancel a timeshare agreement anytime within one year if a signed copy of agreement is not provided.

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## 2. RESIDENTIAL CONDOMINIUMS

### 2.1 Creation of a Condominium

#### The Condominium Act

- A *Condominium* is created after registration of *Declaration* and *Description*.
- The applicant is called *Declarant* and the registration number is a *Sequential Number* for a particular regional municipality.
- The objects of the corporation are management of - (i) the corporation assets, and (ii) the corporation property.
- A corporation *without share capital* is automatically formed upon registration.
- The corporation does not provide limited liability to unit owners.
- Unit owners are personally liable for the debts and obligations of the corporation.

#### Declaration

- *Declaration* is also called the *Condominium Constitution*.
- It includes a statement that *The Condominium Act* governs.
- It includes details about proportionate share of each unit in *Common Elements* and the share of *Common Expenses*.
- Information about common elements for *Exclusive Use* is provided.

#### Description

- This document provides the *Diagrammatic Presentation* of the property.
- It includes plan of survey, architectural plans and certificate of the architect.
- Unit boundaries, shape, dimensions and location of each unit is given in this document.
- Also included are structural plans, certificate of engineer and certificate of *Ontario Land Surveyor*.

#### Planning Act Compliance

- The approval authority is the regional municipality or the *Ministry of Municipal Affairs and Housing*.
- *Draft Plan*: This refers to the detailed proposed project, which is submitted along with the application. Pre-submission consultations may be required by municipalities.
- A *Site Audit* is required regarding grading, drainage, landscaping, lighting, etc.
- After *Draft Approval*, the *Declarant* may start construction.
- Final approval is granted assuming that the plan conforms to the previously approved *Draft Plan* and any conditions imposed have been or will be fulfilled.
- The *Final Plan* is then registered and is assigned a sequential number for that regional municipality.

### 2.2 Types of Condominiums

#### Unit

- A *Unit* is the space defined by boundaries within a condominium building.
- The unit owner has exclusive ownership of the unit and is has proportionate ownership of the *Common Elements* as *Tenant-in-Common*.

### Common Elements

- All property within the condominium corporation *except units* is considered *Common Elements*.
- These are held by unit owners as *Tenants-in-Common* (undivided interest).
- One or more unit owners may have been given exclusive use of some common elements such as parking or lockers.
- The *Board of Directors* may make changes to common elements without the consent of unit owners, unless owners request a meeting and vote against the proposed work.
- If a meeting is requested and voting is held, at least 66% owners must give approval vote.
- Unit owners may make changes to common elements subject to approval by the *Board of Directors*.

### Types of Condominiums

- *Freehold Condominiums*: These are of following types -
  - *Standard Condominium*: This is a *freehold* condominium.
  - *Common Element Condominium*: This consists only of common elements but has no units. Each owner must hold a freehold parcel of land. Examples - A golf course, a ski hill resort or a private road.
  - *Phased Condominium*: It operates as a freehold corporation in which the *Declarant* may add or create additional successive units/common elements in phases.
  - *Vacant Land Condominium*: The *unit* is just a parcel of land in this type of condominium. It provides for development and sale of units (*land*) without the necessity of immediately completing any structures.
- *Leasehold Condominium*: All units and common elements are subject to leasehold interests (40 to 99 years) by owners. The lease term for everyone must be the same.

### Parking and Storage

- *Freehold*: The space is owned by the unit owner. The title may be within the unit title or it may be a separate title. If the title is separate, the owner may sell that space to another unit owner.
- *Leasehold*: The corporation owns the space and leases it to unit owners.
- *Exclusive Use*: The corporation owns the space but grants rights as per *Declaration*.
- *Allocated/Assigned*: The corporation owns the space and assigns it to unit owners on discretionary basis.

## 2.3 Governance and Operation

### Board of Directors

- There must be at least 3 directors who – (i) should be minimum 18 years of age, (ii) should not be *undischarged* bankrupts, and (iii) must not be mentally handicapped.
- A director cannot continue to be a director if one of the latter two conditions is not met.
- Directors are appointed for a maximum term of 3-years.
- A director may also cease to hold office if there is a lien on his/her unit and is not discharged within 90 days of registration.
- *Indemnification*: Directors rely in good faith on reports of experts (accountants, engineers, lawyers, etc.) and are not personally liable if a breach of duty occurs when they take some

decision based on these reports. This protection does not apply if a director is not working in good faith or is acting dishonestly.

- The *First Board* consists of 3 directors and is appointed by the *Declarant* within 10 days of condominium registration. They continue in office until the *Turn Over Meeting* is held to elect new board of directors.

### **Turn Over Meeting**

- This meeting is held to transfer control of the corporation from the *Declarant* to unit owners.
- In this meeting, the unit owners may elect 2 more directors to the board.
- The meeting must be called before the *later of* -
  - The 30<sup>th</sup> day after the *Declarant* transfers 20% of units, or
  - The 90<sup>th</sup> day after the first unit is transferred.

### **Condominium By-Laws**

- *By-laws* are procedures and requirements regarding internal operations and governance of the corporation.
- By-laws are made by the *Board of Directors* and a majority of owners must vote in favour of by-laws to become effective.
- After approval, a copy must be submitted in the *Land Registry Office*.

### **Condominium Rules**

- *Rules* are regulations regarding safety, security and welfare of owners, as well as property and assets of the corporation.
- The board must provide the owners with a copy of rules. Unit owners may request a meeting within 30 days and a majority of owners must vote in favour of the rules.
- If no meeting is requested, the rules become effective without voting.

### **Performance Audit**

- This audit involves detailed examination of common elements to inspect the building components concerning damage or defects.
- The audit reveals deficiencies that may give rise to a *New Home Warranty* claim.
- First audit must be done within 10 months of registration of the condominium.

## **2.4 Sale of Units – Key Points**

### **New Units - Disclosure Statement**

- Buyers of new units must receive a *Disclosure* statement from Condominium Corporation as set out in the *Condominium Act*.
- The buyer has the right to rescind (terminate) the *Agreement of Purchase and Sale* within 10 days of receipt of the *Disclosure* statement or copy of the *Agreement of Purchase and Sale*, whichever is later.
- If terminated by the buyer, the buyer gets a refund of the deposit and interest, if any.

### **Resale Units - Status Certificate**

- The *Status Certificate* provides information to the buyers about many aspects of the corporation.



- It contains information about operational, legal and financial obligations of the corporation.
- The certificate must be provided within 10 days of the request, at a maximum cost of \$100.
- If it is not provided by the corporation, it is assumed that -
  - No default in common expenses has occurred for the subject unit,
  - No increase in common expenses has occurred since the date of current year's budget, and
  - No levies have been assessed against the subject unit.

### Common Expenses

- *Common Expenses (Maintenance Fees)* are the costs related to performance of objects and duties of the corporation.
- Unit owners contribute to common expenses according to their proportionate share.
- If a unit owner is in default, the corporation has an *Automatic Unregistered Lien* on the unit.
- This unregistered lien expires in 3 months if a *Certificate of Lien* is not registered by the corporation.
- The unit owner must be given a *Notice of Lien* at least 10 days before registration.
- If the debt is paid, the corporation must register a *discharge* of the lien and notify the unit owner.
- When the unit is sold, this lien has priority over other encumbrancers, except any *Crown Claim* and *Property Taxes*.

### Reserve Fund

- The *Reserve Fund* is maintained by the corporation for major repairs and replacement of common elements and corporation assets such as roofs, building exteriors, roads, sidewalks, electrical, heating, plumbing, etc.
- Money from just the *Reserve Fund* cannot be used for adding new common elements.
- Funds are collected from *Common Expenses* and must be held in a *Trust Account*.
- In case the repair cost exceeds funds held in reserve, a *Special Assessment* may be required to meet the expenses.
- After the deficiency in *Reserve Fund* is over, the *Special Assessment* is removed.
- *First Reserve Fund* is created when the condominium is registered and until the *First Reserve Fund Study* is done
- The *First Reserve Fund Study* must be done within 1 year of condominium registration.

### Use Restrictions

- *Use Restrictions* limit or restrict the use of condominium property.
- This information is included in the *Status Certificate*.
- Some examples are –
  - No Pets allowed in the building.
  - Only white drapery on exterior windows.
  - No installation of antennas, clotheslines, satellite dishes, etc.
  - No parking of commercial vehicles.
  - No alterations to unit or common elements without the written consent of the corporation.
  - No signs permitted on the property.

## 2.5 Termination of Condominium

- *Consent of Owners:* Owners of at least 80% units must give their consent to terminate. Further, at least 80% of all persons having registered claims must also give consent to terminate.
- *Sale of Property:* When the property is sold as a whole, the *Condominium Act* ceases to govern. Consent of at least 80% unit owners is required. The unit owners share the proceeds of the sale according to their proportionate share.
- *Damage:* When substantial damage occurs to the property and the repair cost is more than 25% of the replacement cost of all buildings and structures. Unit owners are notified, and meeting may be requested within 30 days. At least 80% unit owners must vote in favour of termination. If no vote is held, the corporation must make the necessary repairs.
- *Court Application:* An Ontario court may terminate the *Condominium Corporation* upon application by an owner or a mortgagee.

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### 3. RESIDENTIAL TENANCIES ACT

#### 3.1 Residential Tenancies

##### Types of Tenancies

- *Fixed Term*: The tenant has exclusive possession for a specific term, as agreed in the lease. The lease must have the commencement and expiry dates. In residential tenancies, if the tenancy is not renewed or if the tenant does not vacate after expiry, the lease converts to month-to-month (*periodic tenancy*). In commercial, no notice of termination is required.
- *Periodic*: The period is fixed (weekly, monthly, etc.) but the length of tenancy is indefinite. This type of lease renews itself automatically unless a termination notice is given.
- *Tenancy at Will*: This happens after expiry of the lease or when no lease exists. The tenant remains in possession of the property with the consent of the landlord.
  - *Implied Tenancy at Will*: This occurs when the tenant remains in the property without paying the rent.
  - *Express Tenancy at Will*: This occurs when possession is given to a tenant before completion of a transaction, but the transaction does not close.
- *Tenancy at Sufferance*: Also called *Over-Holding Tenancy*. This happens when, after expiry of the lease, the tenant remains in possession of the property without the consent of the landlord and also *does not pay the rent*.

##### Lease

- *Lease (Tenancy Agreement)*: Lease is a contract between the landlord (*Lessor*) and the tenant (*Lessee*). A lease may be verbal, written, express or implied.
- *Minimum Content*: A lease must have full legal names of the landlord and the tenant, description of the premises, consideration (amount of rent), the legal purpose and start and end dates. The purpose of the lease must be defined. The tenant may register his/her leasehold interest in *Land Registry Office*.

##### Agreement to Lease

- This agreement sets out fundamental, material aspects of the agreement between the landlord and the tenant but formal detailed *Lease* is yet to be signed. An *Agreement to Lease* is considered an unsettled form of lease.
- An *Agreement to Lease* leads the parties to final lease wherein the landlord may add more appropriate clauses.
- This form itself may become the final lease if detailed lease is not to be prepared.

##### Typical Clauses

- *Credit Check*: This clause is used when the landlord wants to ensure credit worthiness of the tenant.
- *No Lease to be Signed*: This clause is used when the *Agreement to Lease* is treated as final Lease.
- *Tenant's First Right of Refusal*: This clause provides that before the landlord (seller) can accept an offer from a buyer, the landlord must first allow the tenant a specified period to submit an offer on the same terms and conditions. The landlord can sell the property to that buyer if the tenant refuses to purchase.

### Exemptions from the Residential Tenancies Act

- Temporary accommodation for travelling, vacationing or seasonal.
- Farm employee whose accommodation is conditional on continued employment.
- *Non-profit* housing co-operatives, penal/correctional facilities and emergency shelters.
- Student accommodation provided by educational institutions.
- Occupants having shared bathroom or kitchen with the owner.
- Premises for business purposes with living accommodation attached *under one lease*.

### 3.2 Provisions in the Residential Tenancies Act

#### Landlord and Tenant Board (Tribunal)

- This board has two main roles – (i) providing information about the *Residential Tenancies Act* and, (ii) resolving disputes between landlords and tenants.
- *Mediation* is preferred by the board where it helps both parties come to some form of agreement. One of the parties has to make an application.
- *Adjudication* is the process whereby hearings are held, evidences are considered and a decision is made according to the *Residential Tenancies Act*.

#### Rental History and Credit References

- According to *Ontario Human Rights Code*, landlords cannot refuse accommodation to anyone because of race, ancestry, ethnic origin, citizenship, creed, sex, age, marital status, handicap or receipt of public assistance.
- In order to select or refuse a tenant, the landlord may request –
  - Rent deposit and rental history.
  - A guarantee for payment of rent.
  - Authorization to conduct credit check.
  - Income information, which can only be requested in conjunction with credit references and rental history.

#### Rent Deposit

- Landlord can require a rent deposit, which cannot be more than *lesser of* the amount of rent for one rental period or one-month rent.
- When the rent is increased, the landlord may ask for additional deposit.
- The landlord is required to pay interest on deposit.
- The deposit is applied to the last rental period (e.g. last month) prior to termination of tenancy.
- The tenant is not required to provide post-dated cheques or automatic withdrawal from bank account or credit card. This is a violation of the *Residential Tenancies Act*.
- The landlord must provide receipts for the rent and rent deposit upon request.

#### Rent and Rent Increase

- *Lawful Rent*: The first rent charged from a new tenant.
- *Rent Increase*: Minimum 90 days' notice is required before the effective date of increase. Generally, the landlord can only increase the rent if 12 months have passed since - (i) the last rent increase, or (ii) the day of occupation by tenant.

- *Increase above Guideline:* If landlord and tenant agree the rent can be increased above guideline. If capital expenses have increased, the limit for rent increase is 3% above *Rent Guideline* for a maximum of 3 years.
- *Rental Fairness Act 2017:* Landlords must use a standard lease document. Landlords cannot increase the rent above rent guideline if the cost of utilities has increased.
  - A landlord will no longer be able to apply for a rent increase above the guideline because utility costs (e.g. fuel, electricity or water) have increased.
  - If a landlord has not complied with an order to fix an elevator (issued by the LTB, the municipality or the Technical Standards and Safety Authority), the LTB can dismiss the application or require the landlord to fix the elevators before ordering an above guideline increase.
- A landlord can approach the *Landlord and Tenant Board (LTB)* for increase above guideline if:
  - the landlord's costs for municipal taxes and charges have increased significantly
  - the landlord has done major repairs or renovations (these are called capital expenditures), or
  - the landlord has operating costs for security services performed by persons who are not employees of the landlord.

### **Pets**

- The '*No Pets*' clause in residential lease is prohibited under the *Residential Tenancies Act*.
- Any such clause in the lease is void and cannot be enforced.
- A Condominium lease can have a '*No Pets*' clause, if this provision is in the *Declaration*.
- In case the tenant has a pet, the landlord may make an application to terminate tenancy and evict tenant if the pet –
  - Causes substantial interference with reasonable enjoyment, or
  - Causes a serious allergy, or
  - Is potentially dangerous.

### **3.3 Access and Entry Rights**

- The tenants have the *Right to Quiet Possession*.
- Neither the landlord nor the tenant can change the entry locking system without providing keys to the other party.

#### **Entry With 24 Hour Notice**

- The landlord may only enter the premises between 8 am and 8 pm after giving the tenant a 24-hour notice. The reasons for such entry may include –
  - To inspect the premises for health and safety issues or to carry out repairs.
  - To allow a potential mortgagee or insurer to inspect the property.
  - To show the property to a potential buyer.

#### **Entry Without Notice**

- The landlord may enter the premises without notice when tenant allows entry or in emergency situations.

- Other reasons when the landlord may enter without notice include –
  - When regular cleaning is done by the landlord (between 8 am and 8 pm).
  - When the existing tenant has given termination notice and the landlord wants to show property to a new tenant (between 8 am and 8 pm).
  - When the landlord has made reasonable efforts to inform the tenant about entry.

### **3.4 Assignment and Subletting**

- Assignment and subletting applies to both fixed term and periodic tenancies.
- When a tenant requests an assignment or subletting, the landlord may agree or refuse.
- The landlord cannot refuse consent arbitrarily or unreasonably.
- If consent is granted, the landlord may charge reasonable expenses.
- The superintendent's premises cannot be assigned or sublet.

#### **Assignment**

- If the landlord does not respond to assignment request within 7 days, the tenant can give 30 days' termination notice.
- If the tenant requests assignment to a specific person, the landlord may refuse based on that person.
- Both the tenant and the assignee are liable to the landlord during the term of the lease, unless the tenant is specifically released.

#### **Subletting**

- The tenant is liable to the landlord and the sub-tenant is liable to the tenant.
- The sub-tenant has no right to occupy the premises after expiry of the sub-lease.
- When the lease of the tenant expires, and the sub-tenant remains in the premises (*over-holding*), the landlord may negotiate a new lease with the sub-tenant.
- Unauthorized possession by sub-tenant is deemed an assignment with the consent of landlord if –
  - A new tenancy agreement is not signed within 60 days, and
  - The landlord does not make any application the tribunal to evict the sub-tenant.

### **3.5 Termination of Lease**

#### **Termination by Landlord**

- *Before or at End of Term:* The landlord may give as little as 10 days' notice to terminate tenancy. Reasons include non-payment of rent, illegal act in the property, misrepresentation of income, damage, interference with reasonable enjoyment of other tenants, safety reasons and too many persons in the unit.
- Effective September 2017, tenants can give just 28 days' notice to terminate tenancy if they are concerned about the safety of their child. This applies to monthly, yearly and fixed-term tenancies. The tenant must provide the landlord with necessary documentation (such as restraining order, access order, peace bond, etc.) with a signed statement that their child had experienced abuse within the last 90 days.



- *At End of Period:* Notice periods vary –
  - Demolition, conversion of use, extensive renovations – 120 days' notice
  - Possession by landlord, parents, spouse or child of landlord – 60 days' notice before end of lease. Tenant may also terminate early with 10 days' notice.
  - Sale of property and if purchaser's parents, spouse or child has to occupy – 60 days' notice before end of lease. Tenant may also terminate early with 10 days of notice

### **Termination by Tenant**

- *Daily or Weekly Tenancy:* 28 days before end of tenancy.
- *Monthly, Yearly or Fixed Term:* 60 days before effective date of termination (end of lease).

### **Abandonment**

- *Abandonment* is the act of leaving the premises fully and finally.
- If the tenant is still paying the rent, the premises is not considered abandoned.
- Before the landlord takes any action, he must have sufficient evidence that the tenant has abandoned the premises.
- The landlord must make attempts to contact the tenant and retain such records.

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## 4. COTTAGE AND RURAL PROPERTIES

### 4.1 Old Cottages

#### Structural Problems

- Cottage structures must comply with the *Ontario Building Code* standards.
- Old structures may suffer from defects, problems and deficiencies.
- *Wood Stoves*: Must be inspected by *Wood Energy Technology Transfer Inc.*
- *Do it Yourself Work*: Appropriate permits/approvals may not have been obtained or proper materials may not have been used.
- *Drainage*: Cottages built on low lands near water may have problems due to lack of drainage. This may result in moisture damage to the structure or soil erosion may have occurred near or under the structure. Drainage problems in low and wet areas may also result in health hazards if surface water enters well water.
- *Footings*: Footings of the structure may be inadequate, installed on weak soil, insufficient in size/depth or not extending below *frost line*.
- *Posts*: Inadequate, deterioration or too large span between posts may result in problems.
- *Roof Pitch*: Inadequate pitch, large spacing between trusses and poor construction quality may cause roof sagging. Low pitch of roof results in deterioration due to heavy snow load or *ice damming*.
- Owners may have built decks or porches without considering added load.

#### Winterization

- *Insulation*: Some areas of the cottage may be insulated, and others are not.
- *Windows*: Winterization may have been done without replacing windows. Extensive use of glass, older sliding windows, limited insulation, etc. may prove expensive to the buyer.
- *Unheated Areas*: Installation of insulation and heating ducts requires adequate space above unheated floors such as crawl space. If vapour barriers are not installed, it may cause moisture build-up and damage.
- *Water and Septic Systems*: Water supply and waste disposal systems need winterization. Heated water lines are required for recreational properties, which are used year-around.
- *Vaulted Ceilings*: If there are uninsulated vaulted ceilings, installation of proper insulation may prove to be expensive.

### 4.2 Water Wells

#### Water Wells

- *Water Wells*: Cottage wells are *Drilled* or *Bored*. Drilled wells have small diameter pipes (5 to 10 inch). Bored wells have large diameter pipes (2 to 3 feet) and are more shallow.
- *Shore Well*: It is located near water's edge. Risk of contamination in a shore well is higher and water purification equipment is typically required.
- *Water Quality*: The *Ministry of Environment* regulates the *Ontario Water Resources Act* and the *Safe Drinking Water Act* to ensure quality of water.
- An *Aquifer* is a water bearing formation capable of transmitting water in sufficient quantity.
- Well contractors are licensed, and they monitor, maintain and prevent contamination of wells.

### Water Testing

- The factors which mainly affect the quality of water are - (i) poor construction, (ii) insufficient depth, and (iii) surface water arising from drainage problems.
- Continuous bacteriological testing of well water is required.
- Three separate samples are collected, one to three weeks apart, and one or two such tests every year are sufficient.
- *Preventive Measures*: Openings to well must be sealed, sanitary well seal and cap should be water tight and vent pipes should be screened. Well casing should be raised to minimum 40 centimetres above surface to ensure access for repair work.

### Well Disinfecting and Treatment

- Disinfection of water is typically done using *Chlorine*.
- Chlorine temporarily removes bacteria, but the underlying problems may continue to contaminate the water.
- *Chlorination* is done for wells, cisterns, springs, pumps, pipes and pipe joints.
- Chlorination is the final step after all defects of location and construction are corrected, and before samples are taken for testing.
- *Chlorination Injection Unit* is mainly used for recreational properties. Chlorine is mixed with water after it is taken from the well.
- *Super chlorination* is another method where a strong solution of chlorine is used.
- *Reverse Osmosis* involves removal of dissolved solids and minerals from water by forcing water through a semi-permeable membrane (filter).

### Condition Regarding Private Water Well

- The buyers of cottage property may include a condition regarding private water wells.
- Three main provisions are included in the condition –
  1. That the well supplies adequate water supply to satisfy household needs.
  2. That the local health authority will conduct *Bacteriological Analysis* of drinking water to ensure there is no contamination.
  3. That the pump and related equipment are in good working order.

## 4.3 Sewage

### Septic Systems

- Outdated, inadequate or improperly working septic systems due to poor drainage may pose problems.
- For new septic systems, appropriate permit under *Ontario Building Code* must be obtained.
- A *Certificate of Installation and Approval* is an evidence of proper installation.
- The size of the septic system depends on the number of kitchen and bathroom fixtures.

### Raised Absorption Bed

- Raised absorption beds are found where there is lack of soil depth to accommodate standard leaching system.
- It is constructed above an existing rocky terrain using approved, imported soil or special filters.

- The size of leaching bed is reduced as compared to standard leaching system.
- Clearances from adjacent wells and structures are increased.

#### **4.4 Shoreline Improvements**

##### **Shore Lands**

- *Shore Lands* are public or private lands covered by waters of a lake or a river.
- *Public Lands Act*. This Act is administered by the *Ministry of Natural Resources (MNR)* for construction activities on shore lands.
- Waterfront cottage owners may have constructed boathouses, docks or other improvements on the bed of a lake or a river, which is public land.
- Permit must be taken for activities such as logging, mineral exploration or industrial operations on public lands; construct or place a building, structure, clear any public lands, dredge or fill any shore lands.

##### **Docks and Boathouses**

- Work permit from *Ministry of Natural Resources* must be obtained, which depends on type of work.
- Boathouses/docks must be located directly in front of owner's property.
- *Work permit is normally not required* if footings are located off shore, docks/boathouses are supported by posts or poles, for boat lifts and marine railways, where water body is less than 15 square meters or for removal of an old dock/boathouse.
- *Work Permit is normally required* for any dock/boathouse where the total surface area of curb on the water bed is more than 15 square meters.

##### **Boathouse Lease Program**

- If the boathouse is located on public lands, the *Ministry of Natural Resources* requires owners to sign a lease agreement and pay fees. This lease is registered on property title.
- Two storey boathouses with living or guest accommodation are specifically included in this program.

##### **Dredging**

- *Dredging* activities are related to removal of material from the bed of a lake or a river.
- Permit is *generally* not required for installation of cable, water line or heat loop for private use but is required for any commercial purposes.
- Permit is required for removal of rocks from shore lands.

#### **4.5 Concerns for the Buyer**

##### **Access and Road Allowances**

- A major concern for buyers of cottages is that whether access to the cottage is by a public road or a private road.
- If the road is a private road; who owns the road and what will be the cost for the buyer?

- If the road is a public road; is it open and maintained all year round? Chances are that the road is open only seasonally.
- If the cottage is on an island, the buyer needs to know where a car can be parked, and a boat can be docked.

### Zoning Requirements

- Zoning by-laws vary by municipality.
- These relate to total coverage of lot, minimum setback requirements, high watermark, boathouses, docks and waterfront decks.

### Services

- Buyers of cottage properties would need to confirm the existence of services.
- If services are not available, the buyer may include a condition regarding the maximum cost he is ready to bear for arranging these services.
- *Hydro*: Hydro One provides 30 meters of free wire from the last pole location. Service is provided only if it is economically feasible. Some cottage owners may own hydro poles and lines and are responsible to pay for their maintenance.
- *Telephone*: Bell Canada will extend an existing service line, but the entire cost must be borne by the customer. Telephone service is provided only if hydro lines are already there. Even then, existence of Hydro One service is not a guarantee that telephone service will be provided.
- *Fire Protection*: Cottages within reasonable distance are normally serviced by staff but small communities rely on volunteers. Cottages that are more than 5 miles away from fire station may have higher insurance rates.

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## 5. VACANT LAND

### 5.1 Residential Vacant Lot

#### Key Factors

- *Location*: The location of land must meet buyer's investment needs such as future development opportunities.
- *Physical Characteristics*: Shape and size of the parcel of land and its aesthetics play an important role in determining future value.
- *Lot Boundaries and Survey*: An up-to-date survey is essential to know the property boundaries. A condition for survey may be included in agreement if it is not available.
- *Access, Easements and Restrictions*: Access to the property, availability of essential services, easements on the property and zoning restrictions on use of property are some of key considerations for the buyer.
- *Costs*: Initial costs and ongoing maintenance costs must be considered. The purchase by buyer may be in cash or *Seller Take Back (STB)* financing may be required. Ongoing costs include taxes, financing costs, cost of fencing, insurance, etc.
- *Revenue*: There may be a long term holding period before the land provides some return on investment. Revenue may be generated by using the lot as parking lot, storage space or rental for cash crops.
- *Market Trends*: Time of purchase and current market trends cannot be ignored. Knowledge of future municipal plans is important for long term investments.

#### Building Lot - Considerations for the Buyer

- *Lot Shape and Size*: Precise and up-to-date survey is essential to determine property boundaries, its shape and size.
- *Price*: It may be *Per Front Foot* for regular lots, *Per Lot Price* for smaller lots or *Per Acre* for large lots.
- *Location of Structure*: Zoning provisions may impact building location, building size and setbacks.
- *Soil Condition*: Soil conditions are important in rural areas.

#### Sale Subject to Severance

- The sale of residential lot may be subject to severance. The seller may offer the land for sale before severance, but severance must be approved before completion.
- The buyer may include a condition when submitting an offer. The severance is at 'seller's expense' as given in *Planning Act* clause of the *Agreement of Purchase and Sale*.
- This would be a *True Condition Precedent*, meaning that the sale cannot complete unless the *Consent to Sever* application is approved by the municipality.

#### Provision of Services

- Typical municipal services or utilities may not be available at the site.
- The buyer may include a condition to ensure that the cost to arrange hydro and telephone services will not exceed certain amount.
- This would be a *Condition Precedent* and may be waived by the buyer.



## 5.2 Forest Land

### Managed Forest Tax Incentive Program (MFTIP)

- This program is regulated by the *Ministry of Natural Resources*.
- Owners who agree to conserve woodlands that are at least 4 hectares (10 Acres), excluding residences, get tax incentives.
- Owners must prepare a *Managed Forest Plan* for long term (20 years or more) along with a 10-year activity plan.
- The plan is typically approved by *Managed Forest Plan Approver*.

### Working with the Seller

- Salespersons must confirm with *Municipal Property Assessment Corporation (MPAC)* that the property is taxed as a *Managed Forest* and not as regular residential property.
- The managed forest plan is personal for the owner and properties that are sold are removed from the program.
- When sold, the seller must complete *Landowner Report Form* and send a copy to the *Ontario Forestry Association* or to the *Ontario Woodlot Association*.

### Working with the Buyer

- The buyer should be informed that the property will be removed from the *Managed Forest Tax Incentive Program* upon sale. As a result, taxes may increase.
- The buyer may also be responsible for up to 5 years of seller's unpaid taxes if the seller has received tax incentives but later it is found that the property did not qualify.
- If the buyer wishes to continue getting the tax incentive, he must make a new application within 90 days of sale and get it approved from the *Managed Forest Plan Approver*.
- The buyer may get help from the seller by requesting a copy of seller's managed forest plan.

## 5.3 Farm Properties

### The Farming Profession

- A *Farm* is parcel of land used for farming or agricultural operations.
- Farm property includes land, farming equipment and any structures.
- The farming scene is rapidly changing with number of farms, farmers and farm labourers on the decline.
- There are fewer family farms now, and domestic and international competition is getting tougher.
- Marketing boards are becoming stronger and individual farmers are not very independent.
- Constant improvements in quality, more reliance on training and, education and management have contributed to changing farm scene.

### Farm Types

- *The Small Farm*: Small farmers may be financially better than many full-time farmers. Small farmers who have a part-time job are considered better than full-time small farmers.
- *Farm Corporation*: The trend for farm corporations with larger farms is due to rising farm labour costs, rising food prices, larger investments in equipment, the need to get reasonable return from investment and different types of financing available.

- *Viable Farm*: This is a type of business that, under good management, is able to provide good returns.

### **Farm Classifications**

- *Special Purpose Farms* are for growing fruits, tobacco and vegetables; each for a specific purpose.
- *Livestock Farms* raise horses, dairy cattle, beef cattle, poultry, hogs and sheep.
- *Cash Crop Farms* are for production of various crops including grain, wheat, corn and soybeans.

### **Farming and Nutrient Management**

- The *Nutrient Management Act* regulations ensure protection of water, the environment and well-being of communities.
- The provisions of the Act are two tiered – (i) *Nutrient Management Plan (NMP)*, and (ii) *Nutrient Management Strategy (NMS)*.
- The Act has provisions for storage, handling, use and transportation of commercial fertilizers.
- The Act has minimum distance requirements for protection of nearby land and water sources.

### **Protection for Farmers**

- Farming and agricultural operations are governed by the *Ministry of Agriculture, Food and Rural Affairs*.
- The governing law is the *Farming and Food Production Protection Act (FFPPA)*.
- This law gives protection to farmers from nuisance complaints and subsequent lawsuits or injunctions.
- It also ensures that farming and food production industry is protected from restrictive municipal by-laws that restrict *Normal Farm Practice*.
- *Disturbance*: Disturbance from an agricultural operation may include odour, dust, flies, light, smoke, noise and vibration.
- *Agricultural Operation*: Includes ratites (ostrich and emu), deer and elk, beekeeping, maple syrup, tree farms, on farm processing, movement of agricultural vehicles, etc.

### **Considerations for Buyer**

- The salespersons should advise the buyer that a nearby farming operation may create disturbance.
- Appropriate clauses must be inserted in the *Agreement of Purchase and Sale*.

### **Normal Farm Practice**

- *Normal Farm Practice* refers to farming operations which are conducted in a manner consistent with proper and acceptable customs and standards, uses innovative technology and good management.
- The *Farming and Food Production Protection Board (NFPPB)* is authorized to rule on various complaints against farmers or farming operations.

- The farmer is protected from nuisance complaints or restrictive municipal by-laws if his practice is considered *Normal Farm Practice*.

#### **Nuisance Complaint**

- The board may dismiss the complaint if disturbances result from a normal farm practice, or
- The board may order the farmer to cease the practice (injunction) if disturbance is not due to normal farm practice, or
- The board may order the farmer to modify the practice and be consistent with normal farm practice.

#### **By-law Challenge**

- The board may state that the farm practice is normal farm practice, or
- The farm practice would become normal farm practice if specific modifications are made within the given time frame.

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## 6. NEW HOME SALES

### 6.1 Working with Builders

#### Exclusive Authority

- An authority given by a builder to a specific brokerage for marketing the new homes.
- Salespersons involved in new home sales work during sales office hours and deal with professional brochures.
- The explain elevations and floor plans to buyers, show builder's model homes, base prices, upgrade options, incentives, development phases and pre-packaged financing options.
- On site advertising by the brokerage is part of the exclusive authority.

#### Prospect Registration System

- This refers to completion of a form when a salesperson introduces a buyer at the sales office of a builder.
- The '*Brokers Protected*' sign on builder advertisements indicates that such a facility exists.
- The registration document is valid for certain period, e.g. 60 days.
- Commission is protected if this introduction leads to a sale to that buyer.

### 6.2 New Home Construction

#### Permits and Inspections

- *Building Permit* is issued by the local municipality for all new home constructions.
- Permit is not issued if the application does not comply with zoning regulations or *Ontario Building Code* requirements.
- Applicant may apply to *Committee of Adjustment* for minor variances.
- Construction must start within a specified time after a building permit is issued.
- The permit and drawings must be kept on site.
- *Building Code Inspections* are conducted by a *Building Inspector* who can enter the land at any reasonable time during construction. If deficiencies are found and are not corrected, a *Stop Order* may be issued.
- *Site Plan Control Inspection*: These are related to grading, sod and landscaping.
- *Electrical Systems*: These inspections are conducted by *Electrical Safety Authority*.
- *Gas Inspection*: Installation of gas equipment are inspected by *Gas Safety Authority*.
- An *Occupancy Permit* is issued when the structure passes all inspections.

#### General Construction Loans

- Construction loan is typically a mortgage and may involve sequential advances by the lender at pre-determined stages of construction.
- Inspections are typically conducted by lenders before each draw of funds.
- A lien under the *Construction Lien Act* may be filed in *Land Registry Office* against a property for labour, services or material supplied.
- This lien must be registered within 45 days of specified events and the owner must be notified about any claim.

### Condominium Construction Loans

- *Blanket Mortgage* for a condominium refers to the loan given during construction for the entire project.
- After completion, this blanket mortgage is divided into individual *Unit Mortgages* that are assumed by buyers at the time of possession.

### Holdback

- *Basic Holdback*: Under this holdback, 10% of the price of all services and materials provided under a contract or subcontract may be withheld by the owner.
- *Finishing Holdback*: When a contract is substantially complete, but various services or materials are required to finish the project. This amount is 10% of price of contract in addition to the *Basic Holdback*.

## 6.3 Tarion Warranty

### Ontario New Home Warranties Plan Act

- Warranty for new homes is provided by *Tarion Corporation* under the *Ontario New Home Warranties Plan Act*.
- A *Vendor* is any person who sells on his/her own behalf, a home that is not previously occupied, to an owner and includes a builder who constructs a home under a contract with the owner.
- Builders must pass on any warranties provided by manufacturers, suppliers and subcontractors that extend beyond one year.

### Maximum Coverage

- Freehold homes and condominium units - \$300,000.
- Damage due to environmentally harmful substances - \$15,000.
- Claims for septic systems - \$25,000.
- Condominium common elements - \$50,000 times the number of units but to a maximum of \$2.5 million.
- *Deposit Protection*: \$40,000 for a freehold home and \$20,000 for a condominium unit.

### Delayed Closing

- Builders are required to provide a specific closing date.
- A *Disclosure* statement related to *Delayed Closing Warranty* must be attached to all agreements for new homes.

### Properties Not Covered

- Structures built on temporary footings/foundations or converted homes.
- Homes that have been previously occupied.
- When the contractor only builds the exterior shell and the interior construction is done by the homeowner.
- An owner contracting the building of a home through subcontractors is not covered under *Tarion* warranty. Warranty is provided if the construction is done by *One Contractor* only from start to finish.

## 6.4 Warranty Coverage

### One Year Warranty

- This includes warranty that the structure meets *Ontario Building Code* standards.
- The home is fit to live in (*habitable*).
- The structure is free from defects in workmanship and materials.
- There are no major structural defects.

### Two Year Warranty

- Major structural defects such as failure of load bearing parts.
- Water leakage, seepage or penetration.
- Windows and doors, electrical, plumbing and heating systems.
- Detachment, displacement or deterioration of exterior cladding.
- Violations of *Ontario Building Code* related to health and safety provisions.

### Seven Year Warranty

- Covers major structural defects that render the property dangerous to live in.
- Any defect in materials or work that results in failure of load bearing parts of the home.
- Any defect due to which the buyer cannot use the building as a home.

### Exclusions from Warranty

- Damage due to improper maintenance or condensation caused by failure to maintain ventilation.
- Damage due to excessive use of humidifiers, hot tub or any equipment that causes moisture.
- Changes made to the structure, any additions or alterations or work done by homeowner himself.
- Materials that normally shrink and dry out after construction such as minor concrete cracks.
- Natural disasters (*Act of God*) and damage from floods, wars, riots, vandalism, etc.
- Damage caused by municipal services or other utilities.
- Any defects that are accepted in writing by homeowner at the time of possession.
- *Secondary Damage* caused by defects under warranty is not covered and the homeowner may file a claim with his home insurance company.

### Warranty for Substitutions

- The builder can substitute any item not specifically included in the agreement but only with an item of similar or better quality.
- If the builder cannot supply buyer's choice of selections, the builder must notify the buyer to make a new selection.
- If the buyer does not make a new selection within 7 days of the notice, the builder can substitute with an equal or better quality item.
- If builder fails to give notice the buyer can ask the builder to change to the original selections or a cash settlement may be reached.



## 6.5 Customer Service Standards

### Documentation – 4 Parts

- A. *Homeowner Information Package*: This package provides warranty related information and must be provided to the buyer on or before the *Pre-Delivery Inspection (PDI)*.
- B. *Pre-Delivery Inspection (PDI)*: This form enables the buyer to describe incomplete, damaged, missing or non-operational items. Buyers do not automatically lose coverage if problems are not specified in this form.
- C. *Warranty Service Rules*: This document explains how the buyers can request service and the time frames for the builder to respond.
- D. *Warranty Review and Reconciliation*: This document explains the procedures when a builder sends a request to *Tarion* for resolving a dispute with a buyer.

### Warranty Certificate/Pre-delivery Inspection (PDI)

- The warranty starts from the date given on the *Certificate of Completion and Possession (CCP)/Warranty Certificate*.
- This certificate marks the official date of possession.
- The *Pre-Delivery Inspection (PDI)* has to be completed on or before possession.
- The *Tarion* warranty sticker is placed on the electrical panel and contains the *Warranty Registration* info and *Enrolment Number* of the property.

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## 7. STIGMA AND OTHER ISSUES

### 7.1 Stigma

#### Stigmatized Property

- *Stigma*: Associated with detrimental factors that negatively affect the value of the property. Examples - murder or suicide in the property, haunted house, grow house, etc.
- *Real vs. Perceived Risk*: There may not be any real risk or danger, but the perceived impact may arise when a buyer is informed that the house they just purchased is haunted.
- *Impact on Value*: Stigma causes negative impact on value.
- It is difficult to estimate the actual loss of value. Media exposure and rumours also impact the value. Stigma also results in longer periods to sell.

#### Disclosure

- Stigma is a *Material Fact* and must be disclosed in writing to both clients and customers.
- Salespersons and brokerages may be liable for lawsuits if proper disclosure is not made.
- Sellers and their salespersons should remember that if they do not disclose, the buyer will know it from neighbours after closing.

### 7.2 Grow Operations

#### Grow House

- *Grow House* is a property used for illegal growing of marijuana.
- A typical operation involves equipment and seeding plants brought through the garage and setup in the basement or upper levels.
- To mature quickly, the plants require water, heat, fertilizers and humidity. For these reasons, electricity bills for the property may be huge.
- To avoid condensation occurring due to humidity, the owner may have made changes to the floors, ceilings or roof.

#### Home Inspection

- A complete home inspection reveals problems or deficiencies with the structure due to grow operation.
- It is difficult to investigate the long-term impact of excessive humidity, use of fertilizers and chemicals, damage to structural components, interior finishes and indoor air quality.
- Home inspection cannot find the health effects of chemical contamination.

#### Full Disclosure

- The listing brokerage should disclose on the listing that anyone showing the property should contact the brokerage first.
- A list of brokerages, which show the property, must be maintained.
- Police may interrogate salespersons if the property they have dealt with turns out to be a *Grow House*.

### **Signs of Suspicion**

- Some signs of buyers or tenants who may want to use the property as a Grow House –
  - Seeking an unfinished basement or focusing on basement during showings.
  - Showing particular interest in the privacy of the house.
  - Buying an unseen property or communicating only through fax, phone or email (no face-to-face meeting).
  - Willing to pay top dollar with no questions or wanting immediate possession.
  - Wanting to make rent payments in cash, having no known employment or source of income and still having expensive cars or phones.

### **7.3 Fraud**

- Fraud is a deception deliberately made to get an unfair or unlawful advantage.
- In real estate, these frauds mostly relate to mortgage financing.

#### **Identity Theft**

- Identity fraud occurs when criminals use stolen credit card numbers, social insurance numbers, bank PINs, etc. to borrow large amounts of money, make major purchases and/or empty bank accounts.
- In real estate, the criminal may steal the items used to get access to electronic land registry system (*POLARIS*).
- They may possibly transfer titles of property, register a discharge of mortgage or register mortgage lien on some property and get away with funds.

#### **Value Fraud**

- *Value Fraud* occurs when the actual value of a commodity is much less than indicated value or has no value.
- In real estate, it is related to increase in the sale price of the property.

#### **Mortgage Fraud**

- Mortgage fraud is related to falsification of information in mortgage applications.
- This may also involve large scale and complex schemes such as escalating property prices in order to over finance a property.
- *Property Flipping* may involve a fraud buyer, fake appraisals, etc. to increase the value significantly and pocket the funds.

#### **RECO Registrar Actions**

- Mortgage fraud is considered as a criminal activity under the *Real Estate and Business Brokers Act 2002*.
- The Registrar of RECO can conduct investigation of brokerage records, bank accounts, correspondence and all account books.
- The Registrar may also freeze bank accounts of a brokerage involved in a mortgage fraud and has the right to refuse, suspend or revoke registration based on its findings.

## 7.4 Proceeds of Crime (Terrorist Financing) and Money Laundering Act

### FINTRAC

- This Act is administered by *Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)*.
- Brokerages are required to report suspicious transactions and terrorist property to *FINTRAC*.
- A transaction may be connected to money laundering when a broker or salesperson thinks that it raises questions or gives rise to discomfort, apprehension or mistrust.
- No minimum dollar amount or value applies.
- Brokerages are also required to verify identification of their clients and that they are not on Canadian or United Nation's list of known terrorists.
- *Large Cash Transactions*: Brokerages must report receipt of \$10,000 or more *IN CASH* (or several cash payments by the same client within 24-hour time period, exceeding \$10,000) to *FINTRAC* within 15 days or receipt.
- This rule does not apply if cash is received from a financial institution (bank) or a government body which is involved in buying or selling.

### Compliance Regime

- The compliance regime of a brokerage must have the following 5 elements –
  - A compliance officer.
  - Written compliance policies.
  - Assessment and documentation of risk of money laundering and terrorist financing.
  - Ongoing compliance training program.
  - Documented review of effectiveness of compliance policies, procedures and training.

## 7.5 Auctions

- Auctions are popular for *Estate Sales*, unique properties or when the seller is facing short time to sell.
- Auctioneers are exempted from registration under REBBA 2002 and may conduct sale of real property if the trade is made as part of auctioneer's normal duties.
- Auctioneers are licensed by municipalities.

### Types of Auctions

- *Absolute Auction*: There is no minimum reserve amount for the seller. This type of auction attracts maximum interest because the sale is guaranteed.
- *Minimum Bid Auction*: This auction provides a safe amount for the seller and is most common. If the seller does not get the reserve price, he may approach the bidders to negotiate or he may seek other options to sell.
- *Auction by Confirmation*: This auction permits the seller to reject even the final highest bid price.

### Considerations for Buyers

- The buyer with highest bid cannot refuse to close the deal after the bidding process is over.

- Auctioneers permit pre-view of property two to three weeks before the bidding date.
- Prior to bidding in an auction, the buyer should –
  - Inspect the title,
  - Have the mortgagee inspect the property to ensure availability of financing,
  - Verify availability of insurance, and
  - Conduct home inspection.

## 7.6 Brokerages Operations

### Recent Trends

- *Franchise Options*: Some advantages of franchising include brand awareness, proprietary marketing materials, national advertising, referrals, profit sharing and, administrative systems to help in management and performance.
- *Teams*: Real estate teams do not currently have any status under REBBA 2002. The benefit is that two or more registrants can work collectively and share advertising and marketing expenses.
- *Social Media*: Registrants can use social media to generate leads and communicate with consumers and other registrants. It helps registrants with greater mobility, immediate access to data and ability to immediately notify clients about market information.

### Discount Brokerages

- *Reduced Fees*: Discounting may mean that the brokerage is offering reduced fees for less service as compared to full service.
- *Flat Listing Fee (Fee for Service)*: A flat fee is charged from the seller for specific services as agreed in the listing agreement. Additional fees may be negotiated and paid to co-operating brokerage.
- *Graduated Commission*: The seller may be charged a varying percentage of commission as the sale price increases. As per REBBA 2002, the commission rate must go down (*descending order*) as the sale price goes up.

### Rebates

- Brokerages may provide incentives or rebates to sellers who also buy the next property from the same brokerage.
- The incentives may also be given to the buyers.
- Rebates given to buyers or sellers *must be disclosed* to all parties to the transaction.
- Referral fees paid by lenders or other parties to the brokerage must also be disclosed to the client in writing.

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## 8. ENVIRONMENTAL CONCERNS

### 8.1 Environmental Assessment

#### Regulations

- Most environmental matters related to land fall under provincial jurisdictions.
- The provincial *Ministry of Environment* handles environmental responsibilities.
- The local *Conservation Authority* handles matters near or on water.
- The *Ministry of Natural Resources* regulates development activities on public lands and shoreline properties.

#### Minimizing Risk While Listing/Selling

- Salespersons should be well-informed and stay updated on environmental issues.
- They should ensure honesty and fairness during negotiations. They should inquire, investigate, verify and disclose information to buyers.
- The Agreement of Purchase and Sale should include appropriate clauses and conditions.
- Salespersons should not provide expert advice on environmental matters but should persuade the clients to seek expert advice from better qualified people.

#### Assessment

- This is a systematic and comprehensive process involving identification, analysis and evaluation of environmental effects of proposed projects.
- Buyers and lenders may require *Environmental Audit* to assess overall environmental condition of the subject property.
- This is done prior to binding agreement as these hazards pose significant risk.

#### Environmental Audits

- *Phase 1*: This audit involves visual inspection of the property and review of documents. This audit determines if the property may have some form of environmental contamination.
- *Phase 2*: This audit involves soil/water sampling, testing, and hazardous waste assessment/analysis. This audit determines the scope of environmental problems and recommends remedial action.
- *Phase 3*: This is the last and most expensive phase where detailed corrective actions and remedial steps are taken for the circumstances identified in Phase 2.

### 8.2 Hazards

#### Electromagnetic Field (EMF)

- Three major elements of power delivery system are – *Generation, Transportation and End Use*.
- Scientists have not yet concluded any health problems due to EMF.
- An electric field may be produced by any appliance that is plugged into an outlet, but a magnetic field is produced only when it is working (i.e. when current is flowing).
- Electric fields do not easily penetrate most materials and are usually shielded or reduced by buildings, but magnetic fields easily penetrate most materials.



- Both electric and magnetic fields decrease in strength as the distance from the source increases.

### Asbestos

- *Asbestos* is found in a variety of products including roofing materials, wall and pipe coverings, floor tiles, appliances, ceilings, patching compounds, textured paints, and door gaskets of stoves, furnaces and ovens.
- Asbestos itself is not hazardous but becomes a health risk when it becomes airborne.
- Most problems related to asbestos arise when older buildings are renovated.
- *Friable Asbestos*: These materials easily crumble, pulverize or reduce to powder by hand pressure. It mostly happens during renovations or repairs. Friable Asbestos is most dangerous.
- *Non-friable Asbestos*: This is found in pre-fabricated products that contain bonding agents such as painted cement sheets used around wood burning stoves. Hazardous fibres are released when these materials are broken.
- Other areas where Asbestos may be found -
  - Homes built between 1930 and mid-1950s may have asbestos in insulation.
  - Insulated water pipes that are deteriorating, old stoves, oven and furnace gaskets.
  - Attic ceiling or wall materials that are crumbling due to water damage.
  - Old fluffy insulation sprayed on materials.

### Lead

- *Lead* is a bluish-grey metal found in various products, e.g. grooved bars in stained glass windows.
- Main sources of lead in older buildings are –
  - Lead paint found in older properties,
  - Lead pipes or soldered pipes coated with minerals, and
  - Dust and soil in properties adjacent to battery recycling and printing industries.

### Mould

- *Mould* is the growth of minute fungi associated with decaying vegetable or animal matter.
- Lack of ventilation (air-tight building) and modern building materials are also a reason for growth of mould.
- Mould requires moisture and water to grow and can generally be found in damp areas of buildings. Kitchen cupboards, storage space and basement recreation rooms are susceptible to mould. Interior building materials may hide dampness problems in these areas.
- Furnace and air conditioners recirculate internal air and further complicate the problem.
- *Stachybotrys Atra* is a dangerous type of mould that produces *mycotoxins*.
- Long term exposure to mould causes severe breathing difficulties, dizziness, memory loss, headaches and bleeding in lungs.

### Radon

- *Radon* is invisible, odourless and tasteless gas produced by natural decay of uranium in earth's crust.

- The gas itself is not dangerous but becomes hazardous when it breaks down into progeny that cling to dust and soil particles inside the structure.
- These radioactive particles attach themselves to lung tissues when Radon is inhaled.
- Two methods for detecting Radon are -
  - *Charcoal Canisters*: Activated charcoal in a canister that absorbs Radon is placed in a home for 2 days and then is returned to a test lab for analysis.
  - *Alpha Track Detector*: This detector uses a plastic sheet that is sensitive to Radon. Decaying Radon gas strikes the plastic sheet and damages it. The tests measure the number of strikes to find the level of Radon.
- *Remedial Action for Radon*: Covering exposed earth in a building, ventilation of the basement, sealing cracks and openings within basement areas and sealing service entrance points.

### 8.3 Urea Formaldehyde Foam Insulation (UFFI)

- *Urea Formaldehyde Foam Insulation (UFFI)* is a low-density foam made from plastic resins, a foaming agent and compressed air.
- It is found in some resins, glues and bonding agents in construction materials.
- UFFI was used as insulation material in buildings built between 1975 and 1979 but was later banned in 1980.
- Generally, it is not decided whether it is actually a health hazard or not.

#### Disclosure

- UFFI is considered a *Stigma* and its presence must be disclosed by sellers of a property.
- Three types of UFFI clauses may be inserted in the *Agreement of Purchase and Sale* -
  - If the seller has used UFFI insulation, disclosure clauses must be inserted.
  - If the seller has removed UFFI insulation, a clause about corrective action must be inserted.
  - If the property is being sold by a third party (estate sale or sale by a lender), a clause must be inserted that the seller has no knowledge of UFFI.
- If a UFFI disclosure clause is inserted in a schedule but the pre-printed clause is not deleted, the inserted clause takes precedence.

### 8.4 Fuel Tanks

#### Underground Oil Tanks

- An underground oil tank is a buried container, in direct contact with earth.
- All such tanks must be registered with *Technical Standards and Safety Authority (TSSA)*.
- TSSA regulates activities of contractors for installation, testing, maintenance, repair, removal, replacement, inspection and use of appliances, equipment, components and accessories where oil is used as fuel.
- Existing underground oil tanks must be upgraded with leak and spill prevention equipment or should be removed. Upgrading depends on the age of the tank.

- Unused oil tanks must be removed by TSSA registered technician and contamination must be cleaned up.
- *Leakage:* The owner must contact a TSSA contractor to stop the leak, cleanup and call *Spills Action Centre of Ministry of Environment*.

### Disclosure

- If a seller sells a property and does not disclose an unused underground oil tank, a legal action can be taken.
- Salespersons should inspect the property during listing process and make enquiries to determine if any underground fuel tank exists. They should verify the information with TSSA.
- This is a material fact and must be disclosed to the buyer by inserting appropriate clauses in the *Agreement of Purchase and Sale*.

## 8.5 Energy Efficient Buildings

### Green Building

- *Green Building* refers to a building where construction techniques utilize energy efficiency and prudent use of resources.
- *Energy Efficiency:* Structural and mechanical activities to make a building energy efficient include –
  - Shading and glazing of windows and use of smart-window technologies.
  - Increased thermal resistance in insulation.
  - High furnace efficiency and integrated furnace/hot water heating systems.
  - Heat recovery ventilators, zoned heating/cooling systems and programmable thermostats.

### EnerGuide Evaluation

- *Energy Audit:* This inspection covers five primary components in a home -
  1. Air tightness and thermal resistance (insulation) of the building envelope.
  2. Heating and ventilation system.
  3. Domestic water supply.
  4. Ventilation systems.
  5. Permanently installed renewable energy equipment.
- Energy Audit does not include inspection of electrical systems and equipment.
- *Energy Star®* homes have an efficiency rating of 80 or above while typical homes have a rating around 68.
- *EnerGuide* label is affixed to the electrical panel of new houses which are certified to be energy efficient.

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## 9. CONTRACT AND TITLE CONCERNS

### 9.1 Assignment of Agreement

#### Assignment

- *Assignment* refers to transfer of rights in a contract to another party.
- As a *general rule*, all contracts are assignable with certain exceptions.
- Contracts for provision of personal service are not assignable.
- The contract between a salesperson and a brokerage is for personal service and is not assignable to another salesperson.
- Certain contracts (agreements) may specifically include a non-assignability clause.
- When an *Agreement of Purchase and Sale* is assigned to another party, the home inspection report and survey may not be transferrable to that assignee.
- Salespersons should seek expert advice on these matters.
- *Mortgage Contract*: A mortgagee may assign (sell) the mortgage to another lender, without the consent of the mortgagor, giving the right of collection of payments to that lender. On the other hand, the *mortgagor* may not be able to assign the mortgage to another person without the consent of the mortgagee.

#### Liabilities vs. Rights

- *Liabilities* under a contract *cannot generally be assigned*, unless otherwise agreed (e.g. without seller's written consent).
- However, liability can be assigned with express consent of the parties.
- *Rights* under a contract *can generally be assigned*, unless otherwise agreed.

#### Assignment of Agreement by Buyer

- If a buyer wants the right to assign an agreement before the completion date, a clause should be inserted in the *Agreement of Purchase and Sale*.
- The buyer should specifically mention that he would be released from all further liabilities under the agreement.
- It is very important that the seller carefully reviews this option because no legal recourse would then be possible against the original buyer in case of default by the assignee.
- In case of an agreement for the purchase of a new home, the assignment may involve certain issues related to *HST*, *Income Tax* and *Land Transfer Tax*.
- In case the agreement involves *Seller Take Back (STB)* mortgage, the seller should either insert a *non-assignability* clause or make sure that assignment is only with seller's prior written consent.

#### Assignment and Sub-letting of Lease

- *Generally*, a tenant may assign at will without the approval of the landlord, *unless* the lease specifically prohibits assignment, or the lease is under the *Residential Tenancies Act*.
- However, if the tenant is not specifically released by the landlord, the tenant remains liable to the landlord throughout the term.
- Most commercial leases require the tenant to seek landlord's written consent for assignment or sub-letting, which the landlord will not withhold arbitrarily. The landlord may charge reasonable legal and administrative expenses.

- In subletting of a commercial premises, the tenant remains liable to the landlord while the sub-tenant is liable to the tenant.
- The landlord may also require the sub-tenant to covenant directly with the landlord.

## 9.2 Property Insurance

### Insurance Basics

- Insurance policies and coverage depend on the type of property to be insured.
- Insurance costs may increase with some higher risk properties where the insurance companies may either refuse coverage or the insurance premiums may be high.
- Separate policies exist for residential, commercial and condominiums.
- Condominium Insurance: The *Condominiums Corporation* typically insures the building exteriors and common elements. Unit owners insure their own improvements and personal items. Tenants in a rental building insure their personal items (*content insurance*).

### Risk Considerations

- *Age of Structure*: Homes that are more than 25 years old need special consideration.
- *Electrical Systems*: Insurance companies may refuse to provide coverage for properties with outdated electrical systems such as 60 ampere service, *Knob and Tube* wiring, aluminum wiring, etc.
- *Underground Fuel Storage Tanks*: Properties must meet current standards set out by *Technical Standards and Safety Authority (TSSA)*. They also see if any remedial action related to environment is required.
- *Woodstove*: Correct installation and compliance with *Ontario Building Code* is required by *Wood Energy Technology Transfer Inc. (WETT)*
- *Heritage Home*: These are essentially old homes and repair costs may be high if the property is damaged.
- *Municipal Services*: Water and sewer connection including the age/condition of well and septic tank.
- *Fire Station*: Distance to nearest fire station that will respond in the event of fire.
- *Previous Claims and Experience*: Previous claims history for the property or the owner combined with the experience of the insurer with similar properties.

## 9.3 Heritage Property (Ontario Heritage Act)

### Heritage Designation

- Designation of a property as *Heritage Property* may deprive the owners of their natural rights on the property.
- This designation may affect intended uses for the property and the owner may not be able to make internal or external changes to the building without permission.
- *Ontario Heritage Trust*: An agency of the *Ministry of Culture* to protect and promote Ontario's heritage.
- *Municipal Heritage Committee*: Consists of 5 or more members to assist and advise the municipal council on local heritage matters.
- *Conservation Review Board*: This board conducts hearings regarding objections to heritage designation and makes *recommendations* regarding heritage matters. The board does not have decision-making powers.

### Considerations for Buyers

- Salespersons may request local municipality for a list of designated heritage properties and *Heritage Conservation Districts* where properties may be designated in future.
- An appropriate *Disclosure* clause must be inserted in the *Agreement of Purchase and Sale*.
- Salespersons should make the buyers aware of the following –
  - *Alterations*: Property cannot be altered if the alteration is likely to affect the heritage designation.
  - *Written Consent*: Alterations are only permitted if the owner gets approval from municipality.
  - *Demolition*: Demolition of a heritage property should also be approved in writing.

### Heritage Conservation Districts

- Municipalities may designate an area as *Heritage Conservation District* in their *Official Plans*.
- This requires that no properties would be demolished during the course of studies by the municipality.

### Heritage Easements and Tax Relief

- Municipalities may enter into *Heritage Easement* with owners to ensure that properties are protected for a long term.
- Owners of such eligible properties may qualify for tax relief ranging from 10% to 40%

## 9.4 Power of Sale

### The Procedure

- *Power of Sale* is the most frequently used, inexpensive and fairest method by which a mortgagee remedies mortgage default without having to approach a court.
- A *Notice of Sale* is sent the mortgagor and subsequent encumbrancers 15 days following default.
- This notice provides the mortgagor certain time period (*Redemption Period*) to pay off the debt.
- *Certificate of Power of Sale*: This form is required by the listing brokerage to verify that the mortgagee has the authority to sell the property under *Power of Sale*.
- The mortgagee can keep only the amount owed and expenses. Any surplus amount after the sale is paid back to the mortgagor.

### Redemption Period

- Time given to the mortgagor to pay off the debt and redeem the property free of debt.
- No action can be taken by the mortgagee during this period.
  - *Contractual Power of Sale* – The period is 35 days if there is a *Power of Sale* clause in the mortgage document.
  - *Statutory Power of Sale* – The period is 45 days if there is no *Power of Sale* clause in the mortgage document.



- When this time passes, the mortgagee can proceed to take possession and sell the property.

### Marketing the Property

- The lender should conduct at least two appraisals to establish market value.
- Reasonable time should be given for marketing and the sale should not be too fast.
- The lender should provide the widest possible marketing exposure.
- The sale should be an *arm's length transaction* (i.e. not to a relative or a business partner).

### Seller Selling Under Power of Sale

- This document is used with the *Agreement of Purchase and Sale* to make the buyer aware of the following –
  - The seller has the authority to sell the property.
  - A default in mortgage has occurred.
  - The property is sold 'As Is' and there is no guarantee of any chattels or fixtures.
  - The mortgagor may have the right to redeem the property until the time of firm and binding agreement or till the right to terminate by the mortgagee exists.

## 9.5 Road Accesses Act

### Access Road

- An *Access Road* is not a dedicated road and is not accepted by municipality.
- This is essentially a *Private Road* but can be used by a motor vehicle to one or more rural properties.
- These roads may be privately deeded roads or undeeded rights of way.
- This is important for properties which would otherwise be landlocked without any access.
- Since the right of way is by necessity, the *Servient Tenement* cannot unreasonably refuse the right of the *Dominant Tenement*.
- An up-to-date survey is required for accurate description of rights-of-way or other registered easements on property title.

### Closing an Access Road

- Under the *Road Accesses Act*, an access road is an *Implied Grant* and constitutes a *Right-of-Way by Necessity*.
- An access road can only be closed by a court order or specific written instructions of all persons affected.
- However, the road can be temporarily closed for 24-hours during one calendar year for maintenance.

### Shore Road Allowance

- *Shore Road Allowance* was originally 66 feet wide from the high water mark adjacent to rivers and lakes.
- Cottage buyers may be unaware of existence of *Shore Road Allowances* because they may be unopened (never been used).
- Any road allowance that was never open does not mean that it does not exist or cannot be used by public.



- *Encroachment*: Cottage owners may have built boathouses or docks on shore road allowance, which is *Public Land*. This is considered encroachment on Public Land.

### Acquiring an Unopened Shore Road Allowance

- Owners are permitted to purchase *Unopened Shore Road Allowance* from the *Ministry of Natural Resources*.
- When sold, the *Shore Road Allowance* becomes a private property.
- Certain implications must be considered by such buyers –
  - *Non-Conforming Status*: If the cottage is a non-conforming structure due to its age, that status would be disrupted after acquisition.
  - *Cost*: Application costs may be significant which depend on the property, cost of survey, purchase price, etc.
  - *Reduced Frontage*: The frontage acquired may be less than the existing frontage in some cases.
  - *Fish Habitat*: Certain areas may involve fish habitat that is protected by the *Ministry of Natural Resources*. This may increase the costs for the buyer.

## 9.6 Line Fences

### Survey

- Fences are most common cause of disputes between neighbours.
- An up-to-date survey helps resolve several problems related to property boundaries.

### Line Fences Act

- This provincial *Line Fences Act* provides for resolving disputes between neighbours.
- An owner is allowed to construct a fence to mark property boundary.
- In case of new construction, an owner may ask the municipality to assist in dividing the cost between the owner and the neighbour.

### Municipal Fence By-Law

- Municipal *Fence By-laws* include detailed procedures related to division fences such as height, construction material and overall design.
- They include methods to arrive at an agreement with neighbours for fence construction.
- In case of disputes between neighbours, there are procedures for mediation and arbitration.
- By-laws also set out fence height requirements, swimming pool and temporary fencing.
- A *Fence Viewer* is appointed by the municipality for inspection and examination of fences, hear evidences and make an award so that neighbours share one half of the cost of fence.

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## 10. REGISTRATION AS A SALESPERSON

### 10.1 Working with a Brokerage

#### Employee vs. Independent Contractor

- All real estate salespersons and brokers are treated as *Employees* of the brokerage as per REBBA 2002.
- The difference between an *Employee* and an *Independent Contractor* is only for the purposes of taxation.
- The brokerage is responsible to advise, counsel, instruct and assist salespersons in performance of their duties.
- The brokerage is responsible for trading activities of its employee salespersons and brokers.

#### Employee Status

- The brokerage normally bears the operating expenses and the salesperson does not pay any desk fee.
- Salespersons have to pay their own RECO registration fees and insurance premiums.
- Salespersons either get a fixed salary or salary plus commission.
- Some employee benefits may also be available such as *Employment Insurance, Canada Pension Plan*, group medical benefits, etc.
- Taxes are usually deducted at source.

#### Independent Contractor

- The salesperson agrees to pay desk fees, a percentage of commission (split) or flat fee, and other administration charges to the brokerage.
- The salesperson agrees to abide by brokerage rules and regulations for conducting business as given in the *Brokerage Policy Manual*.
- The commission charged by salespersons from the clients is solely determined by them and belongs to them (subject to deductions).
- However, total commission is first collected by the brokerage, distributed to any co-operating brokerage and then split with the salesperson.
- The salesperson also bears the expenses of maintaining their own registration, payment of RECO insurance, board membership and the cost of educational courses.
- *Independent Contractor* salespersons are also responsible for their own taxation matters and all personal expenses related to education, advertising, insurance, vehicle, etc.

#### RECO Registration Application

- The application must be complete in all respects, signed by the applicant and the *Broker of Record* before sending to RECO.
- Current or past bankruptcies or proposals must be disclosed in the application.
- Similarly, any current or past criminal charges and/or convictions must also be disclosed.
- Application package includes completed application form, registration fees, transcript of the last course and a *Police Clearance Certificate* in original.
- After initial review and approval, an invoice is sent to the brokerage and the applicant for payment of RECO insurance premium.
- Once the insurance is paid, the salesperson is officially registered as salesperson.

- The most common cause of delay in review of application is that either it is incomplete or there is some inconsistency in information.

### **Utilizing the Waiting Time**

- Conduct market research in the local market regarding trends, prices, recent changes, new developments, etc.
- Attend training courses related to prospecting, listing presentations, qualifying buyers, negotiating skills, using the MLS® system, etc.
- Learn as much as possible from other colleagues in office by making specific and general enquiries.
- Build a database of known people, e.g. friends, relatives, acquaintances and business contacts.
- Drive around in the area and survey all 'For Sale', 'Sold' and 'For Sale by Owner' signs.
- Prepare an effective *Listing Presentation* so as to be successful in the very first call from a prospective seller.

## **10.2 Prospecting Methods**

### **Warm and Cold Calling**

- A *Warm Call* refers to a call made to a known person and should be used effectively.
- A *Cold Call* is made to an unknown person and should be avoided in the beginning.
- New salespersons should focus on their sphere of influence (*warm contacts*).
- In the beginning, contacting known people and referrals is a good practice.
- The chances of rejection of a call in warm calling are much less than in cold calling.
- When making cold calls, the salespersons must not call any person who is on the *National Do Not Call List*.

### **Open House**

- An open house is a warm prospecting technique.
- A salesperson may arrange an open house for any listing of the brokerage provided that the listing salesperson and the sellers agree.
- Open house is effective for 3 reasons –
  1. Potential buyers get a chance to view the listed property,
  2. The seller is convinced that the salesperson is making a sincere effort to sell the property, and
  3. The salesperson gets an opportunity to meet new prospective buyers.

### **Private Sellers**

- *For Sale by Owner (FSBO)* or private sellers are usually motivated to sell the property.
- Salespersons should keep in mind that these sellers might have had bad experiences with another salesperson or brokerage in the past.
- Some reasons why people want to sell privately include –
  - They may be thinking of saving commission, which is actually buyer's saving.
  - They may be under an impression that they can negotiate better than any salesperson.
  - They think that the right buyer will find their property.

- They may be just trying themselves for a month or so.
- They think that all they need is a lawn sign and are not aware of marketing exposure if the property is listed with a brokerage.

### Expired Listings

- Expired listings are also an excellent source of business.
- New salespersons should keep in mind that they may get a negative response due to failure of the previous brokerage to sell the property.
- The seller may be thinking that the brokerage did not do enough to sell the property while a high asking price could be the reason.
- Salespersons should not contact the seller of any expired listing if the listing contains specific instructions from the sellers not to contact them after expiry.

### 10.3 Telemarketing

#### The National Do Not Call List (DNCL)

- *Cold* calling by real estate professionals is under federal legislation.
- Some exceptions apply such as *existing relationship* with the Brokerage.
- A salesperson may make a cold call to someone if that person has specifically asked the salesperson to contact him/her.
- Some people may allow a salesperson to call them when they visit an open house.

#### Existing Relationship

- 6 Months – If the person has made an enquiry.
- 18 Months - If the person has purchased or rented property from the brokerage.
- 18 Months – If the person had a written agreement with the brokerage, e.g. a *Listing Agreement* or a *Buyer Representation Agreement*.

### 10.4 Canada Anti-Spam Legislation (CASL)

- *Purpose:* To promote the efficiency and adaptability of Canadian economy by discouraging use of electronic means for –
  - Impairing availability, reliability, and optimal use of electronic media,
  - Imposing additional costs on businesses and consumers,
  - Compromising privacy and security of confidential information, and
  - Undermines the confidence of Canadians in the use of electronic means of communication for commercial activities.

#### Commercial Electronic Message (CEM)

- *CEM* is an electronic message that asks for participation in some form of commercial activity.
- It includes messages related to real estate sales and promotion of goods, services, a specific individual or sale of real property.
- Messages include those sent to email addresses, Facebook accounts, Twitter accounts, telephone accounts and through *Instant Message* (IM) service.

### Consent

- The sender of a CEM must get consent (*written* or *implied*) of the recipient, identify himself/herself, get consent to send message, the specific purpose for which consent is requested, and provide a method to withdraw consent.
- If challenged, the responsibility of proof is on the sender.
- Express consent must be through *opt-in method* and not by *op-out method*.
- *Referrals*: Consent is not required if it is a simple referral from a business that has *existing relationship* with the consumer. Existing relationship refers to a business relationship or a non-business relationship with the past 2 years.
- *Penalties*: Penalty for violation could be up to \$1 million for an individual and up to \$10 million for a business.

### Exceptions

- CASL does not apply to Twitter posts, Facebook wall posts, websites, blogs, two-way voice communication between individuals and, faxes and voice recordings sent to telephone accounts.

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## PART III - PRACTICE QUESTIONS

### SAMPLE EXAM 1

Take a blank sheet of paper to write your answers. The [Quick Answer Key](#) is located after the last question followed by [Detailed Answers](#).

➤ **Note:** A blank or completed **Agreement of Purchase and Sale** may be provided in the exam. You can refer to that form to answer related questions.

1. Which of the following statements is correct when a contract is signed under seal?
  - A. The contract is voidable by one of the parties.
  - B. The contract does not exist because of lack of consideration.
  - C. The contract is valid and enforceable without consideration.
  - D. The deposit itself is considered as full consideration.
2. Which of the following statements is incorrect about different types of representation?
  - A. Concurrent representation occurs when the same brokerage represents more than one buyer or seller for different transactions.
  - B. Multiple representation occurs only when a brokerage represents a buyer and a seller in the same transaction.
  - C. Single representation refers to a situation when the same brokerage is working with the seller as a client and buyer as a customer.
  - D. Sequential representation occurs when a single client works with the same brokerage, first for selling a property and then for buying another property.
3. What is the latest point of time a registrant must obtain identification information of a buyer client?
  - A. Before the buyer is shown any property.
  - B. Not later than the time when the buyer signs a representation agreement.
  - C. Not later than closing of the transaction.
  - D. Not later than when the buyer submits an offer or gives deposit.
4. Which of the following is an acceptable practice for a salesperson when drafting an *Agreement of Purchase and Sale*?
  - A. The salesperson can skip lawyer's information until the client has made a decision.
  - B. The salesperson can ask one of the spouses to sign as witness for the other spouse.
  - C. The *HST* clause may be left blank until the seller certifies whether HST is applicable or not.
  - D. The *Notices* clause must have fax numbers for at least one of the brokerages.
5. Which of the following would NOT be typically covered by a *Title Insurance* policy?
  - A. A construction lien discovered on the property after closing.
  - B. A violation of setback requirements under the zoning by-laws.
  - C. A claim for a lien under the *Personal Property Security Act*.
  - D. The cost of removing an encroachment onto the neighbour's property.
6. Which of the following does not occur when a buyer acquires a unit in an equity co-operative?
  - A. The buyer gets a copy of the rules and regulations of the building.
  - B. The title of the acquired unit is transferred to the buyer.
  - C. The buyer must pay *Land Transfer Tax* based on the value of consideration.
  - D. The buyer gets share certificate from the co-operative corporation.

7. Which of the following provincial statutes governs operational matters in care homes, which provide nursing services to residents and charge a fee for these services?
- A. The Residential Tenancies Act
  - B. The Contract Law
  - C. The Substitute Decisions Act
  - D. The Nursing Home Act.
8. The buyer of a rural residential lot may have many concerns. Which of the following is usually NOT one of them?
- A. The water table in the area is high as compared to other areas.
  - B. While hydro one service is available to the lot, there is no guarantee that telephone service would be provided.
  - C. The frontage, shape and size of the lot are not standard, and an up-to-date survey is not available.
  - D. The seller's asking price is based on per front foot of the lot.
9. Which of the following statements is correct regarding the farming industry?
- A. The number of farmers, farm labour and small family farms are increasing due to rise in population and demand for agricultural produce.
  - B. Farmers are protected by federal and provincial statutes when they engage in normal farm practice.
  - C. The *Normal Farm Practices Protection Board* is authorized to hear nuisance complaints against farmers and restrictive by-law challenges.
  - D. Since agricultural resources are vital for the growth of provincial economy, the farming industry is protected against all types of complaints.
10. The maximum coverage for deposit under *Tarion* warranty for a condominium unit is:
- A. \$10,000
  - B. \$20,000
  - C. \$40,000
  - D. \$80,000
11. Which of the following is correct with respect to stigma attached to a property?
- A. It is a perceived risk and typically has a positive impact on value.
  - B. It need not be disclosed when selling the property because it might have already received widespread media coverage.
  - C. It is not merely a perceived risk but a real risk to the owners and buyers.
  - D. It results in longer time periods to sell the property and the property may sell at price much lower than its market value.
12. Which of the following statements is correct with respect to assignment of a contract?
- A. When a contract is assigned, both the rights and liabilities are transferred to the assignee.
  - B. All contracts, including those for real estate, are assignable without any limitations.
  - C. An *Agreement of Purchase and Sale* is treated as a contract and the buyer can always assign it to another buyer before closing.
  - D. A contract between a salesperson and a brokerage is not assignable because it is for personal service.
13. When a salesperson has applied for registration to RECO and is awaiting approval, he/she may be involved in several activities to get started? As per REBBA 2002, which of the following activities would NOT be prohibited?



- A. Collecting information and building a database of his friends, relatives and accomplices.
  - B. Making and receiving calls to get started in real estate business as soon as possible.
  - C. Conducting open houses on behalf of other salespersons in the same brokerage.
  - D. Distributing business cards or flyers for advertising in his/her farming area.
14. Which of the following is a correct statement regarding the duty of *indemnification* under the *Agency Law*, as it applies to real estate trading?
- A. The client must indemnify the agent under all circumstances.
  - B. The client must indemnify the agent for liabilities incurred when the agent is carrying out its duties in a lawful manner.
  - C. The client must compensate the agent for all expenses incurred when carrying out its duties.
  - D. The client indemnifies the agent even when the agent is working in excess of the granted authority.
15. Which of the following statements is correct when a buyer or seller contacts a registrant in order to have an agency relationship?
- A. The registrant should provide information regarding service alternatives to the party and ask them to become clients of the brokerage.
  - B. The registrant should simply ask the party to sign a representation agreement with the brokerage without distracting them with any information about agency.
  - C. The registrant should provide information regarding service alternatives and ask them whether they would like to work as clients or customers.
  - D. The registrant should simply ask the party to become customers of the brokerage to reduce its liability.
16. Which of the following statements is correct regarding septic tanks in cottage properties?
- A. All new septic tanks must be built according to *Ontario Building Code* specifications.
  - B. The *Ontario Building Code* eliminates the requirements of minimum distance between dwellings and septic tanks.
  - C. A septic system with raised absorption bed is most commonly used for all rural properties.
  - D. Home inspectors are qualified to perform inspections of septic systems.
17. Why would a lender prefer a *Power of Sale* action as a remedy for mortgage default as compared to other available options?
- A. Because the borrower need not vacate the property or provide possession to the lender.
  - B. Because the *loan to value ratio* is small and foreclosure is not a viable action for the lender.
  - C. Because most borrowers prefer *Power of Sale* instead of other actions that involve court involvement.
  - D. Because power of sale action is an inexpensive action and it provides justice to both the lender and the borrower.
18. Jenny decides to join and is ready to submit her salesperson registration application to RECO. She intends to work as a full-time salesperson. Which of the following documents are required by RECO with the application?
- A. Completed application and applicable annual RECO Insurance premium.
  - B. Completed application, transcript of the last course and a recent police clearance certificate.
  - C. Evidence of good financial responsibility, no bankruptcies or proposals and a credit check report.
  - D. A copy of independent contractor agreement with the brokerage.
19. Seller Smart has listed his property with Cram Realty, Inc. During inspection of the property, a buyer asks if the nearby school offers secondary education. The seller, who did not know about it, asked the question to his neighbour who affirmed the fact. The buyer relied upon this information and purchased the

property. Later, the buyer discovered that the nearest secondary school was about 3 miles away. As a result, the buyer refused to close the deal. What is the basis of buyer's decision?

- A. Fraudulent misrepresentation.
- B. Negligent misrepresentation.
- C. Innocent misrepresentation.
- D. Reckless disregard of truth.

20. A newly registered salesperson is working with a friend who wishes to purchase a cottage property. During their discussions, the friend asks the salesperson for his advice on such properties. The salesperson does not have enough knowledge about cottage properties, water wells or septic tanks. According to *REBBA 2002 Code of Ethics*, which of the following activities would be acceptable on part of the salesperson?

- A. The salesperson should provide his best advice but should not induce his friend into signing a *Buyer Representation Agreement*.
- B. The salesperson should provide his best advice and only explain the benefits of *Buyer Representation Agreement*.
- C. The salesperson should not provide any advice but should require the buyer to sign *Buyer Representation Agreement* before showing cottage properties.
- D. The salesperson should not provide any advice but should ask his friend to seek expert advice from someone who has better knowledge and experience in such properties.

21. The *Real Estate and Business Brokers Act 2002* requires mandatory disclosures by registrants when acquiring an interest in real estate. Which of the following statements is (are) correct regarding the content of the required disclosure?

- 1. The registration status of the registrant such as brokerage, broker or salesperson.
  - 2. Full disclosure of all facts, within the registrant's knowledge that affects or will affect the value of the real estate.
  - 3. Particulars of any negotiation, offer or agreement by or on behalf of the registrant for subsequent disposition of the real estate to any other person.
  - 4. The registrant's method of financing the purchase of the property.
  - 5. The numbers of years the registrant has been registered under REBBA 2002.
- A. Only statements 1, 2 and 3 are correct.
  - B. Only statements 1 and 2 are correct.
  - C. Only statements 1, 2 and 4 are correct.
  - D. Only statements 2, 3 and 4 are correct.

22. Salesperson Skinny of Cram Realty Inc. has signed a *Buyer Customer Service Agreement* with investor Ingrid. This buyer is interested to make an offer on a commercial property listed by salesperson Jenny of the same brokerage. When showing the property, salesperson Skinny observes that there are certain electrical deficiencies in the building. It would be difficult for buyer Ingrid to obtain fire insurance. Skinny does not inform the buyer but assumes that the building inspector would find out these problems. Buyer Ingrid makes an offer and it is accepted by the sellers. Which of the following statements is correct with respect to salespersons' actions regarding disclosure requirements?

- A. Salesperson Skinny has fulfilled her duty of confidentiality to the seller client of her brokerage by not disclosing the facts about the property.
- B. Buyer Ingrid is a customer and the brokerage is not required to disclose material facts to a customer.
- C. Salesperson Jenny would be held responsible because it was her duty to disclose this fact in the listing.
- D. Both salespersons may be held liable because the duty to disclose material facts about the property applies to clients as well as customers.

23. Salesperson Jenny of Cram Realty Inc. is drafting an offer for her buyer client Bright. The buyer has told Jenny that they would need the seller to finance the property because his own lender may not provide sufficient financing for a term of more than 2 years for the purchase. The sellers have agreed to provide a secondary mortgage in the amount of \$35,000 for a term of 5 years. Which of the following financing clauses are required to protect the buyer in this situation?

- A. A postponement clause would be required with the second seller take back mortgage because the first mortgage would expire before the second mortgage.
- B. A postponement clause would be required with the first mortgage because the term of the second seller take back mortgage is longer than the first mortgage.
- C. A creditworthiness clause would be required with the first mortgage to ensure that the seller's loan is protected in case of default by the buyer.
- D. A pre-payment clause would be required with the seller take back mortgage so that the buyer is able to pay off the loan anytime without penalty.

24. Salesperson Jenny of Cram Realty Inc. has sold a property at 120 High Street, which was listed by Power Realty Inc. She referred her buyer client to Cram City Lender Inc. for a mortgage loan. Cram City Lender Inc. will be paying a referral fee to Jenny's real estate brokerage. According to *REBBA 2002 Code of Ethics*, what is salesperson Jenny's legal obligation concerning the referral fee?

- A. Provided that the salesperson has given conscientious and competent service to the buyer client, no disclosure of the referral fee is required.
- B. The salesperson must disclose the referral fee to the buyer by inserting a disclosure clause in Schedule A of the *Agreement of Purchase and Sale*.
- C. A written disclosure of the referral fee must be made to the buyer client by the salesperson at the earliest practical opportunity.
- D. The salesperson must provide written information about the referral fee to both the listing brokerage and selling brokerage.

25. Salesperson Jenny of Cram Realty Inc. sold a nice 3-bedroom bungalow to Mr. and Mrs. Smart, who had signed a *Buyer Representation Agreement* with the brokerage. The listing brokerage was Power Realty Inc. The *Agreement of Purchase and Sale* was conditional upon satisfactory home inspection report and arrangement of mortgage financing by the buyer. These conditions were waived later, and the agreement became a legally binding contract. Just before the closing date, the buyers come to know that the lender has refused to provide them loan because the employment information given by buyers could not be verified. As a result, the buyers default and could not close the transaction.

Which of the parties would be liable for paying commission and why?

- A. The sellers would be liable to Power Realty Inc. because that brokerage fulfilled its obligation by bringing the sellers an offer that they accepted.
- B. Mr. and Mrs. Smart should be liable to because the transaction did not close due to their default.
- C. Mr. and Mrs. Smart would be liable to Power Realty Inc. because only they were responsible for not closing the transaction.
- D. The sellers would be liable to Cram Realty Inc. for the payment of commission as Cram Realty Inc. was the co-op brokerage in the transaction.

26. Salesperson Kim of Cram Realty Inc. has just signed a *Listing Agreement* with sellers Mr. and Mrs. Bright, who wish to sell their 2-storey home in Cram City. According to the provisions of *Real Estate and Business Brokers Act 2002*, at what point of time the salesperson must provide the sellers with copies of the *Listing Agreement*?

- A. Within 24 hours of signing.
- B. Within 30 days of signing.
- C. Within 5 business days.
- D. Immediately upon signing.

27. Salesperson Jenny is preparing an offer for her buyer client Bright. She wants to ensure that the appliances included in the agreement should be in good working order at the time of closing. Jenny includes the following clause in the schedule:

*"The seller represents and warrants that all appliances included in this agreement of purchase and sale are now and on closing shall be in good working condition. The parties agree that this representation and warranty shall survive and not merge on completion but shall apply only to the state of property existing at the time of completion."*

Buyer Bright is surprised to see an extra sentence added to the representation and warranty clause. Which of the following explanations would NOT be correct in this regard?

- A. The clause permits the buyer to have an additional inspection of the appliances before the closing date.
- B. The buyer must understand that the warranty will not exist beyond closing date and he cannot make a claim if a problem arises after closing.
- C. If the appliances do not work at the time of closing, the buyer can make a claim against the sellers.
- D. The extra sentence protects the sellers from any claim the buyer may make after the transaction has completed.

28. Buyer's lawyer requests the seller's lawyer that he needs the survey of the property in order to proceed with completion of the transaction. The seller's lawyer expresses his inability to provide one. Which of the following is a valid option for the buyer?

- A. Terminate the deal because it is a condition in the pre-printed wording of agreement.
- B. The seller must provide a new survey at his own expense and this is clearly mentioned in the agreement.
- C. The buyer must obtain *Title Insurance* in the absence of a survey.
- D. The buyer may close the transaction without the survey.

29. Salesperson Jenny has listed owner Smart's property at 123 Cram Crescent. Her brokerage receives an offer by fax at 5.00pm on Friday, the 6<sup>th</sup> of August. The offer is irrevocable by buyer until 11.00am the following Monday. Salesperson Jenny had already finalized her weekend plans for an outing in her countryside cottage. She would be returning only late Sunday night. She did not inform seller Smart about the offer until 8.00am Monday morning that there was an offer. She arranged for presenting the offer at 9.00am. Do you have any concerns regarding violations of *REBBA 2002 Code of Ethics* by the salesperson?

- A. No, the salesperson made best efforts to present the offer before expiry of the irrevocable time.
- B. Yes, the salesperson should have informed the sellers and arranged for presentation of offer as soon as possible.
- C. No, the irrevocable time starts after the salesperson presents the offer.
- D. Yes, the salesperson should have called the sellers to inform about offer and asked the co-operating brokerage to get the irrevocable time extended.

30. Seller Smart has signed a *Listing Agreement* with salesperson Kim of Cram Realty Inc. for sale of his 2-storey home. The listing period starts on March 1<sup>st</sup> and expires in 3 months. The holdover period is 60 days after the expiry of listing period. The total commission stated on the agreement is 5% of the sale price. There are several showings of the property, but it does not sell during the agreement period. Owner Smart lists the property with Power Realty Inc. on June 5<sup>th</sup> for a total commission of 3.5% of the sale price. Buyer Bob, who was shown the property by salesperson Kim during the agreement period, makes an offer on June 10<sup>th</sup> to buy the property. The seller accepts the offer and the closing date is set for August 30<sup>th</sup>.

Based on the pre-printed wording of the *Listing Agreement*, does the seller owe any commission to Cram Realty Inc.?

- A. Yes, the seller owes 5% commission because the property was shown during the agreement period and is sold to the same buyer during the holdover period.
- B. Yes, because the property was shown during agreement period and purchased by same buyer through a different brokerage. This entitles Cram Realty Inc. to claim the 1.5% difference in commission.
- C. No, because the property is now listed with a different brokerage. The new *Listing Agreement* terminates any holdover provision under previous agreement.
- D. No, although the property was shown during agreement period and sold to same buyer during holdover period, the closing date is after the agreement period as well as holdover period.

31. Under the *Residential Tenancies Act*, both the landlord and the tenant have certain requirements regarding termination notice. Which of the following statements is correct in this regard?

- 1. If the tenant has committed some crime on the property or has caused damage to the property, the landlord can give a 10 days' termination notice anytime.
- 2. For a fixed term tenancy, either the landlord or the tenant can give 60 days' notice anytime they wish to terminate the tenancy.
- 3. If the landlord wants to give the premises to a parent or a child, the termination notice period is 60 days before the end of a fixed term tenancy.
- 4. For a month-to-month periodic tenancy, the minimum notice period is 60 days before the end of period.
- 5. The landlord reserves the right to terminate tenancy with only 10 days' notice in case the tenant brings a pet in the property.

- A. Statements 1, 2 and 4 are correct.
- B. Statements 2, 3 and 5 are correct.
- C. Statements 3, 4 and 5 are correct.
- D. Statements 1, 3 and 4 are correct.

32. Broker of Record Binny is talking to salesperson Skinny regarding opportunities in new home sales. Skinny makes the following statements in response to his questions:

*"I think this is an excellent area of real estate to explore. The prospect registration system with certain builders ensures that if a registrant introduces a buyer to a builder, the commission to the registrant is protected. All home builders pay a fixed amount of commission to salespersons when they introduce a buyer to them. The introduction must result in a sale within certain time period, such as 60 days or 90 days according to builder's policy. It does not matter whether the buyer is accompanied by the salesperson later or not."*

The statements given by salesperson Skinny are not entirely correct. Which of the following best describes the error?

- A. The prospect registration system refers to registration of buyers themselves and not by registrants.
- B. The system ensures that the price offered to the buyers is guaranteed for 60 days or 90 days if buyers come back and make an offer.
- C. The commission paid by builders depends on builder policies and it is not fixed for all builders.
- D. The commission to registrant is guaranteed only if the salesperson later accompanies the buyer when signing the agreement.

33. Buyer Bright is working with salesperson Jenny for buying a rural parcel of land to build his custom home. When inspecting different available lots, Jenny comes across a listing where the seller is offering a 2-acre parcel of land from his existing 6-acre land. This parcel of land has not been officially severed yet. What should salesperson Jenny make the buyer aware of before the buyer signs the *Agreement of Purchase and Sale*?



- A. The *Agreement of Purchase and Sale* will become null and void if the severance is not approved by municipality before the completion date.
- B. If the agreement has become a legally binding contract, the land can be transferred to buyer irrespective of severance approval.
- C. The *Planning Act* clause in the *Agreement of Purchase and Sale* requires the municipality to approve the severance before the agreement becomes binding.
- D. All costs related to the severance process are borne by the buyer and this is clearly mentioned in the pre-printed wording of the *Agreement of Purchase and Sale*.

34. The *Farming and Food Production Protection Act* provides protection to farmers from restrictive municipal by-laws and nuisance complaints. Which of the following is a correct statement in this regard?

- 1. A disturbance from farming operation may result from odour, dust, flies, light, smoke, noise and vibration due to movement of heavy farming machinery.
  - 2. Farmers are protected from several nuisance complaints when their practice qualifies as a *Normal Farm Practice*.
  - 3. Most complaints regarding unacceptable practices by farmers are heard by the *Ministry of Agriculture, Food and Rural Affairs*.
  - 4. A farm practice which is consistent with proper and acceptable customs and produces the highest return on investment is referred to as *Normal Farm Practice*.
  - 5. In case of a valid nuisance complaint, the farmer may be given certain time to modify his practice so that it becomes an acceptable *Normal Farm Practice*.
- A. Statements 1, 2 and 3 are correct.
  - B. Statements 2, 3 and 4 are correct.
  - C. Statements 1, 3 and 5 are correct.
  - D. Statements 1, 2 and 5 are correct.

35. Stigma, for real estate purposes, is associated with detrimental factors attached to the property. Which of the following statements is NOT correct in this regard?

- A. Stigma exists only in the minds of buyers and there may not be any real risk involved.
- B. In most cases, stigma negatively impacts the property value and it is hard to estimate the loss in value.
- C. Since stigma is based on perception only, it is not considered a material fact and need not be disclosed when selling the property.
- D. Stigma results in longer periods to sell the property and the property is typically sold below market value.

36. Salesperson Jenny of Cram Realty Inc. gets a call from a prospective buyer who intends to buy a 2-storey house on a ravine lot. Mini feels uncomfortable during initial conversation with this buyer. Which of the following indications would NOT be a reason to believe that this buyer may get the salesperson involved in a suspicious transaction?

- 1. The buyer may insist on buying an unseen property.
  - 2. The buyer may insist on buying the property unconditionally and in cash.
  - 3. The buyer may want immediate possession by paying over and above the asking price.
  - 4. The buyer wants the basement finished with at least one bedroom and a washroom.
  - 5. The buyer is only interested in privacy of the house and is not looking at finishes or upgrades.
- A. Only statements 2 and 5 are correct.
  - B. Only statements 2 and 4 are correct.
  - C. Only statements 1, 3 and 5 are correct.
  - D. Only statements 1, 3 and 4 are correct.

37. Jenny has joined Cram Realty Inc. and has received her salesperson registration certificate from RECO. She wants to get started as soon as possible by prospecting in her farming area. One of the methods of prospecting in real estate does not involve any major advertising costs. In this particular method, the seller is convinced that the salesperson is making sincere efforts to sell the property; potential buyers can view the property without having to make an appointment and the salesperson can expand his client base by meeting more prospects. This type of prospecting activity is known as:

- A. Making cold and warm calls
- B. Holding open house
- C. Door knocking at private sellers.
- D. Calling sellers of expired listings.

### **Case Study – 2 Parts**

Salesperson Jenny of Cram Realty Inc. is working with buyer Smart who has signed a Buyer Representation Agreement with her brokerage. Smart works in construction industry and is specifically looking for a property that he can renovate and sell. Jenny suggests that she will look for some property which is on power of sale by some lender.

38. Salesperson Jenny finds a property on power of sale by Cram City Financials Inc. The owner had defaulted on his mortgage payments and owed a big amount of outstanding mortgage. Buyer Smart has several questions about such sales. Salesperson Jenny tries to explain the process of power of sale to her client and makes the following statements:

1. A power of sale happens only if there is a power of sale clause in the mortgage document; otherwise the lender must make an application to court.
  2. The lender sends a *Notice of Sale* when the borrower is 15 days into default and it must be ensured that the minimum time period sanctioned by the court is provided to the borrower to pay off the debt.
  3. The lender typically gets the property appraised so as to satisfy the borrower that it is not sold below its fair market value.
  4. Once the redemption period of 35 days passes, the title of the property is transferred to the lender and the borrower loses even the equity he/she has in the property.
  5. The lender makes an attempt to sell the property in open market with reasonable market exposure and giving average time to sell.
- A. Only statements 1 and 4 are correct.
  - B. Only statements 3 and 5 are correct.
  - C. Only statements 2, 3 and 5 are correct.
  - D. Only statements 1, 2 and 5 are correct.

39. Buyer Smart is curious to know that if he decides to make an offer on this property being sold by the lender, what other things he must be aware of. Salesperson Jenny understands buyer's concerns and makes the following statements:

*"There will be no guarantee of any kind on chattels, fixtures or the structure. When your offer is accepted by the lender, the title will be transferred to your name and you will get a chance to correct the mortgage default problem before the date of completion. If there is a difference between the amount owed to the lender and your purchase price, you will be responsible. But if the mortgagor pays off the debt before conditional time or some later date before completion, as stipulated by the lender in the offer, the lender may decide to terminate your offer. When the sale closes, you don't have to worry if the financial condition of the borrower improves and he wants to pay off the debt and take back his property."*

The information provided by salesperson Jenny is not entirely correct. Which of the following explains the problems with the information?



- A. Since the lender has to recover his monies, they typically provide guarantee on the condition of chattels, fixtures and the structure so that the property is sold as soon as possible.
- B. The buyer is not responsible for the defaulting borrower and does not have to pay the difference between purchase price and the money owed by defaulting borrower.
- C. When the lender accepts the buyer's offer, the lender does not have the right to terminate the offer if the previous borrower pays off the debt.
- D. Even when the sale has closed, and the previous buyer pays off the debt the transaction can still be terminated by lender and the previous borrower will get back his property.

### **Case Study – 3 Parts**

Salesperson Skinny of Cram Realty Inc. has just listed a property for sale on 34 Townsend Avenue. The sellers are a nice couple who had purchased the property only three years ago using another brokerage. At the time of purchase, they were verbally told that the property was earlier a grow house and that the previous owners had fully renovated the property. As of now there is no visible sign of any grow operation or structural damage to the property. The sellers insist that there is no need to talk about it in the listing. Skinny, considering her duty of obedience, lists the property and does not mention that it used to be a grow house earlier.

Answer the following questions based on this scenario.

40. Do you have any concern regarding disclosure of a previous grow operation in the property?

- A. No, the property was not used as grow house by current owners and there is no need for any disclosure.
- B. Yes, it is salesperson's responsibility to get in writing that she should not disclose the previous grow operation.
- C. No, since the property has been fully renovated, there is no need for any disclosure in this listing.
- D. Yes, even though the grow operation was not done by current owners, it is a material fact and must be disclosed in the listing.

41. The property was sold in about two weeks' time. The buyers arrange home inspection and the report is satisfactory to buyers. They waive the conditions before the expiry date. Just a week before closing the buyers come to know from the neighbours that the property was once a grow house. The police had raided the property and taken away a lot of marijuana plants. The buyers are upset now because this fact was not disclosed to them earlier. They call their salesperson and seek explanation. The salesperson calls the listing salesperson Skinny. Skinny explains that the property was not used by current owners for grow operations and it was fully renovated by previous owners. She and her seller clients are not obligated to disclose this fact. The buyers are upset and refuse to close the deal. Which of the following would be a correct statement in this situation?

- A. Since grow operations in a property attaches a stigma to the property and it remains for long time, it must have been disclosed by salesperson Skinny in the listing agreement.
- B. Buyers cannot refuse to close based on the fact that they have already waived the home inspection condition.
- C. Current or previous grow operations in a property is considered a patent defect under the *Contract Law* and the buyers cannot refuse to close because it was the duty of the buyers to do further investigation.
- D. Salesperson Skinny had a duty of obedience towards her clients and she was not supposed to disclose it in the listing.

42. Assuming that salesperson Skinny had made the disclosure in the listing, what else should have been done by both salespersons and their brokerages?

- 1. REBBA 2002 requires both the listing and the co-operating salesperson to be present at the time of home inspection.

2. The listing brokerage is required to maintain a list of all brokerages which have shown the property.
  3. Since the disclosure had been made in the listing, no further action was required by either the listing brokerage or the co-operating brokerage.
  4. The Agreement of Purchase and Sale must also have included necessary clauses regarding the previous grow operation in the property.
- A. Only statements 1 and 2 are correct.
  - B. Only statements 2 and 4 are correct.
  - C. Only statements 3 and 4 are correct.
  - D. Only statements 1, 2 and 4 are correct.

### **Case Study – 3 Parts**

Landlord Samson owns a four-unit apartment building on a quiet street in Cram City. He lives in one of the 2-bedroom units and the other three units are rented to various tenants. Most of his tenants abide by verbal rules and regulations that Samson tells them from time to time. Samson has some knowledge of the *Residential Tenancies Act* and, generally follows them. Based on this scenario, answer the following three questions.

43. Landlord Samson is always concerned about creditworthiness of tenants in his fourplex apartment building. A tenant who is new in the country approaches Samson for renting his 2-bedroom apartment. Since the tenant does not currently have any credit history in this country, Samson wants to make sure that the tenant does not default on rent payments. Which of the following is a valid option for Samson?

- A. Ask the tenant to provide post-dated cheques for rent for the next one year.
- B. Insert a condition of automatic withdrawal of rent from tenant's chequing account.
- C. Ask the tenant to provide six months' rent as security deposit.
- D. Ask the tenant to bring a guarantor or a co-signer.

44. One of the tenants living in the building brings in a big dog. Samson does not like pets at all in his building. His lease with all tenants has a clause that prohibits any kind of pet in the building. Samson requests the tenant to remove the dog but the tenant refuses saying that the clause in the lease cannot be enforced under the *Residential Tenancies Act*. Which of the following would be a valid option for Samson to terminate the tenancy?

- A. Samson can terminate the tenancy anytime by giving a 120 days' notice.
- B. Termination notice can be served to the tenant if the dog is creating significant nuisance in the building or is potentially dangerous.
- C. Samson is not permitted to terminate the tenancy on any grounds.
- D. Samson can serve 60 days' termination notice to the tenant anytime and the tenant can vacate within 10 days of receiving the notice.

45. Tenant Brown's lease has already ended with Samson, but he is still staying in his 2-bedroom unit. Brown is paying rent and landlord Samson is accepting it. Samson's mother is coming from another province in two months and is planning to live with him. Samson needs to get Brown's 2-bedroom unit vacated for his mother. Which of the following is a correct statement regarding termination of Brown's tenancy?

- A. Samson can serve a 60 days' notice to Brown to get the unit vacated.
- B. Samson must serve a minimum of 120 days' notice to Brown.
- C. Brown can reject Samson's notice because he is paying rent and Samson is willfully accepting it.
- D. Brown can vacate within a week after receiving the termination notice from Samson.

### **Case Study – 5 Parts**

This case study is based on standard Agreement of Purchase and Sale. Salesperson Jenny of Cram Realty Inc. is drafting an offer for her buyer Bright who has signed a Buyer Representation Agreement

with her brokerage. The property at 135 Cram Crescent is listed by salesperson Kim of her own brokerage for \$384,900. The buyer is ready to make an offer for \$370,000 and wants the seller to finance \$50,000 out of their purchase price. The listing salesperson Kim informs Jenny that the seller is also looking for someone to assume her existing mortgage in the amount of \$240,000 so that they can save on penalty by their lender. While the buyer agrees to assume the seller's existing mortgage, the seller agrees to a seller take back mortgage. The buyers make it clear to salesperson Jenny that they do not want to be responsible for HST on this purchase.

Salesperson Jenny prepares the offer using standard Agreement of Purchase and Sale with all the terms that are agreed verbally.

*The offer date is August 1, 2014 with an Irrevocable date of August 3, 2014 at 10.00 pm.*

*The Deposit amount is \$15,000 to be submitted Upon Acceptance.*

*The date set for fulfillment of conditions is set for August 12, 2014.*

*The Requisition Date is September 5, 2014.*

*The Completion Date is September 30, 2014.*

The *Agreement of Purchase and Sale* contains standard Home Inspection condition, a *Mortgage Assumption* clause and a *Seller Take Back* clause in the Schedule A as shown below:

*"The buyer agrees to assume seller's existing first charge/mortgage held by Cram Financials Inc. for approximately two hundred and forty thousand dollars (\$240,000.00) bearing yearly interest rate of 5.5%, calculated semi-annually, not in advance, repayable in blended monthly payments of one thousand four hundred sixty-four dollars and ninety-four cents (\$1,464.94), including both principal and interest, and due on December 20, 2016. Unless the buyer gives notice in writing delivered to the seller not later than 6.00pm on August 12, 2014 that this condition is fulfilled, this offer shall be null and void and the deposit shall be returned to the buyer in full without deduction. The buyer agrees to proceed diligently to make an application to the lender and provide such documentation as required by the chargee/mortgagee for approval of the buyer as chargor/mortgagor."*

*"The seller agrees to take back a second charge/mortgage in the amount of fifty thousand dollars (\$50,000.00) bearing interest at the rate of 8% per annum, calculated semi-annually not in advance, repayable in blended monthly payments of about three hundred eighty-one dollars and sixty-one cents (\$381.61) based on a 25-year amortization and to run for a term of five years from the date of completion of this transaction."*

The buyers sign the offer on August 1, 2014 at 9.30 am. Answer the following 5 questions based on the scenario given above.

46. How would salesperson Jenny complete the HST section of the Agreement of Purchase and Sale in order to comply with her buyer client's instructions?

- A. The clause can be left blank until the seller's solicitor provides an undertaking that the sale is not subject to HST.
- B. The words '*In Addition To*' should be inserted in the HST clause because it is a multiple representation, and this protects the interests of both clients.
- C. The words '*Included In*' should be inserted in the clause to protect the interests of the buyer so that if HST becomes applicable it is seller's responsibility.
- D. The words '*In Addition to*' should be inserted in the HST clause because the salesperson knows that all residential sales are exempted from HST.

47. Salesperson Jenny has deliberately left the *Notices* clause blank in the Agreement of Purchase and Sale. Which of the following statements correctly describes why she did not fill up fax numbers in this clause?
- A. The fax numbers of the listing and selling brokerages cannot be filled up because both the seller and the buyer are clients of the brokerage resulting in multiple representation.
  - B. Since the buyer has signed a Buyer Representation Agreement after the Listing Agreement was signed, the brokerage is not permitted to send notices by electronic means such as fax or email.
  - C. It is definitely a critical mistake because the space in the *Notices* clause is considered essential information and missing numbers or email addresses could lead to termination of the agreement.
  - D. Salesperson Jenny is treating the buyers as customers even though they have signed Buyer Representation Agreement, and hence left the notices clause blank.
48. Based on the mortgage clauses given in the Schedule A of the Agreement of Purchase and Sale, do you have any concerns with the way the mortgage assumption clause has been drafted?
- A. Yes, the mortgage assumption clause does not specify the amortization period which makes it difficult to verify the payment amount.
  - B. Yes, the mortgage assumption clause does not include the condition for approval of buyer as chargor/mortgagor.
  - C. Yes, the words '*per annum*' are missing in the given clause to specify that the interest rate is annual.
  - D. Yes, the clause should include a waiver provision so that the buyer can waive the condition in order to make the agreement a legally binding contract.
49. Based on the mortgage clauses given in the Schedule A of the Agreement of Purchase and Sale, do you have any concerns with the way the seller take back mortgage has been drafted?
- A. Yes, the seller take back clause should be a conditional clause as is the case with mortgage assumption clause.
  - B. Yes, it is actually the buyer who is taking back the second mortgage and not the seller.
  - C. Yes, the seller take back mortgage cannot have an amortization period of more than 20 years.
  - D. Yes, the seller take back mortgage should have a postponement provision because the first mortgage is expiring before the second mortgage.
50. Based on the financial details given in the scenario, what should be the correct amount of balance due on completion?
- A. \$65,000
  - B. \$115,000
  - C. \$305,000
  - D. \$365,000

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**QUICK ANSWER KEY**

**SAMPLE EXAM 1**

1. C	2. B	3. D	4. A	5. C
6. B	7. A	8. D	9. C	10. B
11. D	12. D	13. A	14. B	15. C
16. A	17. D	18. B	19. C	20. D
21. A	22. D	23. A	24. C	25. B
26. D	27. A	28. D	29. B	30. B
31. D	32. C	33. A	34. D	35. C
36. B	37. B	38. B	39. B	40. D
41. A	42. B	43. D	44. B	45. A
46. C	47. A	48. B	49. D	50. A

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## SAMPLE EXAM 2

Take a blank sheet of paper to write your answers. The [Quick Answer Key](#) is located after the last question followed by [Detailed Answers](#).

➤ **Note:** A blank or completed **Agreement of Purchase and Sale** may be provided in the exam. You can refer to that form to answer related questions.

1. Which of the following obligations under *REBBA 2002 Code of Ethics* does not apply to customers of a brokerage?

- A. Disclosure of material facts of the property.
- B. Keeping personal or motivational information confidential.
- C. Disclosure of agency relationships.
- D. Providing competent and conscientious service.

2. The requirement of a written disclosure of an interest in a real estate applies when:

- A. The registrant is making an offer to buy a property for his brother.
- B. The registrant is an employee of a brokerage where the broker of record is his close relative.
- C. The registrant is trading in real estate for a close family friend.
- D. The other party is a client of the co-operating brokerage and not a customer.

3. When a brokerage is in multiple representation situation:

- A. The first party to become client of the brokerage has definite advantage over the other client.
- B. The second client must give written consent because this client has created multiple representation situation for the brokerage.
- C. The brokerage must make a written disclosure and get written consent of all parties in order to proceed with the transaction.
- D. The first client must give written consent because this party first became client of the brokerage.

4. Which of the following documents is not a part of documents provided by the co-operative corporation to a buyer?

- A. A share certificate for the co-operative corporation.
- B. The ownership documents of the unit.
- C. The amount of current mortgage loan to be assumed by the buyer.
- D. A copy of rules and regulations of the building.

5. Seller Smart has signed a listing agreement with salesperson Jenny of Cram Realty Inc. for a period of three months. In doing so:

- A. Smart has hired salesperson Jenny as his agent for selling the property.
- B. Smart established a dual agency with salesperson Jenny and
- C. Smart established an agency relationship with Jenny and implied agency with Cram realty Inc.
- D. Smart has established an agency relationship with Cram Realty Inc.

6. As per *REBBA 2002 Code of Ethics*, the duty of care is owed to both clients and customers. Which of the following statements correctly explain this duty?

- A. The duty of care relates only to performing the agreed functions with due care and does not expect the brokerage or its employees to have competence.
- B. The brokerage and all its employees must perform the agreed functions with reasonable care, skills and judgment.
- C. The duty of care essentially includes the duty to protect best interests of the client.



- D. Safeguarding confidential information is included in the duty of care.
7. Which of the following statements is correct regarding agreements for time share properties?
- A. The buyer of a *Fee Ownership* time share interest is protected under REBBA 2002 while the buyer of a *Right to Use* interest is protected under the *Consumer Protection Act*.
  - B. The buyers of timeshare can cancel their agreements anytime within six months if a copy of signed agreement is not delivered.
  - C. Buyers of *Fee Ownership* as well as *Right to Use* interests can sell the interest to anyone after receiving a signed copy of agreement.
  - D. Buyers of both *Fee Ownership* and right to lease timeshare interests are protected under the *Consumer Protection Act*.
8. Which of the following statements is incorrect regarding reserve fund in condominiums?
- A. The *Declarant* must maintain a *First Reserve Fund* amount equal to \$2,500 times the number of units.
  - B. Every unit owner is liable for deficiency in reserve funds if some major repair is required.
  - C. The reserve fund itself cannot be used to add new common elements to the building.
  - D. The corporation must complete a *First Reserve Fund Study* within one year of condominium registration.
9. Which of the following is a correct statement regarding water wells in rural properties?
- A. Water wells must be constructed using the boring technique to qualify for insurance coverage.
  - B. Wells located on shore land are more prone to contamination as compared to other wells.
  - C. Decontamination is done using chlorination where a solution of chlorine is added just before consumption.
  - D. Buyers of cottage properties need not add condition for water well quantity or quality if seller provides a *Certificate of Installation*.
10. Which of the following would not be a major concern for the buyer of a countryside cottage?
- A. That the access to the cottage is by a public road or by a private road.
  - B. That the municipality is providing fire protection in the area.
  - C. That the insurance premiums are a bit high as compared to urban properties.
  - D. Whether the hydro and telephone services are available to the cottage or not.
11. Which of the following statements is correct regarding *Managed Forest Tax Incentive* program?
- A. The buyer must prepare his own plan and get approved within 90 days of closing in order to continue receiving the tax incentives.
  - B. The program is overseen by the *Conservation Authority* in conjunction with the Ministry of Environment.
  - C. The seller of a managed forest must permit the buyer to continue the program if the buyer wishes to receive tax incentives after closing.
  - D. The registrant becomes responsible for seller's unpaid taxes if it is found that the seller did not qualify for tax incentives.
12. Which of the following would not be an indication of a suspicious transaction when a salesperson is working with a buyer?
- A. The buyer wants to make an offer on an unseen property and demands quick closing.
  - B. The buyer wants to make a large deposit in order to make sure that the seller takes his offer seriously.
  - C. The buyer does not want to include any conditions regarding mortgage financing but has no known source of income and employment.



D. The buyer wants to buy many properties within a short period of time.

13. The *Proceeds of Crime (Terrorist Financing) and Money Laundering Act* requires real estate brokerages to:

- A. Identify every client in a transaction at the earliest practical opportunity.
- B. Report every transaction of \$10,000 or more to *FINTRAC*.
- C. Requires brokerages to complete *Receipt of Funds Record* for every transaction without exception.
- D. Requires brokerages to complete a *Risk Assessment* form every five years.

14. Asbestos in residential properties is most commonly associated with which of the following structural components?

- A. Foundation walls and roof rafters.
- B. Roofing materials
- C. Water supply and drain pipes.
- D. Windows and doors.

15. Which of the following is a correct statement regarding a salesperson working as independent contractor with a brokerage?

- A. The brokerage is not responsible for the conduct of the salesperson while trading in real estate.
- B. The brokerage is not obligated to provide any training, mentoring or coaching to the salesperson.
- C. The salesperson must pay a monthly desk fee in order to be employed by the brokerage.
- D. The brokerage is not responsible for taxation matters related to the salesperson's income or expenses.

16. Buyer Smart discovers after taking possession of property at 38 Cram Square Avenue that there is a problem of water leakage in the basement. He also finds that the glass pane of one of the family room windows is broken. In addition to these problems, there is a major structural problem with the structure that might take a significant amount of money to repair. None of these problems were visible at the time of inspecting the property. When contacted, the sellers tell Smart that they had told their listing salesperson about all these problems. Based on the information provided do you have any concerns regarding intention of the sellers or the listing salesperson and the contract for purchase of the property?

- A. Yes, both the broken window pane and the basement leakage problem are material latent defects and should have been disclosed.
- B. No, neither the seller nor the listing salesperson can be held liable for not disclosing these defects as both are patent defects.
- C. Yes, the listing salesperson failed to disclose the material latent defect with respect to the leakage problem in the basement.
- D. No, there is absolutely no problem as per the *Contract Law* because by disclosing the defects to his salesperson the seller's intention became genuine.

17. Salesperson Jenny of Cram Realty Inc. obtained a listing from seller Smart for selling his property at 62 Cram Crescent in Cram City. The sellers told Jenny that they did not want to hold any open houses because of their bad experiences in the past. Jenny explains the benefits of open houses to sellers, but they do not agree. Two weeks after the listing agreement is signed, sellers leave the town in the weekend for camping in their cottage. In their absence, Jenny finds an excellent opportunity and holds an open house on Saturday. Sellers return from camping Sunday evening and come to know from neighbours about the open house. They are very upset and make up their mind to take action against salesperson Jenny and her brokerage. Based on the given scenario, which of the following statements is correct?

- A. Jenny has a duty of loyalty towards her client and she tried to protect that by holding the open house.

- B. The sellers are not justified in giving instructions to the brokerage or its employee regarding open house.
- C. Salesperson Jenny should have taken permission from her broker of record before holding the open house.
- D. Salesperson Jenny has a duty of obedience towards seller clients and should not have done the open house.

18. As per regulations of *Real Estate and Business Brokers Act 2002*, when a registrant has an interest in a property while selling or buying, a disclosure must be made to the other party. Which of the following is not a part of contents of this disclosure?

- A. The registration status of the registrant.
- B. The number of years the registrant has been registered.
- C. The nature of interest held in the property.
- D. The facts about the property known to the registrant.

19. Multiple representation occurs when a brokerage represents two or more parties in a transaction. This fact must be disclosed to all parties and informed written consent must be obtained at the earliest practical opportunity but before an offer is presented. Identify which of the following would be considered multiple representation.

- 1. The uptown office of Cram Park Realty Inc. represents the buyer of the property at 32 Power Street while the downtown office of Cram Square Realty Inc. represents the seller of the same property.
  - 2. The uptown office of Cram Park Realty Inc. represents both the buyer and seller of the property at 32 Power Street.
  - 3. The uptown office of Cram Park Realty Inc. represents two buyers making an offer on a property listed by Cram Square Realty Inc.
  - 4. The uptown office of Cram Park Realty Inc. represents the buyer of the property at 32 Power Street while the downtown office of Cram Park Realty Inc. represents the seller of the same property.
  - 5. The uptown office of Cram Park Realty Inc. represents the sellers of the property at 12 Cram Crescent while the far end office of Cram Park Realty Inc. is working with a buyer customer of the same property.
- A. Only the situations given in 1 and 5.
  - B. Only the situations given in 2 and 4.
  - C. Only the situations given in 2, 3 and 4.
  - D. Only the situations given in 1, 3 and 5

20. The *Chattels Included* and *Fixtures Excluded* clauses are for protecting the interests of the buyers and well as sellers. You are working with the buyer and drafting an Agreement of Purchase and Sale and there are certain built-in appliances that do not seem to fit in any of the two categories. What would you complete the offer to protect your buyer's interests?

- A. Include the items in the agreement so that there is no confusion at a later date.
- B. Leave the clauses blank so that the seller and buyer may decide among themselves.
- C. Ask the sellers and buyers to take advice from their respective lawyers.
- D. Leave the Chattels Included clause blank because these built-in chattels are always deemed fixtures and are included in the sale.

21. Buyer Smart is working with Salesperson Kim of Power Realty Inc. He is curious to know why there is a *Residency* clause in the Agreement of Purchase and Sale. Which of the following would be a correct explanation of having this clause?

- A. This clause is makes it mandatory for all sellers to get a clearance from *Canada Revenue Agency* that HST is not payable on this sale.

- B. This clause makes the agreement conditional upon payment of *Capital Gains Tax* by a non-resident seller before completion date.
- C. This clause permits the buyer's solicitor to request that the seller must provide a declaration that he is a not a non-resident.
- D. This clause permits the buyer to ensure that the seller is not a non-resident and that the buyer will not be held liable for the *Capital Gains Tax* on sale.

22. Salesperson Kim of Power Realty Inc. is working with buyer Smart and is drafting an offer for a freehold single-family home. She deliberately leaves the *Present Use* section within the *Title Search* clause blank. What effect will this have on the agreement?

- A. The agreement does not become a legally binding contract because this is a mandatory section and must be completed.
- B. The preprinted wording of the clause applies which permits the buyer to terminate the transaction if the buyer finds out that he cannot lawfully continue the present use of the property.
- C. Leaving the clause blank means that the seller is assuring the buyers that they can use the property in future for any purpose they want.
- D. Since this is an optional section, leaving it blank means that the present use of the property has no bearing on the agreement.

23. About 10 days after the Agreement of Purchase and Sale is accepted, the buyers want to extend the completion date by one month. The agreement documents have already been forwarded to the lawyers for necessary closing procedures. Which of the following would be an appropriate action by the listing and the co-operating salespersons?

- A. The salespersons must now complete a new Agreement of Purchase and Sale with new completion date and have both buyers and sellers sign it.
- B. The buyers and sellers can call their respective lawyers to give verbal instructions for extended completion date.
- C. The *Notice of Completion of Sale* form must be completed by both buyers and sellers indicating the new completion date.
- D. The buyers and sellers must complete an *Amendment to Agreement of Purchase and Sale* form and forward it to their solicitors.

24. Salesperson Jenny has inserted an appropriate *Requisition Date* in the *Title Search* clause of the Agreement of Purchase and Sale. This permits the buyer's solicitor to complete one title search on the property and request more information or declarations from the seller. Which of the following is not a part of a typical *Requisition Letter*?

- A. The seller gives a direction for distribution of funds from the sale proceeds.
- B. The seller authorizes the solicitors to complete adjustments on sale proceeds.
- C. The seller provides consent to transfer his property insurance to the buyer.
- D. The seller declares that he possessed the property during ownership period and will provide vacant possession upon closing.

25. Buyer Bright's lawyer finds during title search that there are certain restrictive covenants on the title of the property. The seller never disclosed them either in the listing or in the Agreement of Purchase and Sale. The *Seller Property Information Statement* also does not have any information related to these restrictions. The buyer's solicitor also determines that the sellers did comply with those restrictive covenants. What is buyer's option now with respect to the Agreement of Purchase and Sale?

- A. The buyer has the right to terminate the transaction because the seller did not disclose material facts about his property.
- B. The buyers cannot terminate the transaction because the sellers have complied with restrictive covenants that run with land.

- C. The buyers do not have the right to terminate the transaction but may have the right to take legal action for damages.
- D. The *Title Search* clause gives the sellers another chance to make a disclosure 5 days before completion date.

26. Salesperson Jenny of Cram Realty Inc. has listed a property at 23 Cram Square using the standard Listing Agreement form. The property generates a lot of interest in buyers with more than expected showings within a short period of time. As a result of her marketing efforts, the listing salesperson Jenny receives 3 offers on the property. Two offers are from co-operating brokerages and one offer is from a buyer who has signed a Buyer Representation Agreement with Cram Realty Inc. The brokerage informs all buyers about competing offers to comply with *REBBA 2002 Code of Ethics* regarding multiple offers. The buyer asks salesperson Jenny to tell her the details of other offers because he is a client of her own brokerage and owes him a duty of full disclosure. How should salesperson Jenny respond to this demand of the buyer client?

- A. The duty of full disclosure relates to disclosure of material facts of property and agency relationships, but the contents of competing offers cannot be disclosed.
- B. The buyer is a client and the salesperson must disclose the details of competing offers to him in order to protect the best interests.
- C. *REBBA 2002 Code of Ethics* makes all disclosures mandatory for a client and this includes disclosure of contents of competing offers.
- D. The salesperson can disclose the contents of competing offers to the buyer client only if the broker of record gives written permission.

27. Seller Smart has signed a Listing Agreement with Cram Realty Inc. using the standard form. The total commission agreed is 4.5% of the sale price with 2.5% to co-operating brokerage. The agreement is for 3 months starting May 1<sup>st</sup> and there is a 90 days' holdover period. Under which of the following circumstances the seller will not have to pay commission to the listing brokerage?

- A. When the property is sold but the sale does not close due to seller's default.
- B. When the property is shown by Cram Realty Inc. during agreement period but is sold privately by seller to the same buyer during holdover period.
- C. When the property is shown by Cram Realty Inc. during agreement period but sold to same buyer during holdover period under a new agreement at 5% commission with a different brokerage.
- D. When the property is shown by Cram Realty Inc. during agreement period but sold to same buyer during holdover period under a new agreement at 4% total commission with a different brokerage.

28. Salesperson Jenny of Cram Realty Inc. has signed a Buyer Representation Agreement with buyer Bright. The agreement starts on April 5th and expires in 3 months. There is a 60 days' holdover period after the expiry of the agreement. Jenny showed the buyer a few properties of his interest, but the buyer wanted to inspect some more properties to decide. Two weeks after signing the agreement Jenny had to go out of town for 3 weeks. Buyer Bright tried to contact Jenny after her return, but she did not respond to his messages. Buyer Bright does extend the agreement with Cram Realty Inc. and does not sign another agreement with any other brokerage. Just a few days before the expiry of the agreement a friend informed buyer Bright about a nice property on sale. He went to inspect the property, liked it and made an offer on July 7th. The offer was accepted by sellers with a closing date of September 30th. Based on this scenario, can Cram Realty Inc. claim a commission from buyer Bright under the terms of the Buyer Representation Agreement and why?

- A. Yes, because the property is seen during the agreement period and is purchased during holdover period.
- B. Yes, if salesperson Jenny can provide evidence of sufficient involvement in showing the property or preparing the offer.
- C. No, because the closing date of the property is after both the expiry of agreement as well as expiry of the holdover period.

- D. No, because salesperson Jenny failed to renew the agreement and buyer Bright made an offer after the expiry of the agreement.

29. Owner Smart has signed a Listing Agreement with salesperson Jenny of Cram Realty Inc. for sale of his 3-bedroom bungalow. The listing period starts on April 1<sup>st</sup> and expires in 3 months. The holdover period is 60 days. The total commission stated on the agreement is 5% of the sale price. There are several showings of the property, but it does not sell during the agreement period. Owner Smart lists the property with Power Realty Inc. on July 2nd and the new commission is 5.5% of the sale price with 3% for the co-operating brokerage. Buyer Bright who was shown the property by salesperson Jenny during one of the open houses now makes an offer on July 10th to buy the property. The sellers accept the offer and the closing date is set for September 10th. Based on the pre-printed wording of the Listing Agreement, does the seller owe commission to Cram Realty Inc.?

- A. Yes, because the property was shown during the agreement period and is purchased by the same buyer during holdover period.
- B. No, because the property is now listed with a different brokerage which terminates any holdover provisions under the previous Listing Agreement.
- C. Yes, because the property was shown during agreement period and purchased by same buyer which entitles Cram Realty Inc. to claim the 0.5% difference in commission.
- D. No, although the property was shown during agreement period and sold to same buyer during holdover period, the new commission is higher than the previous commission.

30. Buyer Bob wants salesperson Jenny to explain him Timeshare interest in a vacation resort. In response to his questions, Jenny provides the following information:

- 1. Timeshare agreements are governed under REBBA 2002 only if a real estate brokerage may be involved in the sale.
  - 2. If the timeshare project is a *Fee Ownership* type, the developers have to create a condominium.
  - 3. Individual weeks are typically designated as units in timeshare properties.
  - 4. In a *Right to Use* timeshare, a condominium corporation is created, and units are leased instead of being sold.
  - 5. Both *Fee Ownership* and *Right to Use* timeshare agreements are governed under the *Consumer Protection Act*.
- A. Statements 1 and 2 are correct.
  - B. Statements 2, 3 and 4 are correct.
  - C. Statements 2, 3 and 5 are correct.
  - D. Statements 1, 2 and 4 are correct.

31. Residential condominiums may provide exclusive possession of certain common elements such as parking space and storage lockers to unit owners. Which of the following documents provide information on such exclusive use common elements?

- A. Description
- B. Declaration
- C. By-laws
- D. Rules and Regulations.

32. A condominium corporation has an annual budget of \$1,795,000. Bright has a three-bedroom 1,250 square feet unit in that building. This unit had a proportionate share of 0.438% of the corporation common elements. What would be the monthly common expenses for Bright's unit in the current year?

- A. \$655.18
- B. \$438.33
- C. \$483.56
- D. \$780.47



33. Ms. Betty and her daughter sign a one-year lease for a two-bedroom unit in a condominium building. The lease starts on May 1<sup>st</sup> and the monthly rent is \$950. They move into to apartment after paying a deposit of \$1,900 to the landlord. Six months later the landlord informs Ms. Betty that his son wants to occupy that unit from January 1<sup>st</sup> of the next year. He gives a 2-month notice on Nov 1<sup>st</sup>. According to the *Residential Tenancies Act*, do you have any concerns with this notice?

- A. No, the *Residential Tenancies Act* requires a minimum of 60 days' notice and the landlord has complied with this.
- B. Yes, the landlord must wait till the end of lease term and the earliest day the landlord's son can move into to unit is May 1<sup>st</sup> next year.
- C. Yes, the notice cannot be given before April 1<sup>st</sup> which is 30 days before the end of term.
- D. No, the landlord is permitted to give a 60 days' notice anytime if a child or parent has to occupy the rental unit.

34. A condominium corporation has just completed construction of a high-rise building consisting of 80 units. What is the maximum amount of *Tarion* warranty coverage on common elements of the building?

- A. \$50,000
- B. \$300,000
- C. \$4,000,000
- D. \$2,500,000

35. Salesperson Jenny is working with a buyer client who is interested in a residential lot near a huge farm where farming operations are done throughout the year. Jenny had made him aware of these farming activities and disturbances caused by them. She also inserted an appropriate acknowledgement clause in the *Agreement of Purchase and Sale*. Just two months after the closing, the buyer calls Jenny and complains of intolerable disturbance due to the farming operations. These include bad smell, smoke, noise and vibrations from farming vehicles at odd hours. What should the salesperson do in this situation?

- A. Ask the buyer to make a complaint to the local municipality who will then stop the farmer.
- B. Tell the buyer that it is too late to complain and if he wants she would be pleased to list and sell the property.
- C. Remind the buyer that she made him aware of all these disturbances caused by farming activities and also included a disclosure clause in the agreement.
- D. Ask the buyer to send a legal notice to the farm owners telling them that these activities are not permitted under the *Farming and Food Production Protection Act*.

36. A salesperson is preparing an offer for her buyer client for a rural property that has private water well. The salesperson informs the buyer that she is including a home inspection condition in the offer to address his concerns regarding water quality, quantity and proper working of well equipment. Do you have any concern with this?

- A. Yes, the home inspector will inspect the residential structure for defects but will not perform inspection of water well.
- B. Yes, the salesperson should include a condition for a separate home inspector for water well inspection.
- C. No, the salesperson has fulfilled her obligation of protecting the buyer's best interests by including the home inspection condition.
- D. No, home inspectors are well qualified to check all components of property including water wells and septic tanks.

37. Bright buys a vacant residential lot about 25 km away from the town. He hires several sub-contractors to finish construction of his custom home. The home complies with all building code standards and passes all inspections including the electrical and gas installations. Will this home qualify for coverage under the *Tarion* warranty?

- A. No, because the owner hired several sub/contractors to finish the completion of the house.
- B. Yes, because the house has passed all required inspections.
- C. No, because the house is not located in urban area.
- D. Yes, because the house is in compliance with *Ontario Building Code* standards.

38. Jenny has successfully completed the required educational courses for registration as a real estate salesperson. She is now looking for a real estate brokerage to join. She understands that when employed by a brokerage, she could work as an *Employee* or as *Independent Contractor*. Which of the following statements is not correct regarding the difference between an *Employee* and an *Independent Contractor*?

- A. As an *Independent Contractor*, the brokerage could require that all advertising be approved in advance.
- B. As an *Independent Contractor*, the brokerage may require her to obtain and maintain a HST registration.
- C. As an *Employee*, she can always alter commission terms without authorization from the brokerage.
- D. As an *Employee*, her employment can be terminated without notice, subject to the provisions of the *Employment Standards Act* of Ontario.

### **Case Study – 2 Parts**

Broker of Record Binny is having a meeting with his salespersons and brokers to discuss the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. After explaining the requirements of the Act and reporting procedures to his employees he wants to check if everyone understands how to comply with the Act. The following two questions are based on Binny's discussions with his employees.

39. The *Financial Transactions and Analysis Centre of Canada (FINTRAC)* has made certain requirements for real estate brokerages to comply with the Act. Salesperson Jenny explains as follows:

*"Every brokerage must complete a Risk Assessment form every 2 years and keep this record for the next 5 years. Every brokerage must also send the Receipt of Funds record form to FINTRAC for every transaction where a deposit is taken by the brokerage, except when the funds are received from a financial institution or a public agency."*

*"Any cash deposit of \$10,000 or more within a 24-hour period is considered a Large Cash Transaction and must be reported to FNTRAC within 15 days of receipt. Where a financial institution or a public agency is paying the funds, the Large Cash Transaction Report is not required even if the cash is more than \$10,000."*

The explanation given by Jenny is not entirely correct. Which of the following statements best describes the error?

- A. The *Risk Assessment* form record is retained for a period of 5 years and not 2 years.
- B. The *Large Cash Transaction Report* is required irrespective of the fact that the funds are received from a financial institution or from anyone else.
- C. The *Large Cash Transaction Report* is required even if the deposit funds are given by cheque or a bank draft.
- D. The *Receipt of Funds* form is to be completed and retained by the brokerage and it is not sent to *FINTRAC*.

40. Broker of Record Binny now asks if someone can explain identification requirements for buyers and seller clients. Another salesperson Skinny gives the following statements:

*"Identification of every client and customer must be done at the earliest practical opportunity. In no case the identification should be delayed later than the time stipulated under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act. For the seller client the latest point of time for*



*identification is when the seller signs a Listing Agreement with a brokerage. For the buyer client, the latest point of time for identification is when the buyer submits an offer or pays the deposit. The brokerage may be held liable if the transaction is completed without identification of the seller or the buyer and it turns out to be a terrorist property."*

The explanation given by salesperson Skinny is not entirely correct. Which of the following best describes the error?

- A. The identification is required for seller clients and not for buyer clients because buyers do not own the property yet.
- B. The latest point of time for identification of the seller client is when the seller accepts an offer and not when the seller signs a Listing Agreement.
- C. The latest point of time for identification of buyer client is when the buyer signs a Buyer Representation Agreement and not when the buyer submits an offer.
- D. Even if the brokerage does not complete identification requirements it will not be held responsible if the property turns out to be terrorist property.

### **Case Study – 2 Parts**

Buyer Smart has signed a Buyer Representation Agreement with Cram Realty Inc. Salesperson Jenny is working with him to locate a 2-bedroom unit in a condominium building located in the busy downtown area. They have inspected several units in different apartment buildings, but buyer Smart wants to give little more time for his search. During one of the showings the buyer asks several questions.

41. Buyer Smart asks how the condominium corporation decides about maintenance fees for the units. Salesperson Jenny gives the following explanation:

*"Maintenance fee paid by unit owners is also called common expenses. It is based on proportionate share of the unit in the common elements. The entire annual operating budget of the corporation to maintain common elements of the building is proportionally divided among unit owners. If any unit owner decides not to use some of the common elements such as the swimming pool, they may request the board of directors to reduce their maintenance fee accordingly. The board of directors may make changes to common elements with the approval of at least 66% unit owners. Unit owners cannot make changes to common elements attached to their units without approval of the corporation."*

The information given by salesperson Skinny is not entirely correct. Which of the following best describes the error?

- A. Every unit owner pays an equal amount of maintenance fee and it is rarely based on proportionate share.
- B. Unit owners cannot request the board of directors to reduce their maintenance fee based on the fact that they are not using certain common elements.
- C. The board of directors can make changes to common elements but at least 75% of unit owners must give approval vote.
- D. The unit owners always own the common elements attached to their units and they can make changes as they wish without approval from the corporation.

42. Buyer Smart decides to make an offer for unit number 810 in the condominium located at 135 Cram Square, a 26 storey high-rise apartment building. The listing clearly states that parking spot numbers B-45 and B-46 are assigned to this unit. Which of the following statements are correct in this regard?

- A. Assigned parking is provided to unit owner on discretionary basis and unit owners may be required to pay for it.
- B. Assigned parking is owned by the unit owner and if they don't want to use it they can sell the space to some other unit owner.
- C. Assigned parking is exclusively given to unit owners and they can use it in any way they want.

- D. Assigned parking is a kind of leased space and unit owners must pay for that.

### Case Study – 3 Parts

Salesperson Skinny works with Cram Realty Inc. and got her real estate salesperson registration only about two months back. One of her friends has referred a buyer to her who is looking to buy a large parcel of land with a house on it, preferably outside the town. The buyer signs a Buyer Representation Agreement with

43. During the next few days, Skinny shows a few properties to the buyer. This buyer shows keen interest in one of the properties which is being auctioned. The buyer is not aware of such sales and asks salesperson Skinny to explain how auction sales actually work. Skinny provides the following information to the buyer:

*"In the auction process, the buyers have full control of the process because they can really decide what price they want to pay for the property. The Minimum Bid auction is most common where the sellers reserve a minimum sale price. Once the highest bid is accepted, the buyer cannot refuse to close the transaction. This means that the buyer must get the property inspected, ensure that title is clean, mortgage financing and insurance would be available well before making a bid for the property being sold in auction."*

The information provided by salesperson Skinny is not entirely correct. Which of the following best describes the error?

- A. An *Absolute Auction*, with no minimum bid, is most common instead of the *Minimum Bid* auction.
- B. Once the highest bid is accepted either the seller or the buyer can refuse to close the transaction.
- C. The buyer still has the right to terminate the transaction if the title of the property has problems or the inspection report is not satisfactory to the buyer.
- D. It is the seller of the property who is in control of the auction process and not the buyer.

44. The property being auctioned is a 3-bedroom bungalow located on a large lot just next to an industrial zone. The current lot size is 120 feet by 150 feet and the house is located on the left half of the lot. The buyer asks Skinny if it is possible to divide the land into two parts and sell one half as a vacant lot. Skinny provides the following information to the buyer.

- 1. Yes, you can sell one half of the lot measuring 60 feet by 150 feet any time after completion of the transaction after necessary approval.
- 2. You will need to apply to the *Ministry of Municipal Affairs and Housing* for *Consent to Sever* in order to divide and sell a part of the property.
- 3. You can get a *Reference Plan* prepared by a licensed surveyor and advertise one half of your lot for sale.
- 4. You need to make sure that the offer you get is made conditional upon approval of severance by the local *Committee of Adjustment* and the sale will become null and void if severance is not approved.
- 5. You need not worry about the costs involved in the severance process because one of the clauses in our agreement clearly states that the buyer will be responsible for this cost.

Which of the statements given by Skinny are correct?

- A. Statements 1, 2 and 4 are correct.
- B. Statements 1, 3 and 4 are correct.
- C. Statements 2, 4 and 5 are correct.
- D. Statements 2, 3 and 4 are correct.

45. Salesperson Skinny is happy that the buyer client has shown interest in the property which is being auctioned. She goes on to collect more information about this property and finds out that the parcel of

land next to this property used to be a heavy medical waste recycling plant. When that plant closed down a year ago, the building was demolished. This fact was well known to the people living in that area. Skinny also finds out that before the auction the property was on the market for about 8 months but did not sell due to possibility of contaminated soil being next to medical waste recycling plant. Acting prudently, Skinny gives all the information to the buyer. The buyer asks Skinny what they could do to address the issue. Skinny provides the following information:

1. We will ask the seller to provide a Phase 1 of *Environmental Audit* report which involves a visual inspection of the land and testing of soil and water samples.
  2. In case the soil is contaminated we can ask the seller to have Phase 2 of *Environmental Audit* which will take care of the corrective action and the costs involved.
  3. Location of nearby medical waste recycling plant has attached a stigma to the property and we must disclose it when we list one half of this parcel of land for sale.
  4. If the sellers can confirm that the soil contamination has been corrected, the stigma is also removed, and we need not worry about making any disclosures to a potential buyer.
  5. Once the contamination has been removed, it will still take a long time to sell the property and the stigma will have a negative effect on the market value.
- 
- A. Only statements 1 and 2 are correct.
  - B. Only statements 2 and 4 are correct.
  - C. Only statements 2, 3 and 5 are correct.
  - D. Only Statements 3 and 5 are correct.

### **Case Study – 5 Parts**

Salesperson Kim of Power Realty Inc. is working with a buyer client Bright who is interested in a cottage property. Kim selects a few properties about 50 km north of the town and shows them to the buyer. The buyer is particularly interested in 1025 Airbase Road, which is a 40-year-old cottage with a large lot. During inspection of the property, the sellers inform the buyer that the property was insulated with Urea Formaldehyde Foam Insulation, but they never had any problem with it. Kim notices that the property has private water well and a septic tank. There is also an easement for Hydro One on the rear 8 feet of the property.

The sellers inform salesperson Kim that there is an underground oil tank in the property, but it is not in use. The buyer does not object to this and wants to make an offer on the property. They ask salesperson Kim to include necessary conditions for adequate water supply, its quality and working condition of the pump and equipment. They also ask Kim to address any issues with the septic tank.

Kim prepares an offer for \$470,000 with a deposit of \$30,000 payable *Upon Acceptance*. The offer is dated May 5, 2014 and is irrevocable till 6.00 pm on May 7, 2014. The completion date is set for July 31, 2014. The first pages of the offer have been drafted correctly and contain no concerns.

To make the sale attractive to the buyer, the sellers agree to take back a mortgage in the amount of \$125,000 at an interest rate of 7% per annum, an amortization period of 25 years and for a term of 3 years from the date of completion.

Critically analyze the details of this offer and answer the following questions.

46. The salesperson has inserted the UFFI disclosure clause as shown below:

*"The Seller discloses and the Buyer acknowledges that the building contains urea formaldehyde foam insulation. The Buyer accepts the property in that state and further acknowledges that the Seller does not warrant the quality or quantity of the insulation or the quality of its installation."*

But the salesperson did not delete the pre-printed UFFI clause in the Agreement of Purchase and Sale. What effect does this have on the agreement?

- A. The pre-printed clause remains effective which provides a representation and warranty that the seller has not used UFFI in the building.
- B. The pre-printed clause would become effective in case the inserted clause is found to be incorrect.
- C. The inserted disclosure clause in the schedule takes priority over the pre-printed representation and warranty clause.
- D. The agreement becomes null and void because there is a conflict in pre-printed and inserted UFFI clauses.

47. The following conditional clause has been inserted to address concerns of the buyers regarding the private water well.

*"This Offer is conditional upon the Buyer determining, at the Buyer's own expense, that:*

- 1. There is adequate water supply to meet the Buyer's household needs; and*
- 2. The pump and all related equipment serving the property are in proper operating condition.*

*Unless the Buyer gives notice in writing delivered to the Seller not later than 5.00 p.m. on the 20th day of May 2014 that these conditions have been fulfilled, this offer shall become null and void and the deposit shall be returned to the Buyer in full without deduction. These conditions are included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller within the time period stated herein. The Seller agrees to allow access to the subject property to the Buyer or the Buyer's agent for the purpose of satisfying this condition."*

Do you have any concerns with the way the water well condition has been drafted?

- A. Yes, the condition does not contain any provision to conduct bacteriological testing of water to ensure that the water is not contaminated.
- B. No, the condition is well written and includes all the concerns expressed by the buyer.
- C. No, the condition includes necessary provisions for both quantity of water as well as working condition of pump and related equipment.
- D. Yes, the equipment part of the condition should have been inserted separately as a representation and warranty clause.

48. The easement disclosure clause reads as follows:

*"The buyers accept the 8 feet easement for Hydro One existing on the property."*

Do you have any concerns with the way the above easement clause has been drafted?

- A. No, since the survey is not available, there is no concern as the buyer has been told about the existence of easement.
- B. Yes, the description of the easement is vague and the issue should have been addressed before drafting the offer.
- C. No, the salesperson has fulfilled her obligation by disclosing the easement in writing.
- D. Yes, a condition should be inserted in the agreement for the seller to clear the property of any and all existing easements.

49. Do you have any concerns about the unused underground oil tank located on the property which is not in use?

- A. No, the existence of the unused underground oil tank has been disclosed to buyers and they have not objected to it.
- B. Yes, there should be a condition to ensure that the unused underground oil tank complies with legislative requirements.

- C. Yes, a condition should be inserted in the agreement requiring the seller to remove the unused underground oil tank by a TSSA certified technician and remove the contamination.
- D. Yes, a representation and warranty clause should be included in the agreement to ensure that the seller is not using the underground oil tank anymore.

50. Now the buyer wants a clause in the agreement so that they are able to assign the agreement to another buyer before completion date. Do you have any concerns with this request of the buyer?

- 1. Yes, because the seller is taking back a mortgage, the seller may insist on a non-assignment of the agreement.
  - 2. No, an Agreement of Purchase and Sale for real property is always assignable by buyer.
  - 3. Yes, an Agreement of Purchase and Sale can never be assigned to another buyer.
  - 4. No, the seller is really in control of the situation because of seller take back mortgage and he decides whether the agreement is assignable or not.
  - 5. Buyer could include an assignment clause, but the seller may insist that the assignment is with their written consent only.
- 
- A. Statement 1 and 2 are correct.
  - B. Statements 1, 2 and 4 are correct.
  - C. Statements 1, 3 and 5 are correct.
  - D. Statements 1 and 5 are correct.

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**QUICK ANSWER KEY**

**SAMPLE EXAM 2**

1. B	2. A	3. C	4. B	5. D
6. B	7. D	8. A	9. B	10. B
11. A	12. B	13. A	14. B	15. D
16. C	17. D	18. B	19. C	20. A
21. D	22. B	23. D	24. C	25. B
26. A	27. C	28. B	29. D	30. C
31. B	32. A	33. B	34. D	35. C
36. A	37. A	38. C	39. D	40. B
41. B	42. A	43. D	44. B	45. D
46. C	47. A	48. B	49. C	50. D

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### SAMPLE EXAM 3

Take a blank sheet of paper to write your answers. The [Quick Answer Key](#) is located after the last question followed by [Detailed Answers](#).

➤ **Note:** A blank or completed Agreement of Purchase and Sale may be provided in the exam. You can refer to that form to answer related questions.

1. Which of the following statements is correct about essential elements of a contract?
  - A. When the object of the contract is unlawful, the contract becomes voidable.
  - B. A disclosure of both latent and patent defects must be disclosed in order to enforce the contract terms.
  - C. A contract is binding and enforceable when there is no seal and consideration is absent.
  - D. A contract signed with a minor is enforceable if an adult is a co-signer.
2. Which of the following statements is not an example of duty of care?
  - A. A salesperson provides information to a customer solely based on his personal knowledge.
  - B. The salesperson advises a buyer client that they should get home inspection done even though the home they are buying is fairly new.
  - C. The salesperson asks several questions from a seller about the property during the listing process.
  - D. A salesperson makes further enquiries to verify the information provided by the seller client.
3. Which of the following is a REBBA 2002 requirement before a brokerage enters into a representation agreement with a party?
  - A. The brokerage must ask the party to become client of the brokerage for providing better services.
  - B. The brokerage must provide information about agency relationships and service alternatives and get a signed acknowledgement.
  - C. The brokerage must explain the benefits of a representation agreement before providing information about service alternatives.
  - D. The brokerage must ask a party to become a customer when the other party is already a client.
4. Which of the following statements is not correct regarding the duty of indemnification under the *Agency Law* as it applies to real estate transactions?
  - A. This duty does not apply in real estate for payment of services to a brokerage when a commission is being paid.
  - B. The client agrees to indemnify the brokerage for losses incurred due to any reason during or after the agreement period.
  - C. The Buyer Representation Agreement specifically provides that the brokerage and its employees are not experts in environmental, taxation or legal matters and cannot be held liable by client.
  - D. The client is not obligated to indemnify the brokerage if the loss incurred is due to negligence of duties.
5. Which of the following statements is correct about the *Commission Trust Account*?
  - A. Every brokerage registered under REBBA 2002 must maintain a *Commission Trust Account*.
  - B. The *Commission Trust Account* is primarily used to hold deposit given by buyers so that this money may be used to make commission payments.
  - C. RECO *Commission Protection Insurance* does not cover a salesperson or broker if he knows that the employing brokerage does not maintain a *Commission Trust Account*.
  - D. REBBA 2002 requires every registrant to maintain their own *Commission Trust Account*.



6. Which of the following statements is correct regarding *Requisition Date* in an Agreement of Purchase and Sale?

- A. The buyer's solicitor must complete preliminary title search before the *Requisition Date* specified in the agreement.
- B. The *Requisition Date* is an optional date and the salesperson can leave it blank until the buyer has decided about his solicitor.
- C. The buyer's solicitor must perform all title searches before the *Requisition Date* specified in the agreement.
- D. The *Requisition Date* must be on or before the date set for fulfillment of conditions.

7. Which of the following statements is correct regarding residential tenancies?

- A. The fixed term tenancy is automatically converted to periodic tenancy whether or not it is renewed after expiry of the term.
- B. Periodic tenancy refers to a tenancy where the term is not fixed but the period of payment is fixed, and a termination notice is not required.
- C. Periodic tenancy automatically renews itself after every period if termination notice is not given by the landlord or the tenant.
- D. Both tenancy-at-will and tenancy-at-sufferance occur after expiry of the term if the tenant does not vacate the property but keeps on paying rent without the consent of landlord.

8. Smart wants to sell his factory-built mobile home in a land lease community. In doing so:

- A. Smart is permitted to sell the home and the parcel of land on which it is installed.
- B. Smart will place a sign on his window only and upon sale the title of home and the lease of land will be transferred to buyer.
- C. Smart may place a 'For Sale' sign anywhere on the property.
- D. The land landlord may have the '*First Right of Refusal*' clause wherein he could prevent Smart from selling the home.

9. Which of the following is a correct statement regarding old cottages?

- A. Cottages built with low roof pitch often have a problem of ice damming during extreme winter.
- B. Lack of draining is not a concern for cottages near shoreline because the soil has excellent percolation and absorption quality.
- C. Inadequate footings or footings installed on weak soil do not have any effect on structural sufficiency.
- D. Self-improvements in cottages do not require any building permit because these improvements are exempted from *Ontario Building Code*.

10. Which of the following is an incorrect statement regarding the farming and food production industry?

- A. The farming scene in Ontario is changing and now there are lesser farms and farming families.
- B. Farm corporations have evolved and there is less independence for individual farmers.
- C. There is more reliance on training, management, technology and effective use of equipment.
- D. A farm that does not produce adequate yield on investment becomes a viable farm.

11. Which of the following is a valid reason why a buyer of a rural residential lot would insert a condition for verifying cost of services in the *Agreement of Purchase and Sale*?

- A. Because when the land is sold, the transfer of seller's contracts with service companies may increase costs for the buyer.
- B. Because the services may not be available and the cost of arranging them may not be affordable for the buyer.
- C. Because the buyer is typically required to pay for all services that the seller previously arranged on the property.

- D. Because the cost of hydro and telephone services is written as '*In Addition To*' in the agreement.
12. Which of the following statements is correct regarding waterfront improvements in cottages?
- A. All improvements on body of water related to docks need a permit.
  - B. Owners of property on shore lands can build two storey boathouses on public lands provided that they do not invite guests.
  - C. The owners of two storey boathouses who received permit for construction are not required to pay lease for using public land.
  - D. Any activity related to logging, dredging, mineral exploration or placing a building on or filling public land requires a permit.
13. Tarion warranty is available to several types of newly constructed homes. Which of the following structures would be covered by this warranty?
- A. When the owner hires a single contractor to construct the entire house but retains the existing foundations.
  - B. When the owner hires a single contractor to construct the entire structure from start to finish.
  - C. When the owner sub-contracts construction of parts of the home to many sub-contractors.
  - D. When the entire exterior shell is constructed by a single contractor and the owner himself finishes the interiors.
14. Which of the following statements is correct regarding electromagnetic fields?
- A. The electromagnetic fields decrease in strength as the distance from the source increases.
  - B. Both electric and magnetic fields can easily penetrate most building structures.
  - C. While magnetic field exists when power is present, the electric field is produced only when current is flowing through equipment.
  - D. Electromagnetic field surrounding a property is considered a latent defect and owners must disclose it when selling the property.
15. A buyer is planning to bid for a property which is being auctioned. He has to get satisfied with several aspects of the property before making a bid. Which of the following is not one of them?
- A. That he will be able to get insurance coverage.
  - B. That he will be able to get a mortgage loan for the purchase.
  - C. That he will be able to refuse closing if the structure has some problems.
  - D. That the title of the property is good and has no problems.
16. The *National Do Not Call List* provisions for making calls apply to real estate brokerages with some exceptions. Which of the following is not one of them?
- A. A party specifically requests a registrant to contact him.
  - B. A party has made an enquiry about a property listed by the brokerage.
  - C. When a party had a listing agreement with the brokerage that expired two years ago.
  - D. Is contacted through email or other means of correspondence.
17. The Registrar of *Real Estate Council of Ontario (RECO)* has published *Advertising Guidelines* for real estate registrants. According to these guidelines:
- 1. A registrant can only identify a property in advertisements with written informed consent of the client.
  - 2. Specific persons involved in a transaction can never be identified in advertisements.
  - 3. A registrant cannot identify a property in an advertisement if it is used for commercial purposes.
  - 4. The pre-printed wording of standard Listing Agreement gets the necessary consent of the sellers to identify the property for advertising.

5. The listing brokerage agrees not to provide any details of the property unless the buyer has signed a confidentiality agreement.
- A. Only statements 1 and 4 are correct.
  - B. Only statements 2 and 5 are correct.
  - C. Only statements 1, 3 and 4 are correct.
  - D. Only statements 2, 4 and 5 are correct.
18. Salesperson Kim of Cram Realty Inc. has listed a property at 123 Cram Crescent. Another salesperson from the same brokerage submits an offer for the property from a buyer who is a customer of Cram Realty Inc. Is this a multiple representation situation and why?
- A. No, because the buyer and the seller are using different salespersons.
  - B. Yes, because both have signed written agreements with the same brokerage.
  - C. Yes, because both the seller and the buyer are working with the same brokerage.
  - D. No, because the brokerage is representing the seller but not the buyer.
19. The *Real Estate and Business Brokers Act 2002* has certain requirements for providing copies of representation agreements. Which of the following is a correct statement when a salesperson signs a Listing Agreement with sellers of a property?
- A. Each seller must be provided a copy of the Listing Agreement immediately upon signing.
  - B. One copy of the *Listing Agreement* must be provided to sellers at the earliest practical opportunity.
  - C. Sellers must be provided a copy of the *Listing Agreement* no later than acceptance of an offer.
  - D. Sellers must be provided a copy of the *Listing Agreement* within 24 hours of a request.
20. Salesperson Jenny has a buyer client who has signed a *Buyer Representation Agreement* with her brokerage Cram Realty Inc. In which of the following circumstances the same buyer can sign a second *Buyer Representation Agreement* with a different brokerage?
- A. When the type of property is different or when the geographic location is different.
  - B. When the commission stated on second agreement is more than the commission on this agreement
  - C. When there is no provision for payment of commission to the second brokerage.
  - D. When the first representation agreement does not have a holdover provision.
21. Salesperson Jenny of Cram Realty Inc. is the listing salesperson for a property located at 123 Cram Square. The property is shown to a buyer by salesperson Kim of Power Realty Inc. Kim prepared the offer on August 7<sup>th</sup>. The offer was irrevocable by buyers until 8pm on August 10<sup>th</sup>. The offer was faxed to the listing brokerage at 5pm on August 7<sup>th</sup>. Salesperson Jenny presented the offer to the sellers on August 8<sup>th</sup> at 2pm. The following date, the sellers countered the offer at 7pm. When buyers were informed about the counter offer on phone they agreed to accept it. The next day salesperson Kim went to the buyers to get their signatures for acceptance. Salesperson Jenny receives a copy of accepted offer later in the evening.
- On the *Agreement of Purchase and Sale* what would be the date of *Confirmation of Acceptance*?
- A. August 8th
  - B. August 9th
  - C. August 10th
  - D. August 11th
22. The buyer's lawyer has requested that he needs a copy of survey of the property in order to complete the transaction. The seller's lawyer checks with the sellers but they do not have the survey in their possession. Which of the following is a valid option for the buyers?

- A. The buyers may now require the sellers to order an up-to-date survey of the property at their cost.
- B. Sellers can assure the buyer that they have *Title Insurance* which will cover all problems with the property.
- C. The buyers may terminate the agreement based on a pre-printed clause that makes the agreement conditional on sellers to provide a copy of survey.
- D. The buyers can obtain their own *Title Insurance* in the absence of a survey and proceed with the completion of transaction.

23. Salesperson Kim of Power Realty Inc. is the listing salesperson of a three-bedroom bungalow at 45 Power Gardens. The property was fully renovated just before listing and has attracted a lot of interest in buyers. After two open houses, the salesperson receives two offers on the property, both with different offer prices and terms. What is the ethical duty of salesperson Kim and her brokerage with respect to these competing offers?

- A. *REBBA 2002 Code of Ethics* requires full disclosure of number and content of all competing offers to every buyer.
- B. *REBBA 2002 Code of Ethics* requires that all buyers must be informed about existence of competing offers but not the number of offers.
- C. The salesperson and her brokerage must comply with duty of confidentiality to the seller client and must not disclose the existence of any competing offer to any buyer.
- D. The listing brokerage must inform every competing buyer about the existence and number of competing offers.

24. Which of the following statements is NOT correct with respect to *REBBA 2002* and the pre-printed wording of standard *Listing Agreement*?

- A. The listing brokerage makes a disclosure that it may be working with sellers of similar properties and it will not create a conflict of interest.
- B. The listing brokerage discloses that if the buyer of the listed property is its own client, the brokerage will seek written consent of both parties before the offer is presented.
- C. The listing brokerage agrees that the seller is free to sell the property privately shown during agreement period to the same buyer after holdover period is over without obligation of paying any commission.
- D. The *Indemnification* clause clarifies that the listing brokerage will not disclose any information about the sellers or the listed property in order to protect the confidentiality and best interests of the seller.

25. Salesperson Kim of Power Realty Inc. is putting together a deal for her buyer client Smart who has signed a *Buyer Representation Agreement* with her brokerage. The property is listed by salesperson Jim of the same brokerage. Salesperson Kim explains the agency relationships to the buyers using a printed brochure and gets a written acknowledgement signed. Buyer smart is happy to notice that salesperson Kim has explained the pre-printed wording of the Agreement of Purchase and Sale to him. Apart from the agency brochure and the *Buyer Representation Agreement*, no other forms have been signed by the sellers and the buyers. Based on the information provided in this scenario, do you have any concerns regarding disclosure requirements for compliance with *REBBA 2002 Code of Ethics*?

- A. No, the Listing Agreement as well as Buyer Representation Agreement has pre-printed written consent of parties for multiple representation.
- B. Yes, the salespersons should have made a written disclosure of multiple representation and obtained their informed written consent prior to presentation of any offer.
- C. No, the salespersons have complied with disclosure requirements by explaining the agency disclosure brochure and the parties have signed the acknowledgement.
- D. Yes, the salespersons should have included a multiple representation clause in the schedule of the Agreement of Purchase and Sale to comply with *REBBA 2002*.

26. Conditions in the *Agreement of Purchase and Sale* are typically included on the Schedules. These conditions may be written in precedent format or in subsequent format. Which of the following statements is correct regarding these two formats?

- A. A condition precedent has a provision that the agreement does not become a binding contract when Confirmation of Acceptance is signed.
- B. A condition subsequent does not make the agreement a legally binding contract when the Confirmation of Acceptance is signed but the buyer has the right to terminate it any time after signing.
- C. A condition precedent must have a waiver provision so that the buyer is able to waive the condition in order to make the agreement a legally binding contract.
- D. A condition subsequent must have a waiver provision so that the buyer is able to waive the condition in order to make the agreement a legally binding contract.

27. Buyer Bright is interested in a freehold single-family home in Cram City. He plans to run his home business from this property which is in residential zone. He has confirmed with the municipality that the zoning by-laws do not prohibit such use of the property. Which of the following would still be a concern for Bright?

- A. The taxes on the property will increase due to running a business from home.
- B. That he will not be permitted to have outside employees.
- C. That he might have to arrange additional coverage for business equipment and inventory.
- D. That there may be a deed restriction preventing the use of property for the intended business.

28. Salesperson Skinny prepares an offer for buyer Smart with a purchase price of \$180,000. The offer date is May 9, 20xx and is irrevocable until 8pm on May 10, 20xx. The offer is conditional upon satisfactory review of condominium *Status Certificate* and related documents by buyer's lawyer. The condition will expire on May 28, 20xx.

Which of the following information would NOT be a part of the *Status Certificate* documentation?

- A. Details of previous title holders, current mortgage lien and any offers on the unit.
- B. Details of any special levies or liens on the unit and information on proportionate share of the unit.
- C. Details of by-laws and rules of the corporation, the current year's budget and maintenance fee.
- D. Details of any lawsuits by the corporation or against the corporation.

29. Bright purchased a new home on Feb 25<sup>th</sup> and, at that time, it was covered by Tarion warranty. There was a rain storm in the town on August 10<sup>th</sup> of the same year. The roof of the house leaked, and the expensive furniture and rugs were badly damaged. How is owner Bright covered under the warranty with regards to furniture and rugs?

- A. Under 1-year warranty
- B. Under 2-year warranty
- C. Under 7-year warranty.
- D. Not covered.

30. Mark has worked in construction industry for over 15 years. He purchases a rundown property by paying only the land value and hires a demolition company to demolish the entire structure except the foundation. He takes a construction loan and hires a building contractor to rebuild the house. The new structure passes all inspections under the *Ontario Building Code*. Will Mark get a warranty on the house?

- A. Yes, because the house has been rebuilt with all new materials.
- B. No, because there is a construction loan on the house.
- C. No, because the house is built on existing foundations.
- D. Yes, because the house is new and has passed all inspections.



31. Which of the following statements is correct regarding formats of conditions in an *Agreement of Purchase and Sale*?

- A. A condition precedent may also be written as condition subsequent but in that case, it protects the seller and not the buyer.
- B. A *Waiver* is not necessary in a condition subsequent and it cannot be used for a true condition precedent.
- C. A *Notice of Fulfillment of Conditions* form must be sent by buyer in case of a condition subsequent as well as in case of true condition precedent.
- D. All conditions include a provision that these are to be fulfilled at buyer's own expense.

32. Buyer Bright is interested to purchase a large parcel of forest land. Bright is curious to know more about this type property, specifically how he can run a managed forest. The salesperson makes the following statements in response to buyer's questions:

*"To qualify as a managed forest, the seller must prepare a plan and get it approved from Ministry of Natural Resources. The land must be minimum 10 acres in size to qualify for Managed Forest Tax Incentive. When you buy the land, you can continue to receive tax incentives if the seller provides you with an approved plan. But if it is found later that the land did not qualify for tax incentives, you may be liable to pay not only your higher taxes but also seller's unpaid tax for up to 5 years."*

These statements are not entirely correct. Identify which of the following explains the error.

- A. The land needs to be less than 10 acres to qualify for tax incentive.
- B. The *Managed Forest Tax Incentive* is regulated by *Ministry of Environment* and not by *Ministry of Natural Resources*.
- C. It is the buyer who needs to prepare his own plan and get it approved.
- D. The buyers are not responsible for any unpaid share of seller's tax if it is found that the property did not qualify.

33. Buyer Bob is purchasing an older cottage and intends to install a new septic system which will have a raised absorption bed. The location of the septic system will be determined by considering:

- A. The frontage and depth of the cottage lot.
- B. The number of kitchen and bathroom fixtures in the cottage.
- C. The size of the bathroom in the cottage.
- D. The location of the water well and residential structure on the property.

34. Salesperson Kim of Cram Realty Inc. has received an offer for her listing. The offer contains a condition that gives the buyer 30 days for fulfillment of conditions. The sellers like the offer and accept it without any amendments. A day after the *Confirmation of Acceptance* is signed, Kim receives another offer from a different buyer. This offer appears to be better than the previous offer. In this situation:

- A. The seller can accept the second offer because the first offer is still conditional.
- B. The seller can counter the second offer because this buyer may still make his offer better.
- C. The seller can accept the second offer only if the first offer includes an escape clause.
- D. The first buyer can be informed that they now have only 5 days to fulfil or waive the condition.

35. Buyer Bright comes to know from his neighbours that the house he just purchased a week ago was used as a grow house in the past. He calls salesperson Jenny and demands to know why this fact was not disclosed to him before purchase. Jenny, in turn, checks the listing agreement and finds no mention of this fact. Jenny immediately calls the listing salesperson Kim of Power Realty Inc. Kim provides the following information:

*"I knew that the property was used a grow house earlier. I was the buyer salesperson when these owners purchased this property seven years ago. The sellers at that time had given us written*

*disclosure that the house was completely renovated after the grow operations were stopped due to police investigation. Since my sellers never used the house as a grow house, I need not make any disclosure in the listing. I can assure you that the property is free from any structural defects now."*

There are some problems with the information provided by salesperson Kim. Which of the following statements correctly describe these problems?

- A. If the property was completely renovated a previous grow operation need not be disclosed.
- B. If the current owners never used the property for grow operations no disclosure is required.
- C. Stigma due to grow operation stays with the property only until it is not renovated.
- D. If the salesperson knew about a previous grow operation in the property, he should have disclosed it in the listing.

36. The *Contract Law* generally permits assignment of a contract by one of the parties to a third party. There are certain exceptions to this when the contract cannot be assigned. Which of the following is an example of this exception?

- A. An agreement between a rural property owner and a surveyor for preparing a reference plan.
- B. The agreement of purchase and sale signed and accepted by the buyer and seller.
- C. A commercial lease signed for less than three years.
- D. A listing agreement between seller and a real estate brokerage.

37. Owner Smart had learned from his friends that he can buy a property in an auction. He is wondering why sellers would auction their property instead of listing it with some brokerage. Which of the following is a correct statement regarding auctions?

- A. The seller may choose the auction method for selling because the property may be unique, or the seller needs a quick sale.
- B. The most common type of auction is the *Absolute Auction* wherein a sale is guaranteed.
- C. In an *Auction by Confirmation*, the buyer has an option to confirm whether or not he will complete the transaction if his lawyer finds out that the title is not clear.
- D. The least popular is the *Minimum Bid Auction* because the sellers do not have any control over the process.

38. Jenny has sent the completed application to RECO and is now waiting to obtain approval of her registration. Which of the following activities can Jenny get involved in during her waiting time?

- A. Call friends, acquaintances and business contacts to ask them if they are interested in selling their homes.
- B. Develop her marketing material and then distribute flyers for prospecting in her selected farming area.
- C. Build a data base of potential clients from her list of known people.
- D. Hold an open house for a listing of another salesperson from her brokerage to get a feel for the real estate business.

### **Case Study – 2 Parts**

This case study is related to condominium buildings. Salesperson Jenny of Cram Realty Inc. is showing her buyer client Bright a few units in a condominium building located at 101 Cram Square. Answer the following 2 questions based on your knowledge of operation of condominiums.

39. On the way to the building, Bright asks questions about parking space and storage lockers. Salesperson Jenny, who forgot the listing at office, provides the following information in response to buyer's query:

1. While parking space is always owned by a unit owner, the storage lockers are assigned on discretionary basis.



2. If the parking and storage space is leased to you may have to pay a monthly rent to the corporation.
  3. If the *Declaration* of the condominium provides so, both parking space and parking lockers may be exclusively given to you.
  4. If you get freehold ownership of parking or storage and the title is separate from the unit title, you may sell or lease it to another unit owner in case you don't need it.
  5. If the parking and lockers are assigned to you, you will have ownership of these spaces.
- A. Only statements 2, 3 and 4 are correct.
  - B. Only statements 1, 3 and 5 are correct.
  - C. Only statements 1 and 4 are correct.
  - D. Only statements 2 and 5 are correct.

40. Bright likes unit number 610 and would like to make an offer. Salesperson Jenny understands that, in addition to mortgage financing and inspection conditions, she has to include a condition for the satisfactory review of *Status Certificate* and related documents by buyer's lawyer. The offer is dated March 10<sup>th</sup> is irrevocable until 8.00 pm on March 12<sup>th</sup>, the *Requisition Date* is April 10<sup>th</sup> and the closing date is set for May 31<sup>st</sup>. The expiry date for all conditions is set for March 20<sup>th</sup>.

The following condition for the *Status Certificate* is included in the Agreement of Purchase and Sale:

*"This offer is conditional upon the buyer's solicitor reviewing the Status Certificate and Attachments and finding them satisfactory in buyer's solicitor's sole and absolute discretion. The seller agrees to request, at seller's own expense, the Status Certificate and Attachments within 3 days after acceptance of this offer. Unless the buyer gives notice in writing delivered to the seller not later than 5.00 pm on the 20<sup>th</sup> day of March, 20xx, that this condition is fulfilled, this offer shall be null and void and the deposit shall be returned to the buyer in full without deduction. This condition is included for the benefit of the buyer and may be waived at the buyer's sole option by notice in wiring delivered to the seller within the time period stated herein."*

The offer is accepted by sellers on March 11<sup>th</sup>. Do you have any concerns with the way the condition has been drafted?

- A. The offer must have been conditional upon seller's solicitor to be satisfied with the information provided in the *Status Certificate and Attachments*.
- B. The typical time for fulfillment of conditions is 5 business days and the time given in the condition is too long, which gives the sellers an option to reject the offer.
- C. There is no problem with the drafting of the condition but there may not be sufficient time for the buyer's solicitor to review the *Status Certificate and Attachments*.
- D. This should have been a true condition precedent and the waiver provision must not be included.

### Case Study – 2 Parts

Salesperson Kim of Power Realty Inc. is working with a buyer, who is interested in purchase of an agricultural land. This buyer doesn't have much knowledge about these properties and asks Kim a number of questions during the showings. Answer the following two questions based on your knowledge of the farming and food production industry.

41. In response to a question regarding types of farming activities and disturbances created, the buyer asks how he will be protected by the current farming legislation. Salesperson Kim makes the following statements:

1. The federal *Farming and Food Production Protection Act* protects farming industry from nuisance complaints.
2. If a municipal by-law restricts the farmer from movement of farming equipment or vehicles, the *Normal Farm Practices Protection Board* may help to resolve the issue.

3. It is up to the farmer and the party making complaint to negotiate whether the farmer's practice is a *Normal Farm Practice* or not and the board interferes only if there is no agreement.
4. The *Normal Farm Practices Protection* may dismiss the complaint or order the farmer to modify farming activities to be consistent with *Normal Farm Practice*.
5. If the board decides that the farmer's practice is *Normal Farm Practice Board* the farmer is protected from the nuisance complaint or the restrictive municipal by-law.

Which of the above statements are correct?

- A. Only statements 1, 2 and 4 are correct.
- B. Only statements 2, 4 and 5 are correct.
- C. Only statements 1, 3 and 5 are correct.
- D. Only statements 2, 3 and 4 are correct.

42. The buyer wants to know what type of farming activities are considered disturbance. Salesperson Kim replies as follows:

*"Any disturbance may result in a complaint to the Normal Farm Practices Protection Board. Smoke, dust, flies and odour from farming activities are termed as disturbance. Certain farming activities such as beekeeping may also be included as disturbance. However, the mechanical vibration due to movement of vehicles is a normal farming activity and is not treated as a disturbance. Any activity for on-site processing may create a disturbance resulting in a complaint against the farmer."*

The statements given by salesperson Kim are not entirely correct. Which of the following best describes the error?

- A. Mechanical vibration due to movement of farming equipment or vehicles is treated as disturbance.
- B. Disturbance includes smoke and dust, but beekeeping operations are excluded.
- C. Since odour may not be due to farming operation, it is not treated as disturbance.
- D. Disturbance resulting from on-site processing activities are normal for farming industry and no complaint can be made.

### **Case Study – 3 Parts**

Salesperson Jenny of Cram Realty Inc. is working with a buyer who has signed a Buyer Representation Agreement with her brokerage. The buyer is interested in a rural home away from the town. Jenny shows the buyer several rural properties and the buyer finally makes up his mind to buy a 3-bedroom old-styled bungalow.

43. The bungalow this buyer has selected to buy is in a remote rural area where both hydro and telephone services are not available. The seller has clearly refused to bear the cost of arranging these services. The buyer asks Jenny a few questions and asks her to ensure that he does not have to pay a lot of money to arrange these services. Salesperson Jenny provides the following information:

*"In rural areas, hydro one provides services only if it is financially feasible. They will provide up to 100 meters of free wire from the nearest hydro pole and the remaining cost would be borne by you. Bell Canada will provide services only if the hydro service is arranged first. The entire cost of the telephone service will be borne by you. Once we have the hydro service, the telephone service is guaranteed. I will include a condition for determining the maximum cost of these services and we will proceed only if this cost is within your budget."*

The information provided by salesperson Jenny is not entirely correct. Which of the following best describes the error?

1. Hydro One is required to provide services to every residential owner upon request whether or not it is financially feasible.
2. If Hydro One decides to provide services to the property they will provide 30 meters of free wire from the last pole and the remaining cost is borne by the buyer.
3. Bell Canada may not provide telephone services even if Hydro One service is arranged.
4. Bell Canada does not require existence of Hydro One services first because these two are different service providers.
5. Inclusion of a condition to determine the cost of services will only complicate the matter because the buyer will lose the deal if the cost is too high.

- A. Only statements 1, 2 and 4 are correct.
- B. Only statements 2, 3 and 5 are correct.
- C. Only statements 2 and 3 are correct.
- D. Only statements 1 and 4 are correct.

44. This property is situated right in front of a lake and there is an old dock and boathouse. The buyer wants to knock down the existing boathouse and build a new one with two storeys and having guest accommodation. Which of the following statements is NOT correct in this regard?

- A. While you may not need a permit to knock down the existing boathouse, the new two-storey boathouse may need a permit from the *Ministry of Natural Resources*.
- B. The new two-storey boathouse with guest accommodation may be subject to a lease agreement and fees payable to the *Ministry of Natural Resources*.
- C. Since construction of boathouses is a common practice, no building permit is required.
- D. In case you do not cover more than 15 square metres of curb area on water, the requirement of permission may be waived.

45. The buyer wants to know from salesperson Jenny whether the entire land between his property and the lake is owned by him. Jenny provides the following information:

1. There is a shore road allowance of 66 feet from the high water mark and it is public land whether or not it has been ever used.
2. If you make a boathouse on this land, it will be an encroachment on public land.
3. If you want, you may apply to the *Conservation Authority* to buy this unopened shore road allowance because it not in use for a long period of time.
4. The process to buy an unopened shore road allowance may not be a simple one and we need to find out more information about it.
5. In any case, you need not worry because public has never used this shore road allowance, and their right to use it has been extinguished.

Which of the above statements is correct in this regard?

- A. Only statements 1, 2 and 4 are correct.
- B. Only statements 1, 3 and 4 are correct.
- C. Only statements 2 and 4 are correct.
- D. Only statements 2 and 5 are correct.

### **Case Study – 5 Parts**

The following case study is based on analysis of pre-printed clauses of the *Agreement of Purchase and Sale*.

Salesperson Jenny is working with seller Smart, who has signed a *Listing Agreement* with her brokerage Cram Realty Inc. Smart is a resident of the United States who wants to sell his 3-bedroom bungalow that he purchased a few years ago as an investment property. In one of the open houses, a buyer named

Bright walks in with his salesperson Kim of Power Realty Inc. After long verbal negotiations, the buyer and the seller agree on fundamental aspects of the deal. Salesperson Kim prepares an offer for her buyer client Bright. The date of the offer is August 5, 20xx and is irrevocable until 8.00 pm on August 6, 20xx. The completion date is set for October 30, 20xx.

Answer the following five questions based on the information provided.

46. The buyers ask salesperson Kim to explain them the meaning of irrevocable time. How would she respond to this query?

1. The buyers have the right to withdraw the offer even after signing it provided that it has not been communicated to the sellers.
  2. When communicated to the sellers, the buyers cannot withdraw the offer during the irrevocable time period.
  3. The buyers have been given until 8.00pm on August 6, 20xx to accept or reject the offer.
  4. The buyers give until 8.00pm on August 6, 20xx to sellers to accept, reject or counter the offer. When this time passes the offer automatically becomes null and void.
  5. The sellers must accept the offer without any changes before 8.00pm on August 6, 20xx.
- A. Only statements 1, 2 and 5 are correct.
  - B. Only statements 2, 3 and 4 are correct.
  - C. Only statements 1, 2 and 4 are correct.
  - D. Only statements 3, 4 and 5 are correct.

47. Buyers have a question about the *Residency* clause in the *Agreement of Purchase and Sale*. How would salesperson Kim respond to the buyers' query?

- A. This clause clearly states that the sellers are responsible for paying the *Capital Gains Tax* on sale of property with no liability of the buyer whatsoever.
- B. This clause is for the protection of the buyer so that the buyer does not become responsible for *Capital Gains Tax* on sale by a non-resident seller.
- C. This clause makes it mandatory for all non-resident sellers to pay *Capital Gains Tax* in advance to the Minister of Revenue.
- D. This clause makes it mandatory for all sellers of real property in Canada to provide a declaration that they are not non-residents.

48. Salesperson Kim has left the *Present Use* section within the *Title Search* clause blank in the offer. How does that affect the agreement?

- A. Since this is a mandatory section, leaving it blank would nullify the agreement.
- B. This is an optional section and when left blank does not affect the agreement.
- C. Leaving *Present Use* blank means that after completion the buyers can use the property in any way they wish.
- D. If the buyers find out that they cannot lawfully continue the present use of the property, they have the option of terminating the agreement.

49. The buyers would like to know more about the pre-printed *Insurance* clause. How would salesperson Kim respond to this query?

- A. The sellers are responsible to keep the property insured until closing and will direct their lawyer to transfer the insurance to buyers upon closing.
- B. In case significant damage occurs to the property before closing the buyers and sellers agree that the agreement will automatically become null and void.
- C. In case significant damage occurs to the property before closing the buyers can either terminate the agreement or take proceeds from sellers' insurance to complete the transaction.

- D. In case significant damage occurs to the property before closing the sellers may decide whether they want to proceed with the transaction or not.

50. The buyers tell salesperson Kim that they have saved \$65,000 for the purchase and would check if the sellers are prepared to take back a mortgage to help them purchase the property. They are ready to offer a purchase price of \$390,000 with a deposit of \$20,000 payable *Upon Acceptance*. They are also ready to assume sellers exiting first mortgage in the amount of \$176,500. The sellers agree to provide a second mortgage for the remaining amount.

What should be the correct amount in the *Balance Due on Completion* clause in Schedule A?

- A. \$45,000
- B. \$148,500
- C. \$193,500
- D. \$370,000

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**QUICK ANSWER KEY**

**SAMPLE EXAM 3**

1. D	2. A	3. B	4. B	5. C
6. C	7. C	8. B	9. A	10. D
11. B	12. D	13. B	14. A	15. C
16. C	17. A	18. D	19. A	20. A
21. C	22. D	23. D	24. D	25. B
26. A	27. D	28. A	29. D	30. C
31. B	32. C	33. D	34. C	35. D
36. A	37. A	38. C	39. A	40. C
41. B	42. A	43. C	44. C	45. A
46. C	47. B	48. D	49. C	50. A

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### SAMPLE EXAM 4

Take a blank sheet of paper to write your answers. The [Quick Answer Key](#) is located after the last question followed by [Detailed Answers](#).

➤ **Note:** A blank or completed **Agreement of Purchase and Sale** may be provided in the exam. You can refer to that form to answer related questions.

1. Which of the following statements is correct regarding consideration under the *Contract Law*?
  - A. Consideration must be adequate to satisfy the demands of the other party.
  - B. Consideration must be made at the time of contracting in order to have a valid contract.
  - C. Both parties to the contract must receive something of value as consideration.
  - D. The deposit paid by buyers is a sign of faith and not a full amount of consideration.
2. Under REBBA 2002, a registrant has the duty of confidentiality for the client. As such, the registrant
  - A. Must not disclose any information provided by the client.
  - B. Must not disclose personal or motivation information of the client.
  - C. Must keep all information of the clients confidential.
  - D. Must not disclose any latent or patent defects of client's property.
3. Is it possible for a brokerage to obtain a representation agreement for a period of more than six months?
  - A. Yes, provided that the buyer or seller client give their written consent by inserting initials on the first page.
  - B. No, REBBA 2002 does not permit any representation agreement to be for more than six months.
  - C. Yes, provided that the commission stated in the agreement is not more than the industry standard.
  - D. No, the representation agreements do not have a provision for a period of six months or more.
4. A postponement clause is typically included in the *Agreement of Purchase and Sale*:
  - A. When the first mortgage has a longer term than the second mortgage.
  - B. With the first mortgage so that the mortgagor can postpone or skip payments.
  - C. To allow an existing mortgage to be renewed or replaced without losing its priority.
  - D. In every situation where the agreement involves a seller take back mortgage.
5. A complaint for hearing before the *Normal Farm Practices Protection Board* would not include:
  - A. Mechanical vibrations due to movement of agricultural vehicles.
  - B. An appeal for taxation matters involving agricultural land.
  - C. Smoke emitted, and noise created due to agricultural operations.
  - D. Flies, dust or odour due to agricultural operations.
6. Which of the following structures would qualify for warranty coverage under the *Ontario New Home Warranties Plan Act*?
  - A. A structure where the builder only completes exterior shell, but the interior finishing is completed by the owner himself.
  - B. A structure where the owner hires several subcontractors for finishing different sections.
  - C. A structure built on existing footings or foundations.
  - D. A structure built by one contractor from start to finish and passes all *Ontario Building Code* inspections.



7. Which of the following agencies regulates wood burning stoves in cottage properties?
- A. Ontario Forestry Association
  - B. Ontario Woodlot Association.
  - C. Wood Energy Technology Transfer Inc.
  - D. Technical Standards Safety Authority.
8. Well water may be contaminated in cottage properties due to many reasons. Which of the following is NOT one of them?
- A. The well was constructed using boring method instead of drilling.
  - B. The well has inadequate depth or has been poorly constructed.
  - C. There is not enough clearance from the septic tank with raised absorption bed.
  - D. The well is located near the banks of a river.
9. If a property is designated as a heritage property, the buyer:
- A. Is assured that he can enjoy all rights of freehold ownership after closing.
  - B. Can make alterations to the property only after approval from the municipality.
  - C. Can appeal to the municipality to remove such designation.
  - D. Is assured that insurance premiums would be lower than homes of similar size.
10. Which of the following statements is correct with respect to electromagnetic fields?
- A. Both electric fields and magnetic fields are equally harmful to human health.
  - B. Electrical fields are less harmful to human health than electromagnetic fields.
  - C. Electromagnetic field is produced even when an electric appliance is not working.
  - D. Scientists do not have conclusive evidence that electromagnetic fields are harmful to human health and life.
11. An application for salesperson registration may be refused by the Registrar of RECO for because the applicant: several reasons. Which of the following is one of them?
- A. Has made a disclosure about a previous bankruptcy in the application.
  - B. Has included a police clearance certificate in original with application.
  - C. Has provided incomplete or false information in the application.
  - D. Is only on a work permit and is not a resident of Canada.
12. In which of the following circumstances, the assignment of an *Agreement of Purchase and Sale* would be a concern for a seller?
- A. When the buyer wants to assume seller's existing mortgage.
  - B. When the seller is taking back mortgage on the property being sold.
  - C. When the offer is conditional upon satisfactory inspection of the property.
  - D. When the buyer has given a large deposit at the time of purchase.
13. Bright has a mobile home in a countryside land lease community. He intends to sell this property to his close friend Smart and permanently move to another community, some 50 miles away. Which of the following would be a valid concern for seller Bright?
- A. The landlord may have the *Right of First Refusal* in the land lease contract, which may prevent the sale to a friend.
  - B. The seller must use the landlord as his agent when listing the mobile home for sale.
  - C. The seller may not be able to sell the mobile home without the written consent of the landlord, which may be refused arbitrarily.
  - D. Bright must complete the 40 years' term of land lease, unless the landlord releases him.

14. Last week, salesperson Ben of Power Realty Inc. listed seller Bright's bungalow for sale. Later in the weekend, a buyer called Ben to get some information on the property. After talking for a while on the phone, the buyer told Ben that he was interested to inspect the property. The showing was scheduled later in the evening. The buyer was impressed and wanted to make an offer on the property. Which of the following is a requirement under *REBBA 2002 Code of Ethics*, before salesperson Ben drafts an offer for the buyer?

- A. Explain the benefits of client relationship and ask the buyer to sign a *Buyer Representation Agreement*.
- B. Avoid multiple representation and simply require the buyer to sign a *Customer Service Agreement*.
- C. The salesperson must not sign any agreement with the buyer except the *Agreement of Purchase and Sale*.
- D. Explain the agency relationships to the buyer and ask him whether he would like to be a client or a customer of the brokerage.

15. Salesperson Jenny of Cram Realty Inc. sold one of her listings to a young man. Jenny did not consider the age of the buyer at the time of acceptance of the offer, but later found that the buyer was under 18 years of age. The young man did not have the legal capacity to sign a contract. In this situation, the agreement:

- A. Would be legally binding since the salesperson is an adult and signed as witness.
- B. Would not be legally binding and may be voidable by the buyer.
- C. Would be void and unenforceable on either the seller or the buyer.
- D. Would be voidable by the seller once he comes to know the age of the buyer.

16. Salesperson Kim is the listing salesperson for the property at 123 Power Street. The sellers are desperate to sell due to their financial circumstances. The property is listed for \$379,000, but the sellers are willing to take any price above \$340,000. Salesperson Kim holds an open house during the weekend. A buyer named Bright is ready to put an offer through Kim, but he has already signed a *Customer Service Agreement* with another brokerage. Kim explains agency relationships, gets an acknowledgement and signs a second *Customer Service Agreement* with buyer Bright. At this point, Kim casually informs the buyer that the sellers would be willing to take an offer for even \$340,000 as they are anxious to sell. What violation of *REBBA 2002 Code of Ethics* has just occurred?

- A. Kim has interfered with the customer of another brokerage.
- B. Kim has created a multiple representation situation by signing a *Customer Service Agreement* with Bright.
- C. Kim has failed to protect the best interests of her seller clients by disclosing personal information.
- D. Buyer Bright has been encouraged to breach the representation agreement with his brokerage.

17. Seller William has contacted salesperson Jim to discuss sale of his large bungalow. The bungalow is located in the suburban area of Cram City and is currently valued at nearly \$1.2 million. Salesperson Jim gives many options to Williams regarding commission that would be charged. Which of the following commission arrangements would be prohibited under *REBBA 2002*?

- A. 3% of first \$400,000; 4% of next \$400,000 and 5% of the balance.
- B. 3% percent of sale price plus an additional \$15,000.
- C. 4.5% of the sale price of the property.
- D. A flat fee of \$20,000 on completion of the transaction.

18. Registrants must ensure that names of all registered owners of the property appear on the *Agreement of Purchase and Sale*. Which of the following is a correct statement in this regard?

- A. If the property is held by an *Estate Trustee*, who is a close relative of the deceased owner, a verbal assurance is sufficient.

- B. All persons who have any type of interest in the subject property must be shown as sellers on the agreement.
- C. When the seller is a corporation, the authorized officer must use a seal with his signatures.
- D. In case of a *Power of Attorney*, it must be *Continuing Power of Attorney for Property*, duly registered in land registry office and the registrant must obtain evidence.

19. Which of the following *Balance Due on Completion* clause is correctly written?

- A. The buyer agrees to pay a further sum of two hundred and seventy-five thousand dollars (\$275,000.00), to the seller, on completion of this transaction with funds drawn on lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using Large Value Transfer System.
- B. The buyer agrees to pay a further sum of one hundred and forty-five thousand dollars (\$145,000.00), subject to adjustments, to the seller on completion of this transaction with funds drawn on lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using Large Value Transfer System.
- C. The buyer agrees to pay a further sum of one hundred and eighty thousand dollars (180,000.00), subject to adjustments, to the seller on completion of this transaction.
- D. The buyer agrees to pay a further sum of three hundred and twenty-five thousand dollars (\$325,000.00), subject to fulfillment of conditions, to the seller on completion of this transaction with funds drawn on lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using Large Value Transfer System.

20. Bright has signed a *Buyer Representation Agreement* with Cram Realty Inc. that specifies a commission of 2.5% of the sale price of property. The agreement is for 3 months, starting April 1<sup>st</sup> and there is a 2 months' holdover period. In which of the following circumstances, the buyer would be liable to pay commission to Cram Realty Inc.?

- A. When he buys a property privately during holdover period, but the same property was shown by Cram Realty Inc. during the agreement period.
- B. When he buys a property privately after the holdover period and it was shown by Cram Realty Inc. during the agreement period.
- C. When he buys a property shown by Cram Realty Inc. during the agreement period and the listing has a 2.5% provision for the co-operating brokerage.
- D. When he buys a property listed by Cram Realty Inc. during agreement period and it has a provision of 2.5% to the co-operating brokerage.

21. A buyer was unable to obtain satisfactory financing for purchasing the property. The lender could not verify the information provided in the buyer's mortgage application. As a result, the deal fell through. In this situation:

- A. The deposit will be automatically returned to the buyer since the mortgage condition included the wording - "*the deposit would be returned to the buyer in full without interest*".
- B. The deposit would be returned to the buyer within 5 business days because REBBA 2002 requires the listing brokerage to keep the funds in trust account for at least that time period.
- C. The deposit would be returned to the buyer once the seller and the buyer sign the mutual release.
- D. The deposit can be returned to the buyer so long as the buyer and the seller have mutual verbal agreement to terminate the agreement.

22. Salesperson Jenny of Cram Realty Inc. has signed a *Buyer Representation Agreement* with Bright. Bright has been shown several properties, but he is mainly interested in a property which is not listed and is being sold privately. The seller agrees to sign a *Seller Customer Service Agreement* with Cram Realty Inc. At what point of time, the salesperson needs to disclose agency relationships to comply with *REBBA 2002 Code of Ethics*?

- A. The salesperson must make a written disclosure of agency relationships to both the seller and the buyer at the earliest practical opportunity but prior to presentation of any offer.
- B. The salesperson must inform the buyer client that she can provide customer service to the seller and this must be done prior to showing the property and presenting the offer.
- C. The salesperson must inform the seller that it can represent the buyer, and this must be done prior to showing the property and presenting any offer.
- D. The salesperson must obtain informed written consent of both the buyer and the seller for multiple representation and this must be done before showing the property to any buyer.

23. Salesperson Jenny of Cram Realty Inc. has prepared an offer for her buyer clients for the property at 20 Cram Crescent. The offer is dated May 15, 20xx and the offer price is \$280,000. The buyers want to give at least two days to the sellers to consider their offer. The offer is conditional upon arranging a home inspection within seven business days, following the acceptance. The completion date is approximately two months from the offer date. Jenny inserts the following information in the *Agreement of Purchase and Sale*:

*Irrevocability*: By Buyers, until 10.00 pm on May 17, 20xx.

*Expiry of Conditions*: May 25, 20xx.

*Completion Date*: July 20, 20xx.

*Title Search*: May 20, 20xx.

The sellers counter the offer by increasing the purchase price by \$8,000. The counter offer is accepted by buyers on May 16, 20xx. What problems or concerns do you see in these dates?

- A. There is not enough time for the sellers to consider the offer.
- B. The title search date is too early.
- C. The completion date is incorrect.
- D. The conditional time is too long.

24. The *Deposit* clause in the standard *Agreement of Purchase and Sale* allows the buyer to provide the deposit cheque within 24 hours of acceptance of the offer. REBBA 2002 requires that the listing brokerage must place the funds in trust account within 5 business days. Is there a conflict between these two provisions?

- A. Yes, the buyer brokerage must forward the deposit cheque to the listing brokerage within 5 business days.
- B. No, but the deposit must be placed in the trust account of the listing brokerage within 5 business days of the offer date.
- C. Yes, the buyer is not obligated to provide the deposit cheque within 24 hours because REBBA 2002 allows him 5 business days.
- D. No, the 24-hour time frame is for the buyer to provide deposit cheque and the 5 business days' time frame is for the listing brokerage to place the funds in trust account.

25. Mr. Bright owned the house before his marriage to Mrs. Bright six years ago. After marriage, Mrs. Bright moved in with him. Mr. Bright now wants to sell this home. Salesperson Jim of Cram Realty Inc. is the listing salesperson. How would the *Agreement of Purchase and Sale* be completed?

- A. Mrs. Bright needs to sign *Spousal Consent* in both the listing agreement and the agreement of purchase and sale.
- B. Mr. Bright is the sole owner of the home and Mrs. Bright need not sign any document.
- C. Mrs. Bright has no interest, whatsoever, in the property and she is not required to sign any document
- D. Since this is a matrimonial home, both names must be in seller lines and both must sign the agreement as owners.

26. The buyer's lawyer is performing a title search on the property in land registry office records. Which of the following information is may not be available from this search?

- A. Deed restrictions prohibiting certain use of the property.
- B. Legal description of the property showing the subdivision plan number.
- C. The current value assessment of the property
- D. Outstanding mortgage liens.

27. Smart leased a two-bedroom apartment on April 1<sup>st</sup> last year. The lease is for a period of 2 years. This year in June, Smart got transferred to a distant city. Smart asked salesperson Kim how he should deal with the situation because approximately 10 months are still remaining in the lease. Which of the following would be a good advice for Smart?

- A. Smart can abandon the property fully and finally with his belongings but can keep paying the rent until the lease term.
- B. Smart should try to find another tenant to whom the lease could be assigned. Smart would then not be liable after assignment.
- C. Smart should sublet the apartment, and this would completely release him of his liability under the lease
- D. Since this is a fixed term lease, Smart has no options but to continue paying the rent to the landlord.

28. A tenant has willfully left a residential unit, completely and finally. He never informed the landlord and has taken all his belongings. He has even left the doors unlocked. The landlord has clear evidence that the tenant has no intention to return until the expiry of the lease. This act of the tenant is known as:

- A. Assignment
- B. Termination
- C. Abandonment
- D. Relief

29. Buyer Bright has a few questions with respect to raised absorption bed in septic systems. Salesperson Jenny gives the following information in response to his questions:

- 1. Raised absorption beds are now required for all cottage properties under the *Ontario Building Code* regulations.
- 2. Raised absorption beds require certain minimum distance from the nearby residential structure and water wells.
- 3. Raised absorption beds are constructed using imported soil and special filters.
- 4. The main reason for using raised absorption bed is that the existing soil depth is insufficient for a standard leaching bed.
- 5. Since a raised absorption bed is a necessity, no building permit is required for construction.

Which of the above statements is/are correct?

- A. Statements 2, 3 and 4 are correct.
- B. Statements 1, 3 and 4 are correct.
- C. Statements 2, 4 and 5 are correct.
- D. Statements 1, 2 and 4 are correct.

30. Real estate registrants may encounter a variety of fraudulent activities when trading in real estate. According to *REBBA 2002 Code of Ethics*:

- A. Registrants are not required to get personal information of clients as this would be done by solicitors.
- B. A fraud would not be a concern for the registrant so long as there is no direct involvement.

- C. Registrants should ignore suspicious activities because fraud is a crime and it is beyond RECO's jurisdiction.
- D. Registrants must be watchful for any signs or indications that point towards a possible fraud.

31. The beautifully maintained house in downtown, which the buyers have finalized, is designated as a heritage property. They are interested to make an offer but ask the salesperson to explain how the heritage designation will affect their rights on the property. Which of the following would be a correct response by the salesperson?

- 1. There is no effect of heritage designation and the buyer will enjoy all rights of freehold ownership without any restrictions.
  - 2. The insurance for heritage homes may be higher as compared to other similar homes because of imputed costs for any damage or repair.
  - 3. The market value of the property would be more than similar properties because of heritage designation.
  - 4. The property tax on a heritage property is more than similar properties due to increase in its market value.
  - 5. Any alterations to the property would need prior approval from the municipality.
- A. Statements 1, 2 and 4 are correct.
  - B. Statements 2, 3 and 4 are correct.
  - C. Statements 2 and 5 are correct.
  - D. Statements 3 and 4 are correct.

32. Real estate brokerages are required to follow certain reporting requirements under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. Accordingly, which of the following amounts must be reported to FINTRAC?

- 1. \$6,000 in cash given to the brokerage and to be forwarded to the builder.
  - 2. \$15,000 in cash given to the brokerage by a buyer customer to be held in trust account of the brokerage.
  - 3. A personal cheque of \$15,000 given to the brokerage to be held in trust account of the brokerage.
  - 4. \$7,000 in cash given to the salesperson at 4pm and another \$5,000 in cash given at 9am the following day.
- A. Only in situation 1.
  - B. Only in situations 2 and 4.
  - C. Only in situations 2 and 3.
  - D. Only in situation 4.

33. Buyer Smart has inspected several properties and is interested to make an offer on a 1,400 square feet bungalow. This shoreline property, about 50 Km away from the city, has a lot size of 2.5 acres. Hydro and telephone services are available to the property, but water and sewerage service is not available in the area. Bright is concerned about contamination of water from the old water well. Which of the following would be an acceptable method of preventing contamination of water?

- A. The well cap and connecting water lines must be sealed properly.
- B. The well cap must allow the water to flow freely down the well.
- C. The well casing must not be visible and should be at least 20 centimetres below surface.
- D. The venting pipe from the well must not have any screening material.

34. The buyer of a rural residential property may have several valid concerns. Out of the options given below, identify which one is an environmental concern.

- A. A private road has to be used to access the property and the buyer may have to share the cost.
- B. Arrangement of telephone service to the property may prove expensive to the buyer.



- C. The property is in a mixed-use zone and can also be used for commercial purposes.
- D. The property has an oil-fired furnace, but the oil tank is buried underground.

35. Fences are the most common cause of disputes among neighbours, when an up-to-date survey of the property is not available. This is specially a concern in newly constructed residential subdivisions where the builders typically do not build fences before giving possession of the property. Which of the following statements is correct when resolving a fence dispute between neighbours?

- A. A provincial fence inspector would inspect the properties under *Line Fences Act* and help neighbours arrive at distribution of cost for fence construction.
- B. The *Line Fences Act* clearly states that, in case of new construction, the builder has to resolve the dispute related to distribution of cost among neighbours.
- C. A *Fence Viewer*, appointed under the municipal *Fence By-law*, would inspect the properties and help neighbours arrive at distribution of cost for fence construction.
- D. The *Line Fences Act* provides that in case of new construction, the neighbours can approach the municipal fence board for resolution of their dispute.

36. Shoreline property owners may have certain riparian rights with respect to access and navigation of waters. Which of the following is a correct statement in this regard?

- A. Owners are permitted to construct docks for their boats on the body of water, subject to certain qualifications, although it is an encroachment on public land.
- B. Permit from the *Ministry of Natural Resources* is typically not required if a shoreline property owner is attempting to construct a two storey boathouse.
- C. All land between the frontage of the lot and edge of water belongs to the property owner.
- D. A shore road allowance is treated as private property if it has remained unopened for a long period of time.

37. A buyer's salesperson had a doubt about the insulation material used in the property. He was concerned that the property might have *Urea Formaldehyde Foam Insulation (UFFI)*. The sellers and the listing salesperson confirmed this fact. To protect the best interests of the buyer, the salesperson inserted the following clause in *Schedule A* of the *Agreement of Purchase and Sale*:

*"The seller discloses and the buyer acknowledges that the building contains Urea Formaldehyde Foam Insulation. The buyer accepts the property in that state and further acknowledges that the seller does not warrant the quality or quantity of the insulation or its installation."*

The pre-printed UFFI clause in the agreement was not deleted. Has the salesperson caused a problem due to conflicting wording of the pre-printed UFFI clause in the *Agreement of Purchase and Sale*?

- A. Yes, the pre-printed UFFI clause should have been deleted because it will take precedence over the inserted clause in *Schedule A*.
- B. No, the UFFI disclosure clause inserted in the schedule takes precedence over the pre-printed clause.
- C. No, but if the parties are still in doubt, the buyers may now waive the pre-printed UFFI clause in an Amendment.
- D. Yes, the '*Mutual Agreement*' element of the contract between the parties is missing and the agreement is null and void.

38. Salespeople may be employed by a brokerage as '*employees*' or as '*independent contractors*'. Which of the following statements is correct in this regard?

- A. Independent contractors need worry about accounting and taxation because the brokerage takes care of these matters.
- B. Employee salespeople use their own judgement and methods when performing their trading activities.

- C. For compliance with REBBA 2002, the brokerage is responsible only for employees and not for independent contractors.
- D. Most independent contractor salespeople pay their own business expenses and may have to pay desk fees to the brokerage.

39. *Canada's Anti-Spam Legislation (CASL)* impacts real estate registrants when they are involved in promoting their services or products. Under the Act, a *Commercial Electronic Message (CEM)* cannot be sent to anyone without prior written consent. CASL regulations apply to most electronic methods of communication. Which of the following is considered an exception?

- A. Writing a message on someone's Facebook wall.
- B. Bulk messages sent through a social media platform.
- C. Sending bulk email to hundreds of consumers.
- D. An electronic message for promoting a residential property.

### **Case Study - 3 Parts**

Salesperson Jenny of Cram Realty Inc. is working with a tenant client named Thomas. He is looking for a three-bedroom condominium unit in Cram City. Salesperson Jenny locates some vacant units and shows them to Thomas and his family.

Thomas, his wife and his daughter particularly like unit number 310 in a condominium building located at 150 Cram Square. They would like to make an offer to lease for a period of one year. Jenny prepares an offer with a monthly rent of \$1,350 and a deposit amount of \$2,700; payable for the first and last month rent. The tenants sign the offer and it is sent to the listing brokerage Power Realty Inc.

The landlord counters the offer with a monthly rent of \$1,400 and a deposit of \$2,000. Moreover, the landlord adds a clause in the offer that prohibits the tenants from keeping any pets in the unit. The Thomas family currently does not own any pets and they accept the counter offer. The lease starts from April 1, 20xx and expires on March 31st of the following year. The landlord gives an option to the tenants to renew the lease after expiry, if they wish to stay in the unit. Thomas and his family accept the counter offer and move into the unit on April 1<sup>st</sup>, 20xx.

Based on this information, answer the following three questions.

40. According to the provisions of the *Residential Tenancies Act*, what problem do you see with the landlord's requirement for deposit?

- A. Security deposits are prohibited under the *Residential Tenancies Act*.
- B. Landlord can ask for a security deposit but only if the tenants also bring a guarantor.
- C. The landlords must not ask for more than one month's rent as deposit amount.
- D. The landlord cannot ask for a security deposit if the tenant provides post-dated cheques for rent.

41. Three months after the lease starts, the tenants bring in a small dog for their daughter. The landlord is upset and asks the tenants to remove the dog from the unit. He reminds the tenants that there is a clause in the lease that prohibits pets in the unit. He serves a written notice that requires the Thomas family to remove the dog within 15 days. According to the *Residential Tenancies Act*, is there a problem with the landlord's instructions to remove the dog?

- A. No, the tenants had agreed not to keep a pet and they cannot keep it.
- B. Yes, the landlord can ask the tenants to remove the dog only if the condominium *Declaration* prohibits pets in the building.
- C. No, the *Residential Tenancies Act* provides that the landlord cannot prohibit tenants from keeping pets in any residential property.
- D. Yes, the landlord can enforce lease agreement only if the tenants had a dog when the lease started.

42. On February 15<sup>th</sup> of the following year, the landlord gives a written notice of rent increase to the tenants. According to this notice, the rent would increase from \$1,400 to \$1,550 beginning April 1<sup>st</sup>. The notice is hand delivered to the Thomas family. What problem do you see with this notice and the rent increase?

- A. The written notice must be given at least 90 days before the expiry of the lease and the rent increase cannot be more than the published *Rent Guideline*.
- B. The notice cannot be hand delivered and must be sent by mail to the tenants at least 60 days before the expiry of the lease.
- C. There is no problem with the amount of rent increase, but this should have been agreed in the lease before the commencement of the lease term.
- D. The landlord must apply to the *Landlord and Tenant Board* for any increase in monthly rent.

### Case Study – 3 Parts

Smart has signed a *Buyer Representation Agreement* with Cram Realty Inc. Salesperson Jenny is working with him to locate a 2-bedroom unit in a condominium building. They have inspected several units in different apartment buildings, but buyer Smart wants to give little more time for his search. During one of the showings, the buyer asks several questions with respect to their concerns for ownership in a condominium building.

43. Buyer Smart is curious to know about functioning of the condominium complex. Salesperson Jenny gives the following information in response to questions by the buyer:

*"Condominium corporations are managed by a Board of Directors. The Declarant must appoint the First Board, with at least 3 directors, within 10 days of condominium registration. This board holds office until the Turnover Meeting, when the board hands over documents to the unit owners. The board makes by-laws of the corporation and a majority of unit owners must vote in favour of the by-laws to become effective. A copy of the by-laws is registered with the Land Registry Office."*

The information by Jenny is not entirely correct. Which of the following best describes the error?

- A. The first board of directors is appointed by the unit owners and not by the *Declarant* and there must be at least 5 members.
- B. The corporation appoints directors in the board and not the unit owners.
- C. The *Declarant* makes the by-laws of the corporation and every unit owner must give approval.
- D. The *Turnover Meeting* is held to transfer control of corporation from *Declarant* to unit owners.

44. In response to buyer Smart's questions about *Common Elements* and the *Reserve Fund*, salesperson Jenny responds as follows:

1. The *Declarant* is required to maintain a *First Reserve Fund* until the corporation completes a *First Reserve Fund Study*, which must be done within a year of the registration.
2. The *Reserve Fund* is for major repairs, replacement and regular maintenance of common elements of the building.
3. A portion of the common expenses paid by unit owners is set aside for the *Reserve Fund*.
4. In case of minor repairs of the common elements, the funds from *Reserve Fund* may be used provided that at least 80% of unit owners give their approval.
5. The corporation is only required to inform the unit owners when it wants to use money from the *Reserve Fund* for adding new common elements to the building.

Which of the above statements is/are correct?

- A. Only statements 1 and 3 are correct.
- B. Only statements 2 and 4 are correct.
- C. Only statements 1, 3 and 5 are correct.
- D. Only statements 2, 3 and 5 are correct.

45. Smart asks salesperson Jenny to explain the main difference between ownership interest in a condominium building and a co-operative building. In response, Jenny gives the following statements:

1. The title of the unit is transferred in your name in a condominium building but in co-operative building you get only a lease for the unit.
  2. Even though the title of the unit is not transferred to you, you still have to pay the *Land Transfer Tax* for buying an interest in a co-operative building.
  3. You must pay your property taxes and monthly maintenance fee for a condominium unit but there is no such requirement for a co-operative unit.
  4. To purchase a unit in a condominium or a co-operative, the mortgage loan you arrange will be the first mortgage because a second mortgage is not permitted by these corporations.
- A. Only statements 3 and 4 are correct.
  - B. Only statements 1, 2 and 4 are correct.
  - C. Only statements 1 and 2 are correct.
  - D. Only statements 2, 3 and 4 are correct.

### Case Study – 5 Parts

Salesperson Skinny of Cram Realty Inc. is working with a buyer who intends to buy a vacant parcel of land. Skinny locates a parcel of land being sold by seller Bright who intends to divide it into two parts and sell one part of it. The seller has prepared a *Reference Plan* and is offering 6 acres from his existing 10 acres. The asking price for the parcel of land is \$50,000 per acre.

Salesperson Skinny prepares an offer with an offer price of \$45,000 per acre. The deposit amount is \$10,000; payable *Upon Acceptance* of the offer. To make the sale attractive to the buyer, the seller has offered a *Seller Take Back* mortgage in the amount of \$50,000, which the buyer accepts. The offer date is April 10, 2014 and it is irrevocable by the buyers until 6.00pm on April 12, 2014. The completion date is set for September 30, 2014. Based on this information, answer the following five questions.

46. The *Schedule A* of the offer contains the following condition for mortgage:

*"This offer is conditional upon the buyer, arranging at buyer's own expense, a new mortgage for not less than one hundred and fifty thousand dollars (\$150,000.00) bearing interest at a rate of not more than 5% per annum, calculated semi-annually, not in advance, repayable in equal blended monthly payment of about eight hundred seventy two dollars and forty one cents (\$872.41) including both principal and interest and to run for a period of not less than five years from the date of completion of this transaction. Unless the buyer gives notice in writing delivered to the seller not later than 5.00 pm on April 20, 2014 that this condition is fulfilled, this offer shall be null and void and the deposit shall be returned to the buyer in full without deduction. This condition is included for the benefit of the buyer and may be waived at buyer's sole option by notice in writing delivered to the seller within the time period stated herein."*

Which of the following statements best describes the problem with this clause?

- A. It is essential to specify the amortization period while the term of the mortgage loan is optional.
- B. The condition must be written as a '*True Condition Precedent*' without the waiver provision.
- C. The words '*not less than*' with the amount of loan should be specified as '*not more than*' to enable the buyer to have more cash in hand at the time of closing.
- D. While the name of the lender is not required, the priority of the mortgage is missing and must be included in the condition.

47. Salesperson Skinny has inserted the following conditional clause for severance of land:

*"This offer is conditional upon the buyer, obtaining, at buyer's own expense, a Consent to Sever the property known as Part 4 on Reference Plan 75R-468, from sellers' existing property. Unless the buyer gives notice in writing delivered to the seller not later than 5.00 pm on September 10,*

2014 that this condition is fulfilled, this offer shall be null and void and the deposit shall be returned to the buyer in full without deduction. The buyer agrees to proceed immediately with all steps reasonably necessary in support of the satisfaction of the foregoing condition."

Which of the following statements best describe the problem with the clause?

- A. The waiver provision is missing from the condition and this would prevent the buyer from removing the condition in case it is fulfilled.
- B. The offer should be made conditional by the seller and not by the buyer; and the seller has to pay for the cost of severance.
- C. The time set for fulfillment of severance condition is too long and an *Escape* clause should be included to ensure that the seller does not reject the offer.
- D. The conditional clause does not specify which authority is to be approached in order to obtain *Consent to Sever*.

48. The offer was accepted, and the buyer was able to arrange the mortgage loan without any difficulty. Fortunately, the municipality also approved the severance application. How should the buyers and sellers now proceed to make the agreement a legally binding contract?

- A. A *Notice of Fulfillment of Conditions* must be sent by the buyer to the seller to inform the seller about fulfillment of both conditions.
- B. A *Waiver* must be sent by the seller to the buyer, indicating fulfillment of both conditions.
- C. The buyer sends a *Waiver* for the mortgage condition and the seller sends a *Notice of Fulfillment of Conditions* to the buyer.
- D. Both the seller and buyer must now terminate the previous agreement and sign a new agreement without any conditional clause.

49. The buyer's lawyer finds out that there is a minor easement on the north-east side of the lot for provision of utilities. This was never disclosed to the buyers, in the listing or in the *Agreement of Purchase and Sale*. What option does the buyer has now with respect to completion or termination of the agreement?

- A. The buyer cannot terminate the agreement since he has accepted the title subject to minor easements, which do not materially affect the use of property.
- B. The buyer can use the undisclosed easement as an objection to the title and he can now refuse to complete the transaction.
- C. The seller and the buyer can now sign an *Amendment to Agreement of Purchase and Sale* with necessary easement disclosure.
- D. Since the listing salesperson failed to include details of the easement in the listing, the buyer has the option to terminate the agreement.

50. What would be the correct amount in the of *Balance Due Upon Completion* clause?

- A. \$260,000
- B. \$210,000
- C. \$60,000
- D. \$120,000

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**QUICK ANSWER KEY**

**SAMPLE EXAM 4**

1. D	2. B	3. A	4. C	5. B
6. D	7. C	8. A	9. B	10. D
11. C	12. B	13. A	14. D	15. B
16. C	17. A	18. D	19. B	20. A
21. C	22. A	23. B	24. D	25. A
26. C	27. B	28. C	29. A	30. D
31. C	32. B	33. A	34. D	35. C
36. A	37. B	38. D	39. A	40. C
41. B	42. A	43. D	44. A	45. C
46. D	47. B	48. C	49. A	50. B

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## BONUS QUESTIONS

Take a blank sheet of paper to write your answers. The [Quick Answer Key](#) is located after the last questions.

Please note that we are **NOT** providing Detailed Answers for these questions. Most of the concepts are already covered in Sample Exams 1 to 4.

➤ **Note:** A blank or completed **Agreement of Purchase and Sale** may be provided in the exam. You can refer to that form to answer related questions.

1. If a seal is not used in an *Agreement of Purchase and Sale*:
  - A. The agreement would have to be witnessed by a lawyer.
  - B. A sufficient deposit would be mandatory in order to make an offer valid.
  - C. The buyer would have to pay sufficient in terms of the purchase price for the property.
  - D. The buyers could withdraw their offer any time before acceptance.
2. A commission trust account is not mandatory as per REBBA 2002. How does this affect the salesperson?
  - A. RECO can terminate the salesperson's registration because he cannot work for a brokerage that does not maintain a commission trust account.
  - B. The salesperson would not be covered under RECO's Commission Protection Insurance program.
  - C. The salesperson as well as the brokerage could be fined as this is a violation of REBBA 2002.
  - D. The brokerage would not be able to accept deposits for its listings after acceptance of an offer.
3. Identify a situation that would result in a violation of the *Competition Act*?
  - A. Power Realty Inc. sells a doctor's matrimonial home for more than the listed price.
  - B. Cram Realty Inc. sells a property for Cram City Financial Inc. under *Power of Sale* for more than the listed price.
  - C. A real estate registrant, under extreme personal financial situation, sells his own home for a much lower price than the listing price.
  - D. Prism Developers Inc. sells most of its condominium units for a higher price than what was advertised.
4. At what point in time must a registrant must advise the sellers of the potential for the multiple representation situation?
  - A. As soon as the sellers have signed the Listing Agreement.
  - B. Prior to entering into a Listing Agreement with them.
  - C. Prior to presenting any the buyers' offer to the sellers.
  - D. Prior to signing the *Confirmation of Co-operation and Representation* form.
5. It is recommended that a postponement clause be included in the *Agreement of Purchase & Sale*:
  - A. When the expiry date of the first mortgage is due before the expiry of the second mortgage.
  - B. If the Buyers wanted to sell their home before purchasing a new one and the Sellers wanted to continue to offer their property for sale.
  - C. When a closing date has to be postponed or extended to a later date.
  - D. When the amount of the second mortgage is less than the amount of the first mortgage.
6. Which of the following is a correct statement as it relates to the assumption of seller's existing mortgage by a buyer?

- A. Typically, when an existing mortgage is being assumed, the payments are recalculated on the outstanding principal balance, based on new terms of the lender.
- B. If the interest rate of the existing mortgage is higher than current interest rates, the seller may have to pay a penalty based on the *Interest Rate Differential*.
- C. Even if the buyer is approved by the lender to assume the existing mortgage, the seller may still be responsible for the mortgage loan.
- D. All existing outstanding mortgages can be assumed the buyer without the approval of the mortgagee.

7. Which of the following is an accepted method of calculating the amount of *Balance Due on Completion*?

- A. The deposit and the amount of first mortgage is subtracted from the purchase price but the amount of second mortgage is not deducted.
- B. The mortgages being assumed and taken back by the seller are added to the deposit and then that amount is subtracted from the purchase price.
- C. All mortgages in the Agreement of Purchase and Sale are first added to the deposit and then the final amount is subtracted from the purchase price.
- D. Take the purchase price and then subtract buyer's down payment and the amount of deposit.

8. Title Insurance would protect the buyer of a home:

- A. When the buyer is paying too much for the property in a multiple offer situation.
- B. When the fire-insurance has been cancelled due to non-payment of the premium.
- C. When the buyer defaults on a seller take back mortgage or an assumed mortgage.
- D. When it is found that the previous owners had made an addition to the property without necessary permits or approvals.

9. Which of the following statements is correct with respect to purchase of a unit in a Life Lease development?

- A. The buyer will be responsible to pay a monthly fee to cover landscaping, snow and garbage removal, property taxes, etc.
- B. The buyer will have full coverage under the Ontario New Home Warranties Plan Act.
- C. The buyer will not have to pay any amount for maintenance of the unit.
- D. The buyer has purchase an interest in a Life Lease development, which is typically built for the purpose of profit.

10. Which of the following agencies must be approached for obtaining a permit for control of underwater plant growth through the use of chemicals:

- A. The local municipality.
- B. The Ministry of Natural Resources.
- C. The Ministry of Environment.
- D. The Federal Fisheries Department.

11. A buyer is insisting that a condition to obtain fire insurance for the property be included in *Agreement of Purchase and Sale*.

This is because:

- A. The buyer may not want to close the deal if the insurance premiums would be too high.
- B. It is required if the buyer wants to obtain Title Insurance.
- C. The standard pre-printed clauses of the agreement do not mention any type of insurance.
- D. The buyer wants to assume seller's existing insurance policy.

12. Which of the following is a correct statement with respect to fraud as they relate to real estate transactions?

- A. RECO has concern whatsoever with fraud as it is a criminal matter and is beyond its jurisdiction.
- B. Registrants do not have an obligation to identify their clients because lawyers will ultimately get their identification information.
- C. So long as they are not parties to the fraud and do not share in the profits, registrants need not be concerned about fraud.
- D. REBBA 2002 requires registrants to look for suspicious, warning signs and indicators of fraud.

13. A typical real estate brokerage would prefer to hire *Independent Contractor* salespersons instead of the *Employee* because:

- A. Commission charged by Independent Contractors must be in compliance with brokerage policies, but Employee salespeople decide their own commission.
- B. Less headache, less control and less supervision are required for Independent Contractors.
- C. Compliance with REBBA 2002 is required only for Employee salespeople but not for Independent Contractors.
- D. Independent contractor salespeople are required to attend the brokerage office during fixed office hours.

14. Brian purchased a sports car under a signed contract when he was 17 years old. The contract specified that he would get the vehicle when it is fully paid for. He would pay \$260 per month for the next 2 years to pay the full price. The contract stated that if Brian changed his mind, he would forfeit all payments made. After making 18 monthly payments, Brian decides not to buy the car and he wants to get all his payments back. Which of the following statements best describes the situation?

- A. Brian cannot be held liable for the contract and is entitled to get all his money back as he signed the contract before reaching the age of majority.
- B. Brian signed the contract which was for a necessity of life. is entitled to get all his money back as he signed as a minor.
- C. Brian cannot receive his any money back if he not able to prove that he did not understand the terms of the contract and what was his commitment.
- D. Brian ratified the contract because he kept making payments even after reaching the age of majority. So, he can be held liable for the terms of the contract.

15. The broker of record, Binny mistakenly used the cheque book for his *Real Estate Trust Account* when he paid \$550 to the janitor. He should have made the payment from his *General Account*. The error was noticed during reconciliation of the trust account. Which of the following statements describes how Binny can now correct the error?

- A. The required funds must be immediately put in the trust account to correct the error and a note be inserted in the trust ledger as reference for any future RECO inspection.
- B. The brokerage must immediately deposit the required funds into the trust account. No permanent record of the transaction needs to be made as long as the reconciliation and correction was done within 30 days of receiving the bank statement.
- C. An amount of \$550 must now be placed in an "*Error Account*" because the brokerage is not permitted under REBBA 2002 to rectify the error and immediately report it to RECO.
- D. Binny must now write a cheque of \$500, payable to RECO and they will deposit the money in the trust account.

16. Cram Realty Inc. listed a property for sale, received an offer, which was accepted by the sellers. The buyer paid a deposit of \$25,000, which was deposited by Cram Realty Inc. in its *Real Estate Trust Account*. Somehow, the buyer was not able to obtain necessary financing and did not waive the mortgage condition in the offer. He has demanded the return of his deposit amount. Which of the following would be a correct course of action with respect to the disbursement of the deposit?

- A. Because the transaction did not complete because of buyer's default, Cram Realty Inc. is required to release and forward the entire amount to the sellers.
- B. The buyer would get his deposit money back from Cram Realty Inc. provided that both the buyer and seller agree to this by signing a mutual consent or direction for the release and disbursement of the deposit.
- C. Given that the deposit is paid by the buyer and the transaction failed to close, Cram Realty Inc. is legally required to return the entire amount of deposit to the buyer.
- D. When a transaction fails to close due to buyer's default, the listing brokerage is entitled to use whole of, or part of, the deposit for payment of commissions owed by the sellers.

17. Seller Smart has signed a listing agreement with Cram Realty Inc. using the standard *Listing Agreement* form. The total commission is 4%; with 2.5% going to the co-operating brokerage. The Listing Agreement is for a period of 3 months, with a holdover period of 2 months after expiration. According to the pre-printed provisions of this form, which of the following statements is correct with respect to payment of commission?

- A. The seller agrees that he will pay only 1.5% if the property is sold by Cram Realty Inc.
- B. The seller has to pay full 4% commission if the sale does not close due to seller's default.
- C. The seller must pay full 4% commission if the sale does not close due to buyer's default.
- D. The seller does not have to pay taxes on commission as the offer usually states "*Included In*".

18. Cram Realty Inc. lists a property at 35 Cram Square Avenue using the standard *Listing Agreement*. Explain how the listing brokerage Cram Realty Inc. gets the authority to co-operate with and pay commission to a co-operating brokerage when the property is sold?

- A. The *Real Estate and Business Brokers Act 2002* directs all brokerages to co-operate on listings in order to promote the interests of the seller.
- B. The *Agency Law* requires that a listing brokerage must co-operates with all registered brokerages in Ontario.
- C. The *Competition Act* stipulates that all brokerages must co-operate in order to promote competition in the market place.
- D. The pre-printed wording of the Listing Agreement provides Cram Realty Inc. the authority to co-operate with other brokerages in order to sell the property.

19. Salesperson Jenny of Cram Realty Inc. was introduced to Maureen, who had listed her property with Power Realty Inc. She tells Jenny that she would like to terminate the listing with Power Realty Inc. and list with Jenny's brokerage. Jenny advises Maureen that she cannot get involved in this situation. Maureen should speak to her salesperson at Power Realty Inc. about any concerns that she has. Have Jenny's actions violated her obligations under the *Real Estate and Business Broker's Act 2002*?

- A. No, Jenny is entitled to discuss Maureen's concerns and provide fair and honest advice to a potential customer with respect to the services being provided.
- B. Yes, Jenny should not be having any conversation with Maureen at the party as this would be considered interfering with another registrant's client.
- C. No, Jenny has acted correctly by advising Maureen to talk to his brokerage about the services they are providing him.
- D. Yes, Jenny should not be providing any advice to a person until they have signed a listing agreement.

20. Newly registered salesperson Benjamin is confused about deposits related to a real estate transaction. He had learned during studies that REBBA 2002 requires real estate brokerages to place the deposit funds in *Real Estate Trust Account* within 5 business days. But the standard *Agreement of Purchase and Sale* requires the buyer to give the deposit within 24 hours.

Is there a contradiction in these two different time frames?

- A. No, the deposit must be placed in the brokerage's trust account within 5 business days of the buyer making the offer and this applies to all transactions.
- B. No, the 5 business days is the time-period the deposit holder has to place the funds after receipt and the 24 hours is the time-period for the buyer to give the deposit.
- C. Yes, the buyer or the co-operating brokerage must forward the deposit funds to the listing brokerage within 5 business days.
- D. Yes, the buyer must be in compliance with *REBBA 2002* with respect to providing the deposit cheque within 5 business days and need not worry about the 24-hour time-period in the agreement.

21. Two days prior to closing, buyer Jamieson learned that there was an easement on the property in favour of a utility company. This was never disclosed by the sellers and Jamieson is now upset. He is planning to sue the seller for this non-disclosure. According to the pre-printed wording of the *Agreement of Purchase and Sale*, does Jamieson have a legitimate claim against the seller?

- A. No. Jamieson accepted the easement by signing the Agreement of Purchase and Sale which clarifies that he is accepting the property subject to minor utility easement.
- B. Yes. Jamieson can sue the seller, as the seller would have definitely known about the easement.
- C. Yes. All easements must be disclosed to the buyer by the seller's lawyer before any contract becomes legally binding.
- D. It would depend on whether Jamieson can prove that the seller was aware of the easement.

22. A seller accepts an offer, which is conditional upon buyers being able to arrange satisfactory mortgage financing. The Buyer has 5 days to fulfill the condition. A few hours after the acceptance of first offer, the sellers receive another offer which seems better than the first one. In this situation:

- A. The seller can accept the second offer if the first offer contains an *Escape Clause*.
- B. The seller cannot accept the second offer until the first offer is terminated.
- C. The seller can accept the first offer only if its offer price is more than the first one.
- D. The first buyer will automatically have 48 hours to obtain their finances, remove the condition and take the property.

23. As per the *Planning Act* clause of the *Agreement of Purchase and Sale*, if a consent to sever is required, it must be done prior to the date of completion of the transaction. Which of the following is correct in this regard?

- A. It protects the seller if the current use of the property is unlawful.
- B. The clause makes it mandatory for the buyer to pay the cost to obtain necessary consent to sever.
- C. The clause states that the transaction will close whether the severance is approved or not.
- D. It protects the buyer as severance approval is required before the completion date under the *Planning Act* to lawfully transfer an interest in land to the buyer.

24. Brandon has just bought 178 Highland Trail for \$780,000 with a closing date set in two months' time. The seller originally bought the property four years ago for \$530,000. Brandon understands that the *Income Tax Act* imposes certain obligations on him with respect to the payment of any *Capital Gains Tax* on this sale of the property by the seller. What is one of the ways Brandon can ensure that he is protected with respect to the obligations and requirements under the *Income Tax Act*?

- A. Brandon could provide the seller with a statutory declaration that he is not a non-resident of Canada.
- B. Brandon credits the seller with a percentage of the purchase price to ensure that the seller pays the tax owed on the property after closing.
- C. Brandon obtains a statutory declaration from the seller that the seller is not a non-resident of Canada.



- D. Brandon could ask the seller to represent and warrant that the seller will pay the taxes owing on the property out of the proceeds of the sale.

25. Salesperson Jenny would like to set up a small home office for her real estate work instead of going to the brokerage office every day. Based on typical zoning requirements, which of the following is *NOT* correct about her plans for a home-based office?

- A. Jenny can have any number of clients visit the premises for discussing their real estate requirements.
- B. Jenny would not be permitted to place any advertising signs outside the home or external storage of any equipment.
- C. Jenny may not be able to use more than 25% of the gross floor area of the home for the office.
- D. Employees of the home-based business may only be residents and the home-office use cannot be the primary use of the building.

26. Souzan wants to sell an owned modular home located in a land lease community. She has found a willing buyer who is ready to offer her \$120,000. The sale would include all fixtures, but chattels would be excluded. The closing would be in two months' time. Souzan's son reminds her that the lease of the land provides the landlord with the *Right of First Refusal*. How would this clause affect Souzan's plans to sell the modular home?

- 1. The landlord has the right to stop any sale to any specific individual but will typically only exercise this right if the buyer has poor credit or does not fit the demography of the community based on age, children, pets, etc.
  - 2. The landlord has the right to buy the unit subject to the exact same terms and conditions as the potential buyer that the seller has found.
  - 3. The land lease has a stated price at which that landlord can elect to buy the modular home in the event that the seller decides to sell, even if the stated price is below the current market value.
  - 4. If the landlord elects not to buy on the same terms that are agreed with the buyer, then the sale can proceed with the prospective buyer.
  - 5. The landlord has the right to stop the sale to any specific individual, but the landlord will only use that right in extreme circumstances as he can only block the first potential buyer.
- A. Only statements 1, 2 and 5 are correct.
  - B. Only statements 1 and 4 are correct.
  - C. Only statements 2 and 3 are correct.
  - D. Only statements 3, 4 and 5 are correct.

27. Molly Gomes is the owner of a rental property. She prepares the lease documents herself. Which of the following clauses in her lease can be successfully challenged?

- 1. A clause prohibiting the tenants from keeping pets.
  - 2. Requiring the tenants to pay first and last month's rent in addition to a security deposit.
  - 3. Requiring the tenants to provide postdated cheques and/or agree to have payments deducted directly from their account by way of automatic debit.
  - 4. An increase in rent six months after the date of possession and every six months thereafter, according to the rate established by the Rent Guideline.
  - 5. Issuing receipts to the tenants for the monthly rent they pay.
- A. Statements 1 and 3 are correct.
  - B. Statements 2 and 4 are correct.
  - C. Statements 2, 3 and 4 are correct.
  - D. Statements 1, 2, 3 and 4 are correct.

28. Heather lives as a tenant in a rental residential condominium building. She has just received a temporary transfer to another province. When she comes back after seven months, she would like to take



back the same apartment. Heather has signed a two-year lease and only four months have passed so far. Under these circumstances, which of the following would be a good advice to Heather with respect to the fixed-term lease?

- A. Heather has no options until the end of the first year of the lease since a landlord can, under the *Residential Tenancies Act*, arbitrarily refuse to allow Heather to assign and/or sublet the lease.
- B. Heather should give 10 days' notice to the landlord to terminate the lease. Heather should include a provision in the termination notice that she be given the *Tenant's First Right of Refusal* when she returns to the town.
- C. Heather should try to sublet the apartment as the subtenant will be liable to Heather for any breaches of the subtenant's obligations.
- D. Heather should try to assign the lease as this will have the effect of removing any liability she might have for the lease period prior to the assignment.

29. A buyer is considering purchase of a rural home which has a private water well. The buyer is concerned about contamination of water. As a caution, the buyer owner should take some preventive measures and ensure that:

- A. The connections to water lines are water tight and properly sealed.
- B. The well cap allows for water to flow freely down through it.
- C. The entire well casing is below ground level.
- D. These must not be any screening material on the well vent pipes.

30. Vanessa has just purchased a cottage with a drilled well. Her sales representative made a number of statements during purchase with respect to the water quality. Which of the following statements made by Janet's sales representative is correct?

- A. The reason chlorine is used for well disinfection is because chlorine is clear, combustible, insoluble non-poisonous gas.
- B. Pouring chlorine into a well is a long-term solution to any contamination problems such as ground water seepage since chlorine permanently removes bacteria from a well.
- C. Chlorine is commonly used to disinfect well water, the well cap, and the plumbing line fixtures drawing water into the cottage.
- D. The reason chlorine is used in well disinfection is because water can be used for drinking within an hour of the disinfection without flushing the plumbing lines and fixtures.

31. Buyer Josh is considering the purchase of a recreational property. He is very active and enjoys playing a wide variety of sports, riding all-terrain vehicles, etc. The property he has finalized for purchase is over 30 acres in size. The previous owners had all the trees and bushes removed, which suits Josh's intended use of the property. Josh also has been informed that the seller had the property registered as *Managed Forest Property* and, as a result, enjoys a property tax reduction. What would be the most important clause that Josh would include in the *Agreement of Purchase and Sale*?

- A. That the rights under the seller's *Managed Forest Plan* are transferrable to him.
- B. A clause protecting Josh in the event of a re-assessment because the property was ineligible under the program during the period that the seller owned it.
- C. That the property automatically remains under the program after closing.
- D. That the seller provides and representation and warranty that his plan would be assigned to the buyer upon closing.

32. Janett purchased a parcel of residential development land two years ago. She has now hired Cram Developers Inc. to build her dream home. The cost of construction is estimated to be \$350,000 and Janett will be paying five equal payments of \$70,000 to the builder, Cram Developers Inc. What is the maximum amount of basic holdbacks that Janett could retain under the provisions of the *Construction Liens Act*?

- A. \$105,000
- B. \$70,000

- C. \$35,000
- D. \$17,500

33. The Hadley family owns a vacant lot located at 38 Fountain Place. They have hired a single builder to construct a new 3,200 square feet home for them. The builder was registered with the *Tarion Corporation* to provide warranty on the home. Construction of the home was completed on April 15<sup>th</sup> and the Hadleys moved in on May 18<sup>th</sup>. Eighteen months later, water leaked through the foundation wall and the home suffered a significant amount of water damage in the finished basement. The carpets, drywall and furniture in the basement were badly damaged and need replacement. Will Hadleys be able to make any claim for this problem under the *Tarion Warranty*?

- A. The owners would only be covered if the problem had occurred in the first year, but the protection would not extend to carpet, drywall and furniture.
- B. Hadleys would have to make a claim to their home insurance company to cover damage to the carpet and the furniture although the two-year warranty would cover the cost of repairs to the foundation wall.
- C. This home would not be covered under the Tarion Warranty because Hadleys owned the land and had their own builder construct the home.
- D. The home would be covered under the seven-year warranty for repairs to the foundation wall to stop the water leakage as well as the cost of replacing the carpet, drywall and furniture.

34. Last year, Maria Parreira purchased a condominium on plan for \$330,000. She has already given the developer \$30,000 in deposits. The condominium will be registered in two weeks on May 8<sup>th</sup> with a closing date for May 14<sup>th</sup>. Prices for condominium units have gone in just one year and Maria's unit has a market value of \$420,000. Maria would like to take advantage of the profit without having to close the transaction with the developer. The developer allows for assignments of the agreement before completion date.

A buyer represented by salesperson Jenny of Cram Realty Inc. approaches Maria Parreira to purchase the said unit and close the transaction with the developer on the scheduled date. Jenny drafts an *Assignment of Agreement of Purchase and Sale* for the buyer and presents it to seller Maria.

If the buyer is prepared to pay the current market value for the unit, what purchase price should Jenny enter on the *Assignment of Agreement of Purchase and Sale*?

- A. \$420,000
- B. \$330,000
- C. \$90,000
- D. \$60,000

35. Benjamin have passed all the pre-registration courses necessary to qualify for registration under the *Real Estate and Business Brokers Act 2002*. He has already interviewed five brokerages and is close to deciding which brokerage to work for and whether to operate as an *Independent Contractor* or as an *Employee*.

Which of the following statements is correct with respect to obtaining his salesperson registration?

- A. Benjamin must obtain proof of adequate automobile insurance coverage and RECO *Consumer Deposit Protection Insurance* before he can apply for registration.
- B. While Independent Contractor status is probably more expensive for him in the beginning, he will benefit from the increased guidance and consulting as compared to choosing Employee status.
- C. To save time, he should send in his application to registration immediately and notify RECO after he is registered as to which brokerage he has decided to work for.
- D. RECO may obtain credit information on Benjamin and may refer to a criminal search before approving his salesperson registration application.

### Case Study – 2 Parts

Salesperson Ben works with Cram Realty Inc. He is currently working with a buyer client named Jonathan who is looking for a property in Cram City. Ben has made appointments to show two properties to Jonathan. The following two questions are related to these two properties.

36. The first property is 1,600 square feet, three-bedroom home with a den on the main floor. It is located at 37 Square Street, a preferred subdivision in the West end of Cram City. Jonathan likes the home in first showing itself and makes the following comments:

*"Wow! This is a great house. The den on the main floor will make a perfect office for my business, which I want to run from home. About 750 square feet of space for the office would not be a problem in a house of this size. The large driveway is good enough as parking space for my regular clients and customers. The garage is large enough to accommodate my business supplies and inventory."*

From the options given below, select the correct statements that relate to Jonathan's plan for the home-based business:

1. The buyer needs to check and verify from the zoning and deed restrictions to determine any restrictions for home-based business.
  2. If the immediate neighbours do not complain to the municipality, outside storage of the inventory will not be a problem.
  3. Jonathan may be limited to use only 25% of the total square footage of the home for the business and his plans to use 600 square feet may not be permitted.
  4. Although Jonathan's clients would be permitted to come to the house, but the zoning by-laws may restrict the maximum number of visitors at a time.
  5. Jonathan would have to arrange extra liability insurance coverage for clients, inventory and equipment.
- A. Only statement 2 is correct.  
B. Only statements 1 and 3 are correct.  
C. Only statements 2 and 5 are correct.  
D. Only statements 1, 3, 4 and 5 are correct.

37. Salesperson Ben shows another house to buyer Jonathan, which is located at 48 Square Avenue. Ben explains that this house was sold two weeks ago with the closing date set for three months. The buyer of this house is selling his interest in the property by way of an assignment of the agreement. Jonathan is not familiar with the concept of assignment and asks Ben to explain how it works. Which of the following statements made by Ben are correct?

- A. If there are no liability issues such as Seller Take Back mortgage, agreements can be assigned. This is because the seller agreed to the terms of their mortgage based on the strength of the original buyer and the new may be a higher risk.
- B. Every *Agreement of Purchase and Sale* is assignable by the buyer and, when a buyer assigns an agreement to another buyer, the first buyer has no further liability under the original agreement.
- C. Assigning an *Agreement of Purchase and Sale* does not attract *Capital Gains Tax* for the assignor as the agreement between the seller and the original buyer is never completed.
- D. If the *Agreement of Purchase and Sale* includes a clause to prevent assignment, then such a clause is legally void.

### Case Study – 2 Parts

The following case study is based on your knowledge of rural and cottage properties. There may be several issues related to such properties as compared to properties in urban areas. Based on this information, answer the following two questions.

38. Salesperson Jenny of Cram Realty Inc. is working with a buyer named Antoine who is considering purchase of a cottage. The cottage must have an approved boathouse on what is considered public land. The buyer cannot believe that boathouses on public land are permitted in Ontario and tells Jenny that 'it's like getting free land'. How would Jenny respond to Antoine's comment?

- A. While the owner does not have to pay to use the land that the boathouse is situated upon, he will pay indirectly as her property taxes are increased.
- B. The *Ministry of Natural Resources*, under its boathouse leasing program, may demand rent for a boathouse which is situated on public lands.
- C. While the buyer is technically right that he need not pay for the use of land that the boathouse is situated on, the approval could be withdrawn at any time and he would also be responsible for maintaining up to 50 feet on the either side of the dwelling.
- D. The buyer is absolutely correct because he does not have to pay any agency for using the subject public land which is right in front of his property.

39. Salesperson Ben of Cram Realty Inc. is working with a different buyer Robert, who is considering purchase of a cottage about 100 kilometres north of the town. The buyer is glad to notice that his closest neighbour will be more than five kilometres away. The current owner used the property only sparingly and had no use of a telephone line. He informs buyer Robert that the previous owner did have a telephone service on the property. After getting this information from the current owner, salesperson Ben makes the following statements to his buyer Robert. Which of these statements is NOT correct?

- A. Services may not be available if the installation of primary and secondary lines is not feasible.
- B. Carter should contact the utility company to inquire about the services.
- C. Sometimes the cottage owners themselves have to pay the cost of installation for telephone poles and associated cables.
- D. If the utility company has provided this service in the past, the buyer is assured of telephone service to the cottage again.

### **Case Study – 3 parts**

Sherry is a first-time buyer interested in purchasing a residential condominium. Salesperson Jenny works with Cram Realty Inc., has been talking to Sherry about ownership within a condominium, including issues related to common elements and the board of directors. The following questions is based on your knowledge of Condominium Act, the governance and day-to-day operation of a condominium buildings. Read each question carefully and select an appropriate answer.

40. During showing of a unit in a condominium building, salesperson Jenny makes the following statements in response to Sherry's questions:

- 1. The board of directors may make substantial changes to the common elements of a condominium provided that they obtain the approval of certain percentage of the unit owners of the condominium.
- 2. The owner of a unit can automatically make changes to an exclusive use common element of the condominium without the permission of the board of directors or other unit owners.
- 3. The *Condominium Act* prohibits condominium corporations from insuring or indemnifying directors for their actions in carrying out board duties on behalf of the condominium.
- 4. The members of the board of directors of a condominium are not required to be experts in running a condominium and would not be liable for a breach of duty that occurs as a result of relying on the advice of an expert or engineer.
- 5. When the board of directors receives the necessary approval for a new common element, they can use the required money from the Reserve Fund without any restrictions.

Which one of the above statements made by Jenny is/are correct with respect to a condominium's common elements and/or board of directors?

- A. Only statements 1, 3 and 4 are correct.

- B. Only statements 1, 4 and 5 are correct.
- C. Only statements 1 and 4 are correct.
- D. Only statements 3 and 5 are correct.

41. Jenny submits an offer for Sherry on one of the units in the condominium building. The offer requires the seller of the unit to provide a *Status Certificate* to the buyer within 2 days of acceptance of the offer. The offer is accepted by the sellers and they request the *Status Certificate* and attachments from the management. The sellers also pay the required \$100 for the documents. If the condominium corporation does not provide the *Status Certificate* within 10 days of request, then:

- A. The corporation gets 5 more days as grace period.
- B. The corporation may not have finalized the budget for the current year.
- C. It is deemed that the corporation has not approved and registered its by-laws and rules.
- D. It is deemed provided and that no default in common expenses has occurred since the current year's budget and no levies have been assessed against the unit.

42. Buyer Sherry is concerned that what happens if the condominium building somehow suffers substantial damage. Salesperson Jenny makes the following statements. Identify the correct statement out of the following options.

- A. In case the cost of repairs exceeds 25% of the replacement cost of all buildings and structures on the property, the board of directors is obligated to have all damages repaired as soon as possible, at their discretion.
- B. The unit owners are notified about the damage and they can request a meeting within 30 days. If at least 80% owners give consent, a notice of termination is to be registered within 30 days. If there is no consent, the board of directors has an obligation to complete the repair work.
- C. The board of directors can put the property up for sale and disburse all funds received to unit owners.
- D. In case the cost of repairs exceeds 25% of the replacement cost of all buildings and structures on the property, the board of directors are obligated to terminate the condominium, sell it and disburse the funds to the unit owners.

### **Case Study – 3 Parts**

This case study is based on your knowledge of *REBBA 2002 Code of Ethics* dealing with clients and customers. Broker of Record Binny Fernandes of Cram Realty Inc. is reviewing salespersons activities during the past three-months period. Salespersons are having a discussion with respect to different situations they face in their day-to-day activities. Answer the following three questions.

43. First salesperson Kim was working with a buyer who was seriously contemplating to buy a home that he was shown recently. This buyer was concerned that he would not get a mortgage sufficient enough to buy this home. Kim told the buyer that he need not worry about this as she has many friends in this business and she would get him the necessary mortgage loan. She then advised the buyer to go ahead with buying the property. What violation of *REBBA 2002 Code of Ethics* occurred in this situation?

- A. Inaccurate representation.
- B. Inducement.
- C. Conscientious and competent service.
- D. False advertising.

44. The second salesperson Benjamin met one of his old friends while buying shoes in a shopping centre. The friend told Ben that he had just listed his property with a different brokerage. Ben told his friend that he is also in real estate business and would like to list his property. Ben further advised his friend on how he could terminate his listing with the other brokerage and then list with him.

What violation of *REBBA 2002 Code of Ethics* occurred in this situation?



- A. Dealing with Other Registrants.
- B. Error, Misrepresentation and Fraud.
- C. Services from Others.
- D. Providing Opinions/Advice.

45. A third salesperson Jim was working with a buyer client named Fardeen last month. He had submitted an offer through Jim for a property located at 231 Cram Square. Fardeen had previously told Jim that he wanted to create a basement apartment in the property. Jim was unaware that the zoning in the area did not permit basement apartments. As a result, Jim was unable to advise Fardeen on this matter, but he still submitted the offer. Did Jim violate the *REBBA 2002 Code of Ethics* with respect to non-disclosure of material facts?

- A. No. Since Jim had not been dishonest as he did not know the zoning for the property, this is not a violation of *REBBA 2002 Code of Ethics*.
- B. No. This would only be violation of *REBBA 2002 Code of Ethics* if Jim had known that the zoning would not permit a basement apartment and he had withheld this information from Fardeen.
- C. No. This is not even a violation of *REBBA 2002 Code of Ethics* with respect to material facts because material facts only relate to physical defects in a building that cannot be seen by a visual inspection.
- D. Yes. Jim ought to have known whether the zoning allowed for a basement apartment and should have advised Farah accordingly. Hence, this is a clear violation of *REBBA 2002 Code of Ethics*.

### **Case Study – 5 Parts**

Binny Fernandes is the Broker of Record for Cram Realty Inc. It is 9am on January 14, 2018. He is reviewing an offer on 312 Side Road South 20 that has just been typed by Benjamin, a newly registered salesperson in his brokerage. The buyer is Maria Leonard, who is a client of Cram Realty Inc. The seller is Jerry Hansen who is a retired person and owns the attractive cottage. This cottage is listed with Power Realty Inc. Maria would like to investigate the water from the well and to ensure it will meet her household needs.

Maria has been informed that there was an underground fuel tank, but it had been removed two years ago in accordance with all statutory requirements. Also, the previous owners had insulated the home with Urea Formaldehyde Foam Insulation, but Jerry could not verify the quality or quantity of the insulation. Maria would like to receive assurance in the offer with respect to removal of the underground fuel storage tank and the seller is happy to provide it. Maria is not concerned about the UFFI, but the seller Jerry Hansen is very cautious and does not want to be left open to any accusation that he did not make the necessary disclosure to Maria. Accordingly, Benjamin inserted a clause in the offer for appropriate disclosure of the UFFI.

Maria would be assuming the seller's existing mortgage with Cram City Financials Inc. provided that she can obtain the necessary approval from the lender. The seller also has agreed to take back a second mortgage to assist the buyer with financing the purchase. The closing date has been set for March 20, 2018. The offer has been prepared on standard *Agreement of Purchase and Sale*. The first 5 pages of the offer have been completed correctly and no changes have been made to any of the pre-printed wording.

Schedule A of the offer is shown herewith. Answer the following five questions based on this information.

46. How would you evaluate the clause in the Schedule A related to the *Seller Take Back* mortgage?

- A. It is well written as it includes all the necessary information such as the amount, the term and the monthly payment.
- B. The wording of the clause is good; however, the *Mortgage Brokers, Lenders and Administrator's Act* requires a minimum term of five years for all seller take back mortgages.



- C. It is fairly well-written, except that it should be the Buyer who is agreeing to take back their mortgage and not the seller.
  - D. It is poorly written as it should have been written as conditional upon the buyer being approved to assume the second mortgage.
47. How would you evaluate the clause in the Schedule A related to the assumption of the first mortgage?
- A. It is well-written, the time for the condition reasonable, and information provided as to what happens if the condition is not satisfied. In addition, the Buyer is agreeing to proceed with her application immediately.
  - B. It is fairly well-written except that there is no waiver provision provided in the clause and this may create difficulties for the Buyer, should she not wish to proceed with the offer.
  - C. It is poorly written as it should be conditional on the mortgagee's approval and not on the buyer agreeing to assume the mortgage.
  - D. It is fairly well-written but the words '*Not More Than*' should be included before the amount of loan and the interest rate because there is a seller take back and the seller must be protected.
48. How would you evaluate the clause in the Schedule A related to the well, its equipment, quality of water and quantity of water?
- A. The condition for the water supply is well-drafted as it contains information on both the equipment serving the property and the bacteriological analysis of water.
  - B. The clause gives reference to the equipment and the bacteriological analysis of the water but has no provision to address the adequacy of the water supply.
  - C. This clause is poorly written as it is a true condition precedent and the waiver provision should not be included.
  - D. The condition should state that the buyer must receive a WETT inspection satisfactory to the Buyer in the Buyer's sole and absolute discretion.
49. Binny Fernandes calls salesperson Benjamin, who drafted the offer, to discuss the its contents. He is now having a discussion with him. Benjamin makes the following statements to explain the clause related to Urea Formaldehyde Foam Insulation:
- 1. I need to put an acknowledgement clause in Schedule A in which the Buyer acknowledges the presence of UFFI in the building.
  - 2. The acknowledgement clause needs to contain the following words in order to protect the buyer: *"This acknowledgement shall not survive but will merge on the completion of this transaction."*
  - 3. The presence of UFFI is considered a stigma but once it is removed by the Buyer, the stigma will disappear.
  - 4. UFFI was used as insulation products prior to 1980's and, it is a low-density foam made from plastic resins, a foaming agent and compressed air. It
  - 5. I must delete the entire pre-printed UFFI clause from the *Agreement of Purchase and Sale* as otherwise it will take precedence over the UFFI clause which I insert in Schedule A.

Evaluate each statement and select the ones that are either appropriate or correct statements.

- A. The 2nd and 3rd statements are the only ones that are appropriate or correct.
  - B. The 1st, 2nd, 3rd and 5th statements are the only ones that are appropriate or correct.
  - C. The 2nd, 3rd and 5th statements are the only ones that are appropriate or correct.
  - D. The 1st and 4th statements are the only ones that are appropriate or correct.
50. Binny Fernandes is concerned and continues to read the offer in details. Benjamin further makes the following statements:
- 1. Maria was verbally informed about the removal of the tank, so I do not need to include a clause about it in the offer.

2. I missed a warranty clause from the seller stating that the underground storage tank has been removed in accordance with all regulations.
3. The contractor would have assessed the soil surrounding the underground storage tank for contamination and cleaned and removed any contamination.
4. The contractor for removal of the fuel storage tank must have been registered with TSSA.

Evaluate each statement and select the ones that are either appropriate or correct.

- A. The 1st and 2nd statements are the only ones that are appropriate or correct.
- B. The 1st, 3rd and 4th statements are the only ones that are appropriate or correct.
- C. The 2nd, 3rd and 4th statements are the only ones that are appropriate or correct.
- D. All the given statements are appropriate or correct.

► Proceed to Next Page for Schedule A, Related to the Above Case Study Questions 46 to 50.

## Schedule A Agreement of Purchase and Sale

**Use with Bonus Exam  
Questions 46 to 50**

This Schedule is Attached to and forms part of the Agreement of Purchase and Sale between:

**Buyer:** Maria Leonard

**Seller:** Jerry Hansen

For the Purchase and Sale of: 312 Side Road 20 South, Region of Orange, Ontario.

Dated the 14<sup>th</sup> Day of January, 2018

The Buyer Agrees to Pay the Balance As Follows:

The Buyer agrees to pay a further sum of \$95,000 (Ninety Five Thousand Dollars), subject to adjustments, to the seller, on completion of this transaction, with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the large value transfer system.

This offer is conditional upon the buyer agreeing to assume the existing first Charge/Mortgage held by Cram City Financials Inc. for approximately \$160,000 (One Hundred and Sixty Thousand Dollars); bearing interest at a rate of 4% per annum, calculated semi-annually not in advance, repayable in blended monthly payment of \$1,845.10 (Dollars One Thousand Eight Hundred Forty Five and Ten Cents), including both principal and interest and due on 17<sup>th</sup> day of December 2021. Unless the Buyer gives notice in writing delivered to the seller personally or in accordance with any other provision in the Agreement of Purchase and Sale or any Schedule thereto, not later than 6pm on the 21<sup>st</sup> day of January 2018, that this condition is fulfilled, this offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction.

This offer is conditional upon the Buyer determining, at the Buyer's own expense that:

1. The pump and all related equipment serving the property are in proper operating condition, and
2. The Buyer can obtain a bacteriological analysis of drinking water from the authority having jurisdiction indicating that there is no significant evidence of bacterial contamination.

Unless the Buyer gives notice in writing delivered to the seller personally or in accordance with any other provision in the Agreement of Purchase and Sale or any Schedule thereto, not later than 6pm on the 21<sup>st</sup> day of January 2018, that this condition is fulfilled, this offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the seller, as above said, within the time period stated herein. The seller agrees to co-operate and allow access to the subject property to the Buyer or the Buyer's agent for the purpose of satisfying these conditions.

The seller agrees to take back a second Charge/Mortgage in the amount of \$75,000.00 (Seventy Five Thousand Dollars), bearing interest at a rate of 5% per annum, calculated semi-annually not in advance, repayable in blended monthly payments of \$492.84 (Four Hundred Ninety Two Dollars and Eight Four Cents), including both principal and interest and to run for a term of two years from the date of completion of this transaction.

This Form must be initialled by all parties to the Agreement of Purchase and Sale.

INITIALS OF THE BUYER(S)



INITIALS OF THE SELLER(S)



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**QUICK ANSWER KEY**

**BONUS QUESTIONS**

1. C	2. B	3. D	4. B	5. A
6. C	7. B	8. D	9. A	10. C
11. A	12. D	13. B	14. D	15. A
16. B	17. B	18. D	19. C	20. B
21. A	22. A	23. D	24. C	25. A
26. B	27. D	28. C	29. A	30. C
31. B	32. C	33. B	34. A	35. D
36. D	37. A	38. B	39. D	40. C
41. D	42. B	43. B	44. A	45. D
46. A	47. C	48. B	49. D	50. C

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## DETAILED ANSWERS

### SAMPLE EXAM 1

1. **C.** *Consideration* is one of the essential elements of a contract but when the contract is signed under a seal, it is valid and enforceable without consideration.
2. **B.** When the same brokerage represents more than one client in the same trade or transaction, the brokerage gets into a multiple representation situation. Representing a buyer and a seller is not the only case where a brokerage is in multiple representation situation. It may also happen when the same brokerage represents two buyers for the same trade although the seller is represented by a different brokerage.
3. **D.** The registrant must try to obtain identification information of the clients as soon as practically possible. A buyer may not provide identification when signing the *Buyer Representation Agreement*. But the latest point of time for identifying a buyer client is when the buyer submits an offer or gives the deposit.
4. **A.** If a buyer has not decided about a lawyer at the time of signing the initial offer or *Confirmation of Acceptance*, the salesperson may leave that space blank in the *Agreement of Purchase and Sale*. Leaving this space blank or writing 'To be Decided' in the space is acceptable.
5. **C.** Title insurance covers the property owner for certain problems related to the property title but does not cover personal liabilities. A lien under *Personal Property Security Act* is personal liability of the property owner and does not affect the title.
6. **B.** The buyer of a unit in equity co-operative, in fact, does not get the ownership of the unit but buys shares of the co-operative corporation. The title of the unit remains with the co-operative corporation. The buyer gets only an occupancy permit (lease) for the unit and a share certificate.
7. **A.** Care homes in Ontario are governed under the *Residential Tenancies Act*. They provide accommodation, nursing and other services to occupants such as meals, ambulance, emergency response, etc.
8. **D.** Whether the price of a rural residential lot is based on per lot basis or per front foot basis, this is not a concern for a buyer. Some valid concerns for the buyer of a rural residential lot may include items such as high water table in the area, availability of hydro or telephone services, irregularly shaped or size of the lot, unavailability of an up-to-date survey, etc.
9. **C.** The *Normal Farm Practices Protection Board* is a judicial tribunal which is authorized to hear appeals and decide on nuisance complaints against farmers. It also hears challenges by municipality for violation of certain restrictive by-laws. The board decides whether the practice by the farmer is a *Normal Farm Practice* or not. If yes, the farmer is protected from nuisance complaint or a restrictive municipal by-law challenge.
10. **B.** The maximum coverage for deposit protection for a condominium unit provided by Tarion under *Ontario New Home Warranties Plan Act* is \$20,000. This amount is \$40,000 for freehold residential properties.
11. **D.** *Stigma* refers to good or bad feelings about a property in the minds of buyers or sellers. In real estate, it typically refers to some bad perceptions attached to a property such as a haunted house or a grow operation in the property. Stigma has a negative effect on its value and results in longer time periods to sell the property.

**12. D.** In general, all contracts are assignable with an exception that contracts for personal service cannot be assigned to a third party. The contract between a salesperson and the brokerage is for personal service and is not assignable.

**13. A.** Until the time the application for registration is not approved by the *Registrar of RECO* and the salesperson has not paid the *RECO Insurance* premiums, the applicant cannot involve in any activity that may be termed as trading in real estate. Out of the given options, the only activity the applicant can do until approval is to start collecting information and make a database of friends, relatives and accomplices.

**14. B.** Under the *Agency Law*, the client has an obligation to indemnify the agent when the agent is performing its duties in a lawful manner. This means that if the client suffers a loss during the agreement period but the loss is not due to any negligence of duties by the agent, the client will not hold the agent liable for the loss.

**15. C.** *REBBA 2002 Code of Ethics* requires that the brokerage must provide certain information to a buyer or seller prospect before entering into a representation relationship. This includes information regarding service alternatives available with the brokerage, client and customer relationships, explanation of multiple representation and *REBBA 2002 Code of Ethics*, etc. This information must be provided at the first point of contact or at the earliest practical opportunity but before an offer of representation is presented. The prospect must be given an option to choose the type of service they would like from the brokerage.

**16. A.** All new septic tanks must be built according the specifications set out in the *Ontario Building Code*. The Code includes various specifications including the size and location of the septic tank.

**17. D.** A *Power of Sale* action is typically preferred by lenders because it is an expedient process by which the lender can recover monies in the event of payment default by a borrower. This process is inexpensive as compared to other options; the lender does not have to approach a court for taking possession or selling the property and the process provides justice to both the lender and the borrower.

**18. B.** An application for registration as salesperson includes completed application with all required disclosures, a copy of transcript for the third course and a recent police clearance certificate as an evidence of good past conduct. The applicant does not have to pay the *RECO Insurance* at the time of application. Also, no credit check report is required to prove good financial responsibility.

**19. C.** The scenario provided points to an innocent misrepresentation. Both the seller and the buyer honestly relied upon the information provided by a third party. The buyer should have acted diligently and verified the information regarding the nearest secondary school.

**20. D.** *REBBA 2002 Code of Ethics* makes it clear that when a registrant does not have sufficient knowledge, skills or competence in a matter, he should not provide expert advice on that matter. The registrant should encourage the client to seek advice from other better qualified persons in those matters.

**21. A.** When a registrant has an existing or contemplated interest in real estate, he must make a written disclosure to the other party at the earliest practical opportunity but before an offer is presented. This disclosure includes information such as registration status, full disclosure of the facts regarding the trade that may affect value and the particulars of any agreement for subsequent sale of the property by the registrant. The registrant is not required to disclose the method of financing or the number of years he has been registered.

**22. D.** The buyer must have been given an opportunity to investigate the matter thoroughly or a condition should have been inserted to give more time to the buyer to investigate the electrical deficiencies. The duty to disclose material facts of the property applies to both clients and customers. It does not matter



whether only one brokerage is involved in this transaction or different brokerages are working for the seller and the buyer, material facts must be disclosed at the earliest practical opportunity.

**23. A.** In the given scenario, a *postponement* clause is required with the second seller take back mortgage to protect the interests of the buyer. Since the first mortgage expires before the second mortgage, the buyer would need to ensure that the second mortgage does not jump to the first priority. In the absence of a postponement clause, the second mortgage will jump to first priority and it will become difficult for the buyer to renew or refinance the first mortgage with its first priority.

**24. C.** The salesperson has an obligation to disclose any financial benefit she receives from a third party that arises as a consequence of the transaction. This written disclosure must be provided to the clients at the earliest practical opportunity.

**25. B.** Only the buyers would be liable to pay commission to because it was their default that the transaction did not close. This is based on the rule of *Privity*, which states that only parties to a contract can enforce the contract terms on each other. The buyer had a contract (*Buyer Representation Agreement*) with Cram Realty Inc. The sellers are not responsible to any of the brokerages because non-completion of the transaction was not due to their default.

**26. D.** *REBBA 2002 Code of Ethics* requires that the registrant must provide copies of representation agreements immediately upon signing.

**27. A.** The *representation and warranty* clause does not state anywhere that the buyer is permitted to have another inspection of the property before completion. The representation and warranty clause has two parts – (i) the actual representation and warranty, and (ii) that the representation and warranty will *survive* up to the time of closing. It also states that the representation and warranty will *not merge* on completion but will apply only to the state of the property existing at the time of closing. In other words, the representation and warranty does not exist after the time of closing.

**28. D.** In case an up-to-date survey for the property is not available, the buyer may accept an existing survey, order a survey at his own cost or buy the property without a survey. Depending on the circumstances, the seller may agree to provide an up-to-date survey but a provision must be made in the agreement. If the Agreement of Purchase and Sale does not have any provision that the seller must provide an up-to-date survey, the seller cannot be forced to bring survey before completion.

**29. B.** *REBBA 2002 Code of Ethics* requires that all offers received by a brokerage must be presented to the clients at the earliest practical opportunity. Since an offer becomes null and void after the irrevocable time, the salesperson must not delay presentation of the offer. As a result of delay by the salesperson, the sellers may not get sufficient time to review the offer and may even lose the buyer. In the given situation, the salesperson must have informed the sellers and made arrangements for offer presentation.

**30. B.** The *holdover* provision in *Listing Agreement* states that when a property is *shown* during agreement period and purchased by the *same* buyer during *holdover* period, commission is payable. The exception is when the property is listed by another brokerage during holdover period at a lower commission, only the difference in commission is payable. In the given scenario, the property is originally listed with Cram Realty Inc. at 5% total commission but is listed and sold to the *same* buyer by a *different* brokerage at 3.5% total commission. The seller is liable to pay the difference in commission which is 1.5%.

**31. D.** When the tenant has caused damage to the property, the landlord has the right to give only 10 days' termination notice to the tenant. In case the landlord's parent or child has to occupy the premises, the notice period is 60 days before the expiry of the lease term. In a month-to-month *periodic* tenancy, the notice period is 60 days before the expiry of the period.

**32. C.** Different builders have different policies for paying commission to registered salespersons and brokers. All builders do not offer a fixed or standard rate of commission. Some builders may pay a higher rate of commission while others may pay a lower commission or may not pay any commission at all. All other statements given by the salesperson are correct.

**33. A.** According to Section 50 of the *Planning Act*, transfer of a parcel of land is invalid unless *Consent to Sever* is obtained. This application is typically made to the local *Committee of Adjustment*. The seller may offer the parcel of land for sale, obtain an offer and then apply for severance. The sale will not close if severance is not approved before the completion date.

**34. D.** Only statements 1, 2 and 5 are correct. A disturbance from farming operations may include odour, dust, flies, light, smoke, noise and vibration due to movement of heavy farming machinery. When the farmer's practice is a *Normal Farm Practice*, he is protected from nuisance complaints and restrictive municipal by-laws. The *Normal Farm Practices Protection Board* hears appeals in this regard and may order the farmer to modify his practice so that it is consistent with *Normal Farm Practice*.

**35. C.** It is incorrect to say that stigma is not a material fact and need not be disclosed when listing or selling the property. Although stigma is based on perceptions and there may not be any real risk to buyer due to stigma, it still must be disclosed.

**36. B.** Only statements 2 and 4 are correct. It is incorrect to say that a suspicious transaction is occurring only because the buyer is insisting on buying a property unconditionally or buying in cash. The buyer may not need a mortgage loan for the purchase. Similarly, if a buyer needs a finished basement with at least one bedroom, this is not an indication of a suspicious transaction.

**37. B.** An open house is one of the several prospecting techniques used to promote the listed property. The salesperson permits potential buyers to view the property without the need to make an appointment and also gets a chance to meet new prospects. In addition to this, the seller is convinced that the salesperson is making a sincere effort to sell the property.

### **Case Study – 2 Parts**

**38. B.** Only statements 3 and 5 are correct. Getting at least two appraisals of the property in order to establish its market value is a standard practice for the lender when selling the property under *Power of Sale*. This is to ensure that the property is not sold below market value and provide fairness to the mortgagor. The lender must also expose the property in open market and gives sufficient time to sell. The lender must not try to rush the sale in order to quickly recover the money owed.

**39. B.** The buyer of a property being sold under *Power of Sale* is not responsible for the debt of the defaulting mortgagor. He is not required to pay the difference in the purchase price and the money owed by the previous mortgagor. It is up to the lender to make an assessment as to how much should be the sale price. The property is usually sold on 'as is, where is' basis and there is no guarantee of any chattels, fixtures or the condition of the structure itself. The lender may have reserved the right to terminate the buyer's offer until the date of conditions or even up to some later date in case the previous mortgagor brings the mortgage in good standing.

### **Case Study – 3 Parts**

**40. D.** A grow operation in a property attaches a stigma to the property. This is a material fact and must be disclosed to potential buyers in the listing as well as in the Agreement of Purchase and Sale. It does not matter whether the current owners used the property as grow house or not, the information must be disclosed whenever the property is sold.

**41. A.** Grow operations in a property attach a stigma to the property and it is considered a material fact. The salesperson must have disclosed this fact in the listing. The duty of obedience to clients applies only for lawful instructions and an instruction to hide material facts such as a previous grow operation is an unlawful instruction.

**42. B.** When a grow house is listed for sale, the listing brokerage is required to maintain a list of brokerages which show the property to their buyer clients. When an *Agreement of Purchase and Sale* is drafted by the buyer brokerage, it must include required disclosure clauses so that the buyer understands and acknowledges that he has been informed about the grow operation.

### Case Study – 3 Parts

**43. D.** When a prospective tenant does not have a credit history in the country, the landlord may ask the tenant to bring a guarantor who can be held responsible in case of default by the tenant. Under the *Residential Tenancies Act*, the landlord cannot ask the tenant to provide post-dated cheques or automatic withdrawal of rent from tenant's chequing account. It is also unlawful to ask the tenant to pay six months' rent in advance as security deposit.

**44. B.** Although the *Residential Tenancies Act* permits tenants to keep pets, the landlord may still give a termination notice if the pet creates nuisance in the building, causes a serious allergy to any occupant of the building or is potentially dangerous.

**45. A.** After the expiry of the lease, a *fixed term* tenancy converts to *periodic* tenancy if the tenant stays in the property and keeps on paying the rent. When this periodic tenancy is on month-to-month basis, the landlord can terminate the tenancy anytime with 60 days' notice.

### Case Study – 5 Parts

**46. C.** When the words '*In Addition to*' are inserted in the HST clause, the HST becomes buyer's responsibility, if it is applicable. Inserting the words '*Included In*' means that the seller will be responsible if HST becomes applicable. The buyer has already given lawful instructions to the salesperson regarding HST and the salesperson has an obligation to obey these instructions. Inserting '*Included in*' protects the interests of the buyer client, in case HST is applicable.

**47. A.** Fax numbers or email addresses are left blank in case of multiple representation. This is clearly written in bold in the *Notices* clause.

**48. B.** The condition inserted in the Schedule A is not written properly. There is no provision in the clause that the assumption of mortgage loan is subject to approval by the lender and the agreement would become null and void if the lender does not approve the buyer as mortgagor.

**49. D.** The *Seller Take Back (STB)* mortgage clause should contain a postponement provision because the first mortgage becomes due before this second mortgage. When the first mortgage becomes due the STB mortgage will jump to the first priority and the borrower may find it difficult to renew or refinance. The postponement clause permits the borrower to renew/refinance the first mortgage and maintain its priority.

**50. A.** Balance Due on Completion = Purchase Price – Seller Take Back – Assumed Mortgage – Deposits  
= 370,000 – 50,000 – 240,000 – 15,000 = **\$65,000**

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## DETAILED ANSWERS

### SAMPLE EXAM 2

1. **B.** The fiduciary duty of *confidentiality* refers to safeguarding personal and motivational information of the clients. This duty does not apply to customers of the brokerage. The duty to customers is limited to providing information, fairness, honesty and no misrepresentation.
2. **A.** When a registrant has any direct or indirect interest in a transaction, whether *existing* (when selling) or *contemplated* (when buying), a written disclosure to this effect must be made to the other party. The disclosure must be made at the earliest practical opportunity but before an offer is presented.
3. **C.** Multiple representation occurs when a brokerage represents more than one client in a real estate transaction. The brokerage must make a written disclosure of multiple representation to all clients involved and get their written consent in order to proceed with the transaction. Multiple representation is not prohibited provided that the disclosure is made at the earliest practical opportunity but before and offer is presented.
4. **B.** No ownership interest is transferred to a buyer in an equity co-operative building. The buyer buys shares of the corporation and gets an occupancy agreement for the unit.
5. **D.** When a representation agreement is signed, the party creates an agency relationship with the brokerage. The seller creates this relationship by signing the *Listing Agreement* and the buyer by signing a *Buyer Representation Agreement*.
6. **B.** The *duty of care* applies to both *clients* and *customers* of a brokerage. The brokerage must provide competent and conscientious service, use reasonable care, skills and judgment to provide services and, perform the agreed functions. There must not be any misrepresentation to the client or the customer.
7. **D.** The consumers for most real estate transactions are protected under REBBA 2002. The exception is time share agreement where the consumer is protected under the provisions of the *Consumer Protection Act*. The Act provides a cooling off period to buyers of timeshare interests wherein they can terminate the agreement within 10 days of delivery of signed copy of the agreement.
8. **A.** It is incorrect that the declarant has to maintain a *First Reserve Fund* of \$2,500 times the number of units in a condominium. Other statements regarding the *Reserve Fund* are correct.
9. **B.** Water wells which are located on shore lands are more prone to contamination because of potential of ground water entering the water well. Continuous bacteriological testing is required to ensure the quality of water.
10. **B.** The buyer of a countryside or rural cottage may have several concerns such as access to the property, insurance premiums, availability of hydro and telephone services, etc. Many rural communities do not have municipal fire protection and they rely on volunteers. If the municipality is providing fire protection this is, in fact, a good thing for the buyer.
11. **A.** If the buyer of a *Managed Forest* plans to continue receiving the tax incentives for forest land, he must prepare his own plan and get it approved within 90 days of closing date. Otherwise, the buyer may lose the incentive and may have to pay higher taxes on the property.
12. **B.** A buyer making a large deposit to make sure that the seller takes his offer seriously is not an indication of a suspicious transaction. But a buyer making an offer to buy an unseen property, demanding a quick closing, having no known source of income or buying many properties within a short period of time may be some of the reasons to suspect the intentions of the buyer.

**13. A.** The *Proceeds of Crime (Terrorist Financing) and Money Laundering Act* requires that every brokerage must identify its clients at the earliest possible opportunity. It does not require the brokerage to report every deposit of \$10,000 or more to *FINTRAC*. Only cash deposits of \$10,000 or more or several deposits in cash within 24 hours exceeding \$10,000 need to be reported as *Large Cash Transaction*. The *Risk Assessment* form has to be completed every 2 years and not every 5 years.

**14. B.** Asbestos is considered a hazardous material and is most commonly found in roofing materials of older homes, built between 1930 and mid-1950. It is not in foundation walls, roof rafters, water pipes or windows and doors.

**15. D.** When the salesperson is working as an *independent contractor* with a real estate brokerage, he is himself responsible for personal taxation matters. The brokerage does not deduct any tax from the commission payments. However, the brokerage is responsible for the conduct of the independent contractor salesperson for compliance with *REBBA 2002* regulations.

**16. C.** The problems with the property were *latent defects* because they were not visible at the time of inspection. The listing salesperson/brokerage were aware of these problems but never disclosed it to the buyer. While the intentions of the seller were genuine, the intentions of the salesperson/brokerage may attract liability because it was their responsibility to make this disclosure about *known* latent defects in the property.

**17. D.** The registrant has a *fiduciary duty* of obedience towards their clients. All *lawful* instructions of the client must be obeyed. If the seller did not want to hold any open houses, the salesperson should have followed these instructions. The salesperson was obviously protecting her own interests more than the interests of the seller client. This is a clear violation of *fiduciary duty* of obedience.

**18. B.** A direct or indirect interest in a transaction must be disclosed by registrants at the earliest practical opportunity but before an offer is presented. The disclosure statement includes information on registration status, nature of existing or contemplated interest and known material facts related to the property. The registrant is not required to disclose the number or years he/she has been a registrant.

**19. C.** Situations given in statements 2, 3 and 4 are considered multiple representation. Cram Park Realty Inc. is in multiple representation situation in these scenarios. In other scenarios the brokerage is representing only one client in the transaction.

**20. A.** The salesperson must protect the best interests of his buyer client. No assumptions should be made whether a specific item is automatically included or automatically excluded from the sale. This frequently happens for certain built-in items such as a dish washer. The salesperson must make sure that if the buyers want to include certain items, they are specifically included in the agreement. This helps avoid any confusion or disputes at a later date.

**21. D.** Non-resident sellers must pay *Capital Gains Tax* on sale of real property in Canada. If the seller fails to pay the *Capital Gains Tax*, the buyer becomes responsible. The *Residency* clause in the *Agreement of Purchase and Sale* has three options for the protection of the buyer. The seller may provide a certificate from *Ministry of Revenue* after paying necessary *Capital Gains Tax*, credit the buyer for the amount of tax or provide a statutory declaration that the seller is *not* a non-resident.

**22. B.** The *Present Use* space within the *Title Search* clause of *Agreement of Purchase and Sale* may be left blank and is not a mandatory section that must be filled up. When this space is left blank, the pre-printed wording applies which states that the buyer may be able to lawfully continue the present use of the property and obtain fire insurance. This means that if the buyer finds out before closing that he cannot continue the present use of property in a lawful manner or if he is not able to obtain fire insurance, he may use this clause as an objection to closing the transaction. In this case, the buyer may terminate the *Agreement of Purchase and Sale*.



**23. D.** When a buyer or seller needs to make some changes to the fully accepted *Agreement of Purchase and Sale*, they need to use the form named *Amendment to the Agreement of Purchase and Sale*. Both parties must sign this form and the brokerages must sign as witness for their respective clients. The amendment form is then forwarded to the solicitors of buyers and sellers.

**24. C.** The *Requisition Letter* sent by buyer's solicitor to the seller's solicitor includes requests for several documents. This letter does not include any request that the seller will transfer his property insurance to the buyer. The buyer is required to arrange his own property insurance before the completion date.

**25. B.** The *Title* clause in the *Agreement of Purchase and Sale* assures the buyer that the property would be free and clear of all encumbrances, liens and charges; except those that are specifically mentioned in the agreement. In addition to this, the clause states that any registered *restrictive covenants* that run with land and complied with by the seller, cannot be used as an objection to the title. Such restrictive covenants are not a basis for termination of the agreement.

**26. A.** In a multiple offer situation, the listing brokerage must disclose the number of existing offers to every competing buyer. This disclosure must be done *before* any competing buyer makes an offer. But the listing brokerage must not disclose the contents of any competing offer to any competing buyer. This rule applies even if the competing buyer is a client of the listing brokerage. The buyer client and the listing brokerage should not confuse the duty of full-disclosure related to material facts and agency relationships.

**27. C.** The seller's obligation to pay commission applies when a property is *shown* during agreement period but sold to the same buyer during holdover period. In case the property is listed with another brokerage during holdover period but sold to the same buyer, the obligation to pay commission is reduced by the amount of commission payable to the new brokerage. Further, if the new commission is higher than the previously agreed commission, the commission is not payable.

**28. B.** The buyer's obligation to pay commission applies when a property is shown during agreement period but sold to the same buyer during *holdover* period. A brokerage can claim a commission from a buyer if the buyer purchases a property '*shown*' to him during the agreement period but the buyer purchases the same property *privately* during the *holdover* period. Merely having a *Buyer Representation Agreement* with a buyer, which includes a holdover provision, is not sufficient to claim a commission. The brokerage must make sincere efforts to provide services to the buyer and provide evidence of sufficient involvement in order to make a claim for commission.

**29. D.** The seller's obligation to pay commission applies when a property is shown during agreement period but sold to the same buyer during holdover period. In case the property is listed with another brokerage during holdover period, the seller's obligation to pay commission is reduced by the amount of commission agreed with the new brokerage. Further, if the new commission is higher than the previously agreed commission, the commission is not payable.

**30. C.** Statements 2, 3 and 5 are correct. In a *Fee Simple* timeshare project, the developers create a condominium corporation where individual weeks are typically designated as units. A condominium corporation is not created in a *Right to Use* timeshare project. The ownership of the land and structures remains with the developers. The agreements for both the *Fee Simple* and the *Right to Use* timeshare projects are governed under the provincial *Consumer Protection Act*, and not under *REBBA 2002*.

**31. B.** The *Declaration* of the condominium corporation contains information about *exclusive use* common elements given to unit buyers. These exclusive use common elements may include parking space, storage lockers, etc.

**32. A.** Monthly Common Expenses =  $1,795,000 \times 0.438\% \div 12 = \$655.18$



**33. B.** In a *fixed term lease*, the landlord must wait for the lease term to expire. In case the landlord wants to get the premises vacated for giving it to a child or parent, the landlord must give at least 60 days' termination notice before the expiry of the term. In the given scenario, the lease expires on April 30<sup>th</sup> and the earliest date landlord may get the premises vacated would be May 1<sup>st</sup>.

**34. D.** The *Tarion* warranty coverage for common elements in a condominium building is \$50,000 times the number of units. This is subject to a cap of \$2.5 million.

**35. C.** When a residential property near a farm is sold the salesperson must be careful to inform the buyer that farming activities in a nearby farm may cause various types of disturbances in the neighbourhood. This is done by including a disclosure cause in the *Agreement of Purchase and Sale*. If the buyer later makes a complaint regarding disturbances, the salesperson may remind the buyer that this fact was already disclosed to them and they acknowledged it before making the offer.

**36. A.** A typical home inspector is not qualified to inspect water well for its water quality, quantity or the satisfactory working of pump and related equipment. Home inspectors typically restrict their inspection to the building structure itself. The salesperson must add appropriate conditional clauses to ensure that the buyer hires qualified inspectors for the water well.

**37. A.** *Tarion* warranty does not cover any structure which is built by several subcontractors hired by the owner. In order to obtain *Tarion* warranty, the structure must be completed by a single contractor from start to finish.

**38. C.** A salesperson may be hired by a brokerage as an *independent contractor* or as an *employee*. A salesperson working as independent contractor uses his own judgment and methods and decides himself what commission is to be charged from the clients. The salesperson working as an *employee* may not be able to work in the same manner. It may not be possible for an *employee* salesperson to decide or alter the commission policies of the brokerage.

### **Case Study – 2 Parts**

**39. D.** As per the requirements of the *Proceeds of Crime (Terrorist Financing) and Money Laundering Act*, every real estate brokerage must complete a *Risk Assessment Form* every two years and retain it for a minimum period of 5 years. This form need not be sent to *FINTRAC*.

**40. B.** Real estate brokerages must identify their clients as soon as practically possible. It is recommended that the sellers are identified at the time of signing the *Listing Agreement* and the buyers are identified at the time of signing the *Buyer Representation Agreement*. For the seller client, the identification must be done, *at the latest*, before the seller accepts an offer. For the buyer client, the identification must be done, *at the latest*, when the buyer submits an offer for purchase or gives a deposit.

### **Case Study – 2 Parts**

**41. B.** The common expenses or maintenance fee in a condominium unit is based on the proportionate share of the unit as per the *Declaration*. If the unit owner is not using any of the common elements of the condominium building, he cannot request the condominium corporation to reduce the maintenance fee. Every unit owner must pay the maintenance fee, whether they are using certain common elements or not.

**42. A.** There are four types of parking spaces in a condominium building – freehold, exclusive use, assigned and leased. The freehold parking is owned by the unit owner and the exclusive use parking is provided as per *Declaration*. In these cases, the unit owner may not have to pay monthly fee for the space. The leased or assigned parking space is subject to a monthly fee. If the parking space is assigned or allocated, the assignment is on discretionary basis and there may be a monthly fee for the space.

### Case Study – 3 Parts

**43. D.** In a typical real estate auction, the seller of the property can decide whether they would accept the buyer's bid or not. In *Absolute Auction* the sellers do not keep a minimum safe amount. In a *Minimum Bid Auction*, the seller sets a minimum amount for bidding. Sellers may reserve the right to reject even the highest bid if the auction is to be confirmed by the seller. This is known as *Auction by Confirmation*.

**44. B.** Owners are permitted to divide and sell a part of their land subject to the provisions of the *Planning Act*. An owner may get a *Reference Plan* prepared by an *Ontario Land Surveyor* and offer a part of land for sale. Once the seller obtains an acceptable offer, an application for *Consent to Sever* is made to the local *Committee of Adjustment*. The land can be transferred to the buyer after the application is approved. The buyer's salesperson should insert a condition in the Agreement of Purchase and Sale that the seller has to obtain a *Consent to Sever* at seller's own expense. The agreement becomes null and void if the *Consent to Sever* application is not approved on or before the time period given in the condition.

**45. D.** Only statements 3 and 5 are correct. Location of a nearby medical waste plant might have contaminated the land and attached a *stigma* to the subject property. Stigma is a material fact and must be disclosed when listing and selling the property. Even when the contamination is removed, the stigma remains attached to the property and negatively affects its value. Further, it takes a long time to sell such a property. Phase 1 audit involves visual inspection but does not involve any tests. Phase 2 audit involves sampling and testing but the remedial action, if required, is completed in Phase 3.

### Case Study – 5 Parts

**46. C.** When there is a conflict in the wording of a pre-printed clause and a clause inserted in the schedule, the inserted clause takes precedence and is effective.

**47. A.** The salesperson did not include any provision in the condition for bacteriological testing of water. This test is done by local health authorities to ensure that the water from the well is not contaminated. The offer becomes null and void if the buyer is not satisfied with the quality of water because the water may fail the bacteriological tests.

**48. B.** The description of the easement given in the clause is not clear regarding the location and scope of the hydro one easement. Since it is not a *minor* easement, the buyer may want to know more details about this easement. Major easements are material facts related to the property and the matter should have been resolved before the offer was presented. Ideally, the salesperson should have demanded a survey of the property showing the details of the easement. The offer should have been made conditional and the buyer should have been given the right to terminate the agreement in case he was not satisfied.

**49. C.** Unused underground fuel tanks must be removed by a technician licensed by *Technical Standards and Safety Authority (TSSA)*. In addition to this, the seller is responsible for cleanup of any contamination of soil surrounding the tank. The buyer's salesperson must be aware of these facts and should have inserted an appropriate condition in this regard.

**50. D.** Only statements 1 and 5 are correct. As a general rule, all contracts including those for real estate are assignable, unless otherwise agreed. In case the seller is giving a loan to the buyer and taking back mortgage of the property, his investment may be at risk if the buyer assigns the agreement to a third party. The seller should either make the agreement non-assignable or should insert a clause that the assignment of the agreement to a third party must be with his written consent.

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## DETAILED ANSWERS

### SAMPLE EXAM 3

1. **D.** If an adult is a co-signer with a minor, the contract is valid and can be enforced on the minor by the other party. Furthermore, if it can be proved that the minor has obtained legal advice before signing a contract, the contract remains valid and enforceable on the minor.
2. **A.** The *duty of care* is owed to both clients and customers of a brokerage. Salespersons and brokers must not provide any information to clients or customers only on the basis of personal knowledge or assumptions, without verifying the facts. There must not be any misrepresentation of facts related to the transaction.
3. **B.** According to *REBBA 2002 Code of Ethics*, the registrant must provide written information about agency relationships and explain available service alternatives to potential buyers and sellers. This must be done prior to signing any agreement with the consumers. The brokerage must also get a signed acknowledgement and keep it in records.
4. **B.** It is incorrect to say that the client agrees to indemnify the brokerage for *any* reason during the agreement period. The duty to indemnify the brokerage for expenses incurred for carrying out its obligations does not apply in real estate because the client agrees to compensate the brokerage in the form of commission. Further, the client does not agree to indemnify the brokerage if a loss occurs to the client due to gross negligence of duties by the brokerage.
5. **C.** A *Commission Trust Account* is not mandatory for a brokerage under REBBA 2002. But if a salesperson or broker knows that the brokerage does not maintain a *Commission Trust Account* and they lose their commission due to misuse of funds by the brokerage or bankruptcy of the brokerage, their commission will not be protected under *RECO Errors and Omissions Insurance*.
6. **C.** As per the pre-printed wording of the *Agreement of Purchase and Sale*, the *Requisition Date* permits the buyer's solicitor to perform one title search on documents registered on the title. The solicitor must report any issues related to the title to seller's solicitor before this date.
7. **C.** A *periodic tenancy* automatically renews itself after the end of period, unless a termination notice is given by either the landlord or the tenant. The *Residential Tenancies Act* provides minimum notice periods in case of fixed term and periodic residential tenancies.
8. **B.** In a land lease community, the home or the mobile home is owned but the land is on lease. Upon sale of the home or mobile home, the title of the structure is transferred to the buyer and the lease of the land is assigned to the buyer. The owner of a mobile home in a land lease community may place a 'For Sale' sign only on the window of the mobile home. The landlord may prohibit a window sign also if the landlord provides a bulletin board for such signs, which must be free of charge, and the prohibition is for all tenants.
9. **A.** *Pitch* of a residential structure refers to its *slope*. If the pitch is low, the snow may convert to ice in extreme winter. Later, when the sun warms the roof surface, this ice starts melting. Since there is no way for the water to go, small ice dams may appear on the roof. A high pitch roof ensures that in extreme winter the snow flows down easily when it melts.
10. **D.** A *viable farm* in terms of return on investment is that which produces adequate return of investment to the owners.
11. **B.** The buyer of a cottage property where hydro and telephone services are not available may be concerned about the cost of provision of such services to the property. Prudent salespersons

representing the buyer would include a condition so that the agreement does not become binding if the cost to the buyer exceeds certain amount.

**12. D.** Activities on shoreline properties such as logging, dredging, mineral exploration or placing a building, etc. are regulated by the *Ministry of Natural Resources*. Anyone who wants to undertake these activities may need a permit from the ministry.

**13. B.** Under the *Ontario New Home Warranties Plan Act*, the *Tarion* warranty is provided to a structure when an owner hires a single contractor to complete the construction from start to finish. *Tarion* warranty excludes any structure where the owner has hired many sub-contractors for completing parts of the house or when the house is built on existing foundations/footings. *Tarion* warranty is also not available when only the exterior shell is completed by a building contractor but the owner himself finishes the interior work.

**14. A.** An electromagnetic field decreases in strength as the distance from the source increases. An electromagnetic field is produced when an electric current is passing through the equipment. When the equipment is not working, the electric field may be there, but magnetic field does not exist.

**15. C.** If a buyer is bidding for a property in an auction, he has to close the transaction regardless of the condition of the structure. The buyer must make sure before bidding that the structure is in satisfactory condition, that he can obtain a mortgage loan, insurance coverage would be available, and that the title of the property is clear.

**16. C.** When a party has an existing or expired agreement with a brokerage, the brokerage is permitted to contact the consumer for up to 18 months of signing the agreement. The *National Do Not Call List* provides certain exemptions to real estate brokerage for making calls to consumers when the brokerage has an existing business relationship with the consumer but the time limit for such calls is 18 months.

**17. A.** Only statements 1 and 4 are correct. *REBBA 2002 Code of Ethics* specifies that a registrant cannot identify a party or a property without the informed written consent of the party. The pre-printed wording of standard *Listing Agreement* includes provisions for obtaining necessary written consent of the seller to identify the property and other details for marketing purposes.

**18. D.** Multiple representation happens when the same brokerage represents more than one *client* in a real estate transaction. An agency relationship is established when a party signs a representation agreement with a brokerage. A *Customer Service Agreement* does not make a party *client* of the brokerage because a *customer* is not represented. This means that when the seller is a *client* of the brokerage and the buyer is a *customer* of the same brokerage, multiple representation does not occur.

**19. A.** As per the *Real Estate and Business Brokers Act 2002* the listing brokerage must provide a copy of the *Listing Agreement* to each seller immediately upon signing. This provision must not be confused with delivery of copies of offers and other documents which have to be provided to clients as soon as practically possible.

**20. A.** A buyer can sign *Buyer Representation Agreement* with more than one brokerage provided that either the type of property or the geographic location is different in these agreements. For example, a buyer may sign a *Buyer Representation Agreement* with one brokerage for a single family residential property and may sign another agreement with a different brokerage for a commercial property.

**21. C.** The last party to accept all terms of the offer or the counter offer signs the *Confirmation of Acceptance*. This must be done before the expiry of the date and time given in the *Irrevocable* clause. In the given scenario, the acceptance must have been signed by the buyers on or before August 10<sup>th</sup>.

**22. D.** If the seller is unable to provide an up-to-date survey of the property, the buyer may accept the existing survey or may buy the property without a survey. The buyer may then purchase title insurance to protect himself against any title related problems. It is important to note that the title insurance policy may not cover all problems related to the title. If the buyer feels that an up-to-date survey is required, he should insert a condition in the agreement requiring the seller to arrange it.

**23. D.** In case of multiple or competing offers, the listing brokerage must inform every competing buyer about the existence and number of competing offers. The content of the competing offers must not be disclosed to any competing buyer.

**24. D.** The *Indemnification* clause specifically focuses on environmental, legal and accounting issues and states that the client has been advised to seek expert advice in these matters. In case a loss occurs to the client, the brokerage cannot be held responsible. There is no provision in the *Indemnification* clause of the pre-printed wording of the representation agreement that the brokerage will not disclose personal information about the client.

**25. B.** The given scenario does not suggest that the salespersons made any effort to inform the buyers and sellers about the multiple representation situation and did not obtain their written consent. This is a violation of *REBBA 2002 Code of Ethics*, which requires that the registrant must obtain informed written consent of all parties for multiple representation at the earliest practical opportunity but before an offer is presented.

**26. A.** A condition precedent typically includes a waiver provision for the benefit of the buyer. The buyer may send a *Notice of Fulfillment of Conditions* or may send a *Waiver* to the seller before the time period specified in the condition. This makes the agreement a legally binding contract. If the buyer does not send any of these two forms to the seller before the time period, the clause wording states that the offer automatically becomes null and void.

**27. D.** For a specific use of a residential property, a *Deed Restriction* takes precedence over the zoning by-laws. While zoning by-law for a particular residential zone may permit use of property for some home business, a deed restriction may still prevent such a use. The buyer must check both the zoning by-law and the deed restrictions as to whether he would be permitted to run the business from home or not.

**28. A.** The *Status Certificate* for a condominium unit includes information about legal and operational matters related to the corporation. This document does not include any information regarding previous owners of the unit, existing mortgage liens on the unit or any previous or current offers on the unit.

**29. D.** *Tarion* warranty covers problems with the structure due to workmanship or quality of building materials. While roof leak may be covered under the *Tarion* warranty, the damage to furniture and rugs is considered a secondary damage. The home owner may file a claim with his home insurance company for damage to these personal belongings.

**30. C.** Under the *Ontario New Home Warranties Plan Act*, the *Tarion* warranty does not cover any structure which is built on existing foundation or footings. Other structures given in the options are usually covered under the *Tarion* warranty.

**31. B.** A condition may be written as a condition precedent, as a true condition precedent or as a condition subsequent. In case of condition precedent, the buyer may send a *Notice of Fulfillment of Conditions* or send a *Waiver* to the seller to make the agreement a legally binding contract. A true condition precedent does not permit the buyer to waive the condition because the condition must be fulfilled to make the agreement a legally binding contract.

The subsequent format makes the agreement a legally binding contract at the time of signing the *Confirmation of Acceptance*, but the buyer still has the right to send a *Notice of Termination* before the



date and time mentioned in the condition. It is not necessary that all conditions are to be fulfilled at buyer's own expense. It depends on what has to be done and by which party.

**32. C.** It is incorrect to state that the *Managed Forest Tax Incentive* is automatically transferred from the seller to the buyer when the property is sold.

The buyer must prepare his own plan and get it approved in order to continue getting the tax incentives.

**33. D.** The location of the septic tank is determined by the location of the water well and the residential structure. *Ontario Building Code* specifies the minimum distance requirements for the septic tank.

**34. C.** Once an offer has been accepted by all parties, the seller has an obligation to keep the property available to the buyer until the date and time specified in the condition. The seller cannot accept another offer unless the first offer includes an *Escape* clause. This clause permits the seller to continue marketing the property and get a better offer. In the absence of an *Escape* clause, the seller cannot require the buyer to fulfill or waive the condition before the accepted date and time.

**35. D.** An existing or previous grow operation attaches a stigma to the property, which is a material fact. This fact must be disclosed by sellers and the listing brokerage when listing and selling the property. An appropriate disclosure clause must be inserted in the agreement so that the buyer is made aware of the previous grow operation.

**36. A.** As a general rule, all contracts are assignable with certain exceptions such as contracts for personal service. For example, a contract between a property owner and a surveyor is for personal service and cannot be assigned. The agreement of purchase and sale, a commercial lease and a listing agreement between a brokerage and seller are typically assignable, unless otherwise specified.

**37. A.** A seller may elect to auction his property because the property may be unique and he may not be able to sell it through a typically listing process. Another reason for using the auction method may be that the seller needs a quick sale and closing for his personal reasons.

**38. C.** The only activity permitted from the given options, during wait time for a salesperson, is that she can build a database of her potential clients from her list of friends, acquaintances and business contacts. Other activities cannot be undertaken because they are unlawful until she receives registration certificate from RECO.

### **Case Study – 2 Parts**

**39. A.** Only statements 2, 3 and 4 are correct. The parking space in a condominium is of four types. The *exclusive use* parking space is owned by the corporation and provided to the unit owner as per the *Declaration*. The *freehold* parking space is owned by the unit owner. In this case, the title of parking space may be within the unit title or may be a separate title.

If the title of parking is separate from the unit title and the unit owner does not need the space, he can sell or lease it to another unit owner. In case of *leased* or *assigned* parking, the space is owned by the corporation.

**40. C.** The condominium corporation has 10 days to provide the *Status Certificate* from the date of request. The condition inserted in the agreement does not consider this time frame. The buyer or the buyer's solicitor may not have sufficient time to review the *Status Certificate* and attachments before the expiry of the time period given in the condition.

A prudent salesperson should have provided a few more days for the fulfillment of the condition related to Status Certificate.



### Case Study – 2 Parts

**41. B.** Only statements 2, 4 and 5 are correct. The *Normal Farm Practices Protection Board* hears complaints regarding nuisance and violation of municipal by-laws that restrict movement of agricultural vehicles. When a complaint is made to the board, it decides whether the practice by the farmer is a *Normal Farm Practice* or not. The board provides its decision based on the nature of complaint and the practice undertaken by the farmer.

**42. A.** Mechanical vibrations due to movement of heavy farming equipment or vehicles are also a form of disturbance. This is in addition to other types of disturbances caused by farming operations such as smoke, dust, odour, flies, etc.

### Case Study – 3 Parts

**43. C.** Only statements 2 and 3 are correct. *Hydro One* usually provides 30 metres of free wire from the last pole location and the remaining cost is to be borne by the customer. Further, hydro service is provided only if it is economically feasible. *Bell Canada* provides service to a cottage property only if hydro service is already there. Existence of hydro service is not a guarantee that *Bell Canada* will provide telephone service.

Prudent buyers should include a condition in the agreement to ensure that provision of these services does not increase their budget and the agreement does not become binding if the cost is beyond their budget.

**44. C.** It is incorrect to say that no permit is required to build a single storey boathouse or it will not be subject to lease fees payable to the *Ministry of Natural Resources*. Salespersons should not provide any expert advice to their clients in these matters.

**45. A.** Only statements 1, 2 and 4 are correct. A shore road allowance is 66 feet from the *high* water mark and not from *low* water mark. The boathouse is an encroachment on a shore road allowance because it is located on public land. The shore road allowance exists whether or not public is using it. If a cottage owner wants he can purchase an unopened shore road allowance from *Ministry of Natural Resources* and, in that case, the it becomes their private property.

### Case Study – 5 Parts

**46. C.** Only statements 1, 2 and 4 are correct. The *Irrevocability* clause provides that the buyers can only withdraw their offer before it is communicated to the sellers. It cannot be withdrawn after it has been communicated to sellers until the date and time given in the clause. Upon receipt of an offer, the sellers may accept, reject or counter the offer before the date and time given in the clause. If the sellers do not take any action until that time, the clause wording provides that the offer automatically becomes null and void.

**47. B.** The *Residency* clause in the Agreement of Purchase and Sale is for the protection of buyers in case the sellers are non-residents. Non-resident sellers of real property in Canada must pay *Capital Gains Tax* within 10 days of closing. If the seller does not pay, the buyer becomes responsible. The clause provides that the seller may pay *Capital Gains Tax* in advance and give a certificate to the buyers, or give a credit to the buyer equal to the amount of *capital gains tax* or provide a declaration that they are not non-residents.

**48. D.** The blank space for *Present Use* of the property within the *Title Search* clause is optional and may be left blank by buyers. In that case the pre-printed wording applies. This provides an assurance to the buyers that they may lawfully continue the present use of the property and would be able to obtain fire insurance.

In case the buyers find out that they cannot continue the present use lawfully, they have a valid objection to the title and have the right to terminate the agreement. The agreement does not automatically become null and void. It is up to the buyers to decide whether to close the transaction or not.

**49. C.** The pre-printed wording of the *Inspection* clause in the Agreement of Purchase and Sale provides two options to the buyers in case significant damage happens to the property before closing. The buyer may either terminate the transaction or take proceeds from sellers' insurance and complete the transaction. The agreement does not automatically become null and void. It is up to the buyers to decide and not the sellers. The sellers' insurance is not transferred to buyers because the buyers have to arrange their own property insurance before completion.

**50. A.** The buyers have saved \$65,000 to purchase the house. Out of this amount, they have used \$20,000 for the deposit.

The balance they would pay on completion is:

$$= 65,000 - 20,000 = \text{\$45,000}$$

► **Note:** You cannot use the normal formula in this scenario because the amount of Seller Take Back Mortgage is not known.

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## DETAILED ANSWERS

### SAMPLE EXAM 4

1. **D.** The deposit paid by a buyer at the time of acceptance of an offer is a sign of good faith and itself cannot be treated as a consideration. It is however, a part of consideration.
2. **B.** Personal or motivational information of the client must be safeguarded and must not be disclosed by the registrant to any third party without the informed written consent of the client. Disclosure of confidential information may harm the interests of the client. This does not apply to agency relationships and materials facts of the property, which must be disclosed.
3. **A.** If the representation agreement or a customer service agreement is for a period of more than six months, the brokerage must get written consent of the party. This is typically done by obtaining initials of the party on the first page after the effective dates of the agreement.
4. **C.** Mortgage priority is based on date and time of its registration. When the *first* mortgage expires before the *second* mortgage and the borrower needs to renew it, the second mortgage may take first priority. In such a situation, the borrower must ensure that a *postponement* clause is used with second mortgage to prevent the second mortgage from taking first priority. Otherwise, renewal or re-financing the first mortgage may prove to be difficult.
5. **B.** The *Normal Farm Practices Protection Board* cannot hear appeals or give decisions regarding taxation matters involving agricultural land. The board hears appeals for nuisance complaints and municipal restrictive by-laws and decides whether the practice is a *Normal Farm Practice* or not.
6. **D.** Tarion warranty under the *Ontario New Home Warranties Plan Act* is provided only when the structure is completed by one contractor from start to finish. Other options given here are not covered under the *Tarion* warranty.
7. **C.** Wood burning stoves in cottage properties are regulated and inspected by the *Wood Energy Technology Transfer Inc. (WETT, Inc.)* The *Ontario Forestry Association* and *Ontario Woodlot Association* regulate managed forests.
8. **A.** Contamination of water in rural properties may be due to several reasons. If the well is a drilled type it is considered better than a dug well. Construction of water wells in Ontario is a regulated activity and falls under the jurisdiction of the *Ministry of Environment*.
9. **B.** If a property is designated as a heritage property, the owner may not enjoy all rights of freehold ownership. Alterations or changes to the structure require approval from the municipality. The *Ontario Heritage Act* does not permit any alterations to the property that may affect its heritage designation.
10. **D.** Scientists do not have conclusive evidence that electromagnetic fields are really harmful to human health and life. Electric fields may not be as harmful as magnetic fields or electromagnetic fields. An electromagnetic field is produced when an electrical appliance is in working condition.
11. **C.** One of the common causes of refusal of a registration application is that the application is either incomplete or the applicant has provided false information in the application. The application may also be delayed if the registrar finds some inconsistency in the information provided by the applicant.
12. **B.** When the seller is giving mortgage loan to the buyer and taking back mortgage of the property, the assignment of contract to a third party may be a concern for the seller. The seller might want to ensure that the assignment is not done without his consent. To protect his interests, the seller may want to insert a non-assignability clause or that the agreement is not assignable without his prior consent.

**13. A.** A valid concern for the seller is that the landlord may have the *First Right of Refusal* in the land lease. This might prevent seller Bright from selling the mobile home to his close friend. Under this clause, the landlord gets the first right to purchase the mobile home on the terms agreed with any buyer. Bright can sell the mobile home to his friend only if the landlord refuses to buy. Other statements are not a valid concern for seller.

**14. D.** The salesperson must provide information about agency relationships and service alternatives to the prospective buyer and give them an option to choose between a client relationship or a customer service. This must be done at the earliest practical opportunity but before an offer of representation or customer service is presented to the buyers. The salesperson must not force the buyers to become clients or customers only because that would protect the interests of the salesperson or the brokerage.

**15. B.** An Agreement of Purchase and Sale becomes a legally binding contract only when the parties to the contract have the legal capacity to sign the contract. A contract signed with a minor is voidable by the minor and not by the other party. In this situation, the buyer, who is a minor, can still enforce the contract on the sellers.

**16. C.** The salesperson failed to protect the best interests of the seller client by disclosing their motivation to a buyer customer. She disclosed that the sellers were desperate and would accept a lower price for the property. A *Customer Service Agreement* is not a representation agreement and is non-exclusive. As such, the salesperson did not violate *REBBA 2002 Code of Ethics* by signing a *Customer Service Agreement* with the buyer.

**17. A.** When several percentages are used for commission, the rate must be in descending order. Commission must decrease as the sale price increases. The given option shows commission rate in ascending order. Jim can charge 5% of first \$400,000; 4% of next \$400,000 and 3% of the balance. Other commission arrangements are valid and in compliance with *REBBA 2002*.

**18. D.** A *Power of Attorney* is of three types but, for trading in real estate, the *Continuing Power of Attorney for Property* must be used. It is registered in land registry office and the registrant must get a copy as evidence that the person acting as attorney for the real owner has the authority to trade on their behalf.

**19. B.** There are six essential elements of the *Balance Due on Completion* clause. Only one option (B) has all of these elements.

- (1) *The buyer agrees to pay*
- (2) *a further sum of one hundred and forty five thousand dollars (\$145,000.00),*
- (3) *subject to adjustments,*
- (4) *to the seller,*
- (5) *upon completion of this transaction,*
- (6) *through lawyer's trust account by bank draft, certified cheque or electronic wire transfer using the Large Value Transfer system.*

**20. A.** The provision for payment of commission during *holdover* period applies when a buyer is shown a property during the agreement period but he later purchases the same property privately from the seller during the holdover period. If the property is purchased after the holdover period, no commission is payable. Also, no commission is payable if the property is listed by another brokerage at equal commission rate or at a higher commission rate.

**21. C.** Deposit can only be returned to the buyer when both the seller and the buyer have signed a *Mutual Release*. If the parties do not sign this form, the listing brokerage needs a court order to withdraw the money from the trust account and return it to the buyer. Other options for return of deposit are not permitted under *REBBA 2002*.

- 22. A.** Agency relationships must be disclosed to clients as well as customers at the earliest practical opportunity but before an offer is presented for signing. The given situation is not a multiple representation situation because the seller is a customer of the brokerage. The brokerage must inform both parties that it is providing client service to the buyer and customer service to the seller.
- 23. B.** Salespersons should ensure that the buyer's solicitor starts working on title search and related legal proceedings only after the conditions in the agreement have been fulfilled or waived. In the given scenario, the title search date (*Requisition Date*) is before the date set for fulfillment of conditions.
- 24. D.** There is no conflict in these two provisions. The 24-hour time frame is an agreement between the sellers and buyers and the buyer agrees to provide the deposit cheque within 24 hours of acceptance of the offer. REBBA 2002 makes it mandatory for the listing brokerage to place the funds in its *Real Estate Trust Account* within 5 business days of receipt.
- 25. A.** If the title of a matrimonial home is in the name of only one spouse, the non-owner spouse must sign the listing agreement as well as the agreement of purchase and sale. It is incorrect to state that the non-owner spouse does not have any interest in the property.
- 26. C.** The current value assessment of the property may not be available in land registry office records. Other information given in the options are typically available in the land registry records.
- 27. B.** Assignment of a fixed term lease to a new tenant is an option in the given scenario. If the landlord agrees for assignment, the tenant would be released of his liabilities under the lease. Other options mentioned here would not be a good advice to the tenant.
- 28. C.** Abandonment is the act of the tenant to fully and finally leaving the unit before expiry of the lease term. Before the landlord can take any action for possession of the leased unit, he must make reasonable efforts to contact the tenant and must have clear evidence that the tenant has no intention to return.
- 29. A.** Only statements 2, 3 and 4 are correct. Septic systems with raised absorption bed are used where there is a rocky terrain or lack of soil depth to accommodate a standard leaching bed. The *Ontario Building Code* specifies minimum distance for such septic systems from nearby residential structures. These absorption beds use imported soil with special filters and are typically smaller in size as compared to the standard leaching beds.
- 30. D.** Real estate registrants have an obligation under REBBA 2002 to look for warning signs or indications of possible fraud. Any such activity must be reported to Real Estate Council of Ontario. Registrants are required to obtain identification information of their clients as early as possible. It is incorrect that a registrant should not be concerned about fraud if he/she is not directly involved.
- 31. C.** Only statements 2 and 5 are correct. If a property is designated as a heritage property, the owner may not be able to enjoy all the rights of freehold ownership. The insurance premium for such properties may be higher than typical homes because the cost of repairs in case of damage may be high. Since an alteration to the property may affect its heritage designation, any proposed alterations must first be approved by the local municipality.
- 32. B.** Only in situations 2 and 4. These are considered a *Large Cash Transactions*. The brokerage must report receipt of \$10,000 or more 'in cash' or several cash payments over \$10,000 within 24 hours to FINTRAC. A *Large Cash Transaction Report* must be made to FINTRAC within 15 days of receipt.
- 33. A.** Well cap and water lines must be sealed properly in order to prevent contamination of water. Other statements are incorrect because all these actions would, in fact, increase the chances of bacteriological contamination of water.

**34. D.** A valid environmental concern for the buyer is that the property has an oil-fired furnace, but the oil tank is buried underground. An underground oil tank must meet standards of the *Technical Standards and Safety Authority* with respect to leak and spill prevention. Other statements may be a concern for the buyer but these are not related to environment.

**35. C.** The municipal *Fence By-law* has procedures for resolving fence related disputes between neighbours. A *Fence Viewer* is appointed by the local municipality to inspect the properties. He helps neighbours arrive at a settlement for distribution of costs related to construction and maintenance of fences.

**36. A.** Owners of shoreline properties may have certain rights with respect to access of water. They are permitted to construct docks for their boats, provided that the dock is right in front of their own property. Two-storey boathouses require a permit from the *Ministry of Natural Resources*. It is untrue that all land between the property and edge of water belongs to the property owner. A shore road allowance is public land, whether it has ever been used or not.

**37. B.** If there is a conflict of wording between a pre-printed clause and a clause inserted in the schedule, the inserted clause takes precedence. The salesperson has not caused any problem due to conflicting wording of the two clauses.

**38. D.** Independent contractors are responsible for their own business expenses and may have to pay a monthly desk fee or other administrative expenses to the brokerage. They are also responsible for their accounting and taxation matters.

*Employee* salespeople work according to the duties assigned to them by the brokerage. They may not have the freedom of using their own methods for trading. It is incorrect to state that the responsibility of the brokerage for REBBA 2002 compliance is only for *employees* and not for *independent contractors*.

**39. A.** Writing on someone's Facebook wall, Twitter posts and blogs are some examples of exceptions under *Canada's Anti-Spam Legislation (CASL)*. Other methods of unsolicited electronic messages for promoting services or products may fall under CASL as prohibited activities.

### **Case Study – 3 Parts**

**40. C.** The *Residential Tenancies Act* regulates rent deposits requested by landlords in rental buildings. The maximum deposit a landlord may request is the rent for one month for a fixed term tenancy. In the given scenario, the rent deposit requested by the landlord is \$2,000 which is not lawful. The maximum deposit should be equal to one-month rent, which is \$1,400.

**41. B.** The condominium *Declaration* takes priority over the provisions of the *Residential Tenancies Act* with respect to pets in the building. If the condominium *Declaration* does not permit pets in the building, the landlords can have a '*no pets*' clause in the lease and can request removal of a pet from the building.

**42. A.** The written notice for rent increase in a fixed term tenancy must be given on a prescribed form by the landlord. The notice must be given no later than 90 days from the effective date of increase. Further, the rent increase cannot be more than the *Rent Guideline* published by the *Ministry of Municipal Affairs and Housing*. In the given scenario, the landlord has given the notice on February 15<sup>th</sup> which is only 45 days before the effective date of rent increase.

### **Case Study – 3 Parts**

**43. D.** The *Turnover Meeting* is held by the condominium corporation to transfer the control of the corporation from the *Declarant* to the unit owners. The operational documents of the corporation are transferred to the board of directors in this meeting.



**44. A.** Only statements 1 and 3 are correct. The *Declarant* has to set aside a *First Reserve Fund* until a *First Reserve Fund Study* is completed. This study must be completed within one year of the condominium registration. The corporation keeps aside certain part of common expenses for contribution to the *Reserve Fund*.

**45. C.** Only statements 1 and 2 are correct. In a condominium, the title of the unit is transferred to the buyer but in a co-operative building, the title to the unit remains with the co-operative corporation. The buyer of a unit in an *equity co-operative* building gets a share certificate and an occupancy agreement for the subject unit. *Land Transfer Tax* is payable in both condominiums as well as in co-operatives.

### Case Study – 5 Parts

**46. D.** The condition for first mortgage need not have the name of the lender as the buyers may have to check with different lenders. However, the condition must specify the priority (*first* or *second*) and the term (in number of years) of the mortgage loan. Amortization period is optional and may be omitted in the mortgage condition. This condition is typically written as condition precedent and not as true condition precedent. This gives an option to the buyers to waive the condition at their sole option.

**47. B.** Since the *Consent to Sever* application has to be made by the seller, at seller's own expense. This is because the seller is the current owner of the property. Hence, it is the seller (not the buyer) who will notify the buyer whether severance has been approved or not.

**48. C.** The condition for severance of the property is a true condition precedent and cannot be waived by either party. This condition must be fulfilled to transfer the parcel of land from the seller to the buyer. The seller must send a *Notice of Fulfillment of Conditions* form to inform the buyer that the condition has been fulfilled. The buyer, on the other hand may send a *Waiver* to remove the mortgage financing condition or may send a *Notice of Fulfillment of Conditions* to the seller. Only then the agreement will become a legally binding contract.

**49. A.** A '*minor*' easement for provision of utilities to the property does not affect the title and does not have to be disclosed in the listing or in the *Agreement of Purchase and Sale*. It is not a valid objection to the title and the buyer must complete the transaction. A '*major*' easement may affect the use of the property by the buyer and, if not disclosed, the buyer would have a valid objection to the title. Disclosures must be made before presentation of an offer and cannot be included in the *Amendment to the Agreement of Purchase and Sale*.

**50. B. \$210,000.**

Balance Due on Completion = Purchase Price - Seller Take Back – Assumed Mortgage - Deposit  
= 270,000 - 50,000 - 10,000 = \$210,000

► **Tip:** Do not subtract the amount of '*New*' mortgage, whether it is *First* or *Second*.

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