


[HOME](#)
[CALENDAR](#)
[MLS](#)
[NEWS/INFO](#)
[SERVICES](#)
[ABOUT CBR](#)
[CONSUMERS](#)
[HELP](#)
[SEARCH](#)

Thursday, 01/17/08 10:29 PM

[Safety](#)
[In Contract Magazine](#)
[Designations](#)
[New Builds](#)
[Area Realty Associations](#)
[Grants & Scholarships](#)
[Affordable Housing](#)
[Related Links](#)
[Tech Tools & Tips](#)
[Home Sales Statistics](#)
[Contact Us](#)
[News & Information](#) : [In Contract Magazine](#) : [March 2004](#) : [Purchase Contract](#)

Purchase Contract

New Purchase Contract diminishes need for additional contingency clauses

The newest version of the Contract was drafted jointly by the Columbus Board of REALTORS® and the Columbus Bar Association. There has been input from the mortgage bankers and the Ohio Division of Real Estate. As the representative from the Columbus Bar Association sitting on the CBR Standard Forms Committee, I can tell you first hand that this contract has been more thoroughly reviewed than I could ever have imagined.

I encourage you to read through the contract very carefully as it provides for many of the most common elements of a residential transaction. The committee addressed most situations, considered possible "what if" scenarios and provided a solution or outcome. We spent hours upon hours working on the contract language so that all you will have to do is to fill in the necessary blanks.

While the contract addresses most situations, it does not preclude you from adding other provisions, terms, conditions, or contingencies. The addition of new clauses by an agent may be necessary. However, added clauses should consider all eventual outcomes. For example, if a contingency is added, what happens if it is not satisfied or waived? Is the contract terminated and what happens to the earnest money deposit?

Avoid the unauthorized practice of law

In 1941, the Supreme Court of Ohio stated in *Gustafson v. V. C. Taylor & Sons, Inc.* (1941), 138 Ohio St. 392,397, "This court finds itself in agreement with the reasoning and conclusion of the lower courts to the effect that the supplying of simple, factual material such as the date, the price, the name of the purchaser, the location of the property, the date of giving possession and the duration of the offer requires ordinary intelligence rather than the skill peculiar to one trained and experienced in the law."

Late last year, the Supreme Court of Ohio in *Toledo Bar Assn. v. Chelsea Title Agency of Dayton, Inc.*, 100 Ohio St.3d 356,357, 2003-Ohio-6453 stated, "The unauthorized practice of law is the rendering of legal services for another by any person not admitted to practice in Ohio ...The practice of law embraces the preparation of legal documents on another's behalf, including deeds which convey real property." Citations omitted.

The point is that if you stay with the approved contract language and provide the factual material regarding the transaction, you should not have a problem. If you need to add language to the contract, you might want to consider seeking input from your broker or suggest that your client talk to an attorney.

Commonly used mechanicals clause not necessary

The clause that I see added most often is the mechanicals clause. You know, the "everything is to be in working order at time of possession" clause. I suggest that this clause is simply not needed and serves only to create lawsuits after the closing. As an attorney, I never want to see any client involved in litigation, but that is the only outcome from the addition of this clause.

The contract already provides the necessary protection for a Buyer. Paragraph 4 gives the Buyer the ability to inspect the premises and to request remedies or to terminate the contract if warranted.



by James A. Zitesman, Esq.

James A. Zitesman, Esq. has served on the CBR Standard Forms Committee for the past three years as the representative from the Real Property Law Committee of the Columbus Bar Association.

Furthermore, pursuant to Paragraph 14 the Seller has the duty to have the premises in the same condition as on the date of acceptance of the contract.

The Supreme Court of Ohio in 1988 decided the case of Layman v. Binns (1988), 35 Ohio St.3d 176 and held, "[t]he doctrine of caveat emptor precludes recovery in an action by the purchaser for a structural defect in real estate where (1) the condition complained of is open to observation or discoverable upon reasonable inspection, (2) the purchaser had the unimpeded opportunity to examine the premises, and (3) there is no fraud on the part of the vendor." Given the provisions of the contract and prevailing Ohio law, is there a compelling reason for you, as a REALTOR®, to add the mechanicals clause to an offer?

The new CBR/CBA contract is a significant step forward in making the contracting process easier for all concerned. It should help provide clarity to the transaction and make for a smoother process. In most cases, all you need is already there.

[\[Home\]](#) [\[Calendar\]](#) [\[MLS\]](#) [\[News & Information\]](#) [\[Member Services\]](#) [\[About CBR\]](#) [\[Consumers\]](#) [\[Help\]](#)

REALTOR® - A registered collective membership mark that identifies a real estate professional who is a member of the National Association of REALTORS® and subscribes to its strict Code of Ethics. For questions or comments about this site, please email us.