

## ASSIGNMENT OF CONTRACT GUIDELINES

There are essentially three parts to a contract assignment: 1) the sales contract with the seller; 2) the agreement with the new buyer to assign that sales contract; and 3) the formal substitution of buying parties with a contract amendment signed by the seller, the initial buyer, and the new buyer. If earnest money has already been paid by the initial buyer, the parties will also want to substitute that earnest money with new earnest money being paid by the new buyer.

Below are some important notes with respect to the key documents.

Sales Contract. The initial sales contract needs to be assignable. If using the standard commission approved contract there is a box to check at Section 2.2 stating that the contract will be assignable. It is also recommended to reiterate in the additional provisions (Section 30) that the contract is assignable and the that seller will cooperate with any new buyer.

Assignment Contract. The assignment contract is between the buyer and the new buyer. It will identify the contract being assigned, and require payment from the new buyer to assign the contract. The assignment contract may also contain a substitution of earnest money clause to require the new buyer to substitute the new buyer's earnest money for the initial buyer's funds.

Substitution of Parties Amendment. The substitution/amendment is signed by all three parties. It explains that the sales contract has been assigned, and that they new buyer is to be substituted for the old.

Additional Issues:

Types of Transactions. Assignment of contract can be a good strategy when the seller is a private party seller. It does not work for short sales, bank owned properties. Additionally, investors should NOT assign any contracts when the seller is delinquent on mortgage payments without determining whether the transaction falls under purview of the Colorado Foreclosure Protection Act.

Disclosures. Investors should always openly disclose in communications and in the contract that the investor intends to assign the contract and that the investor will be paid a fee from the new buyer. You don't want any sellers to be surprised. You should also obtain authorization from the seller to market the property after you have gone under contract.

Brokering. Investors should avoid brokering between prospective sellers and prospective buyers. In other words, an investor (without a real estate license) cannot act like a real estate broker by finding properties for buyers and then doing an assignment to accomplish the payment for putting buyer and seller together. Only market properties AFTER you have gotten the property under contract.

*These are general guidelines. As with any transaction, it is strongly recommended that you obtain legal counsel to assist you with your specific transaction because assignments can be complex.*

SUGGESTED ADDITIONAL PROVISIONS FOR ASSIGNMENTS  
(not in foreclosure)

INTENT TO RESELL. Seller understands that Buyer is an investor, who intends to resell the property for a profit as soon as reasonably practical, which could be as early as the day Buyer purchases from Seller. The subsequent sale by Buyer will be for a purchase price higher than the price at which Seller sells to Buyer.

NO RIGHTS TO PROFITS. Seller is giving up any equity that may exist in the property and any proceeds that may ensue from the subsequent sale of the property. Seller will not receive any incentives or proceeds from the subsequent sale of the property.

AUTHORITY TO MARKET. Seller grants the Buyer and/or its representatives all of the necessary rights to list for sale, market, negotiate and enter into a contract to sell the property to a third party.

ASSIGNMENT. Seller understands and agrees the Contract is assignable and that Buyer may assign Buyer's rights under the Contract to another party, in which case the new party would become the buyer under the Contract. Seller hereby consents to any such assignment and agrees to execute any documentation necessary to formalize such assignment. Seller understands that Buyer may receive compensation from any party to which this Contract is assigned.

INVESTMENT PURPOSE. Seller understands that Buyer is a real estate investor, that Buyer may be acquiring the Property substantially below market value, and that Buyer intends to make a profit on the sale of the Property. Seller understands and agrees that Seller has had the opportunity to explore other options for selling the Property and that Seller may be able to obtain a higher price for the Property if Seller sells to another party on the open market.

BUYER ALSO BROKER?

Buyer is a licensed real estate agent in Colorado. Agent does NOT represent Seller. Seller is advised to seek separate legal and tax counsel.

Seller has not listed the property for sale on the open market. Buyer is purchasing the property below market value. Seller understands and agrees that Seller has had the opportunity to explore other options for selling the Property and that Seller may be able to obtain a higher price for the Property if Seller sells to another party on the open market.

*This document has not been approved by the Colorado Real Estate Commission. This document was prepared by Original Buyer's attorney, Parham Law Firm, P.C.. Seller is advised to seek separate legal counsel.*

## ASSIGNMENT OF REAL ESTATE PURCHASE & SALE AGREEMENT

This Agreement is entered into by and between \_\_\_\_\_, (hereinafter called "Assignor"); and \_\_\_\_\_, (hereinafter called "Assignee").

### RECITALS

A. Assignor as Buyer entered into that certain Real Estate Purchase and Sale Agreement ("Sales Contract") between Assignor and \_\_\_\_\_ ("Seller") for the purchase of \_\_\_\_\_ (the "Property"). A copy of the Sales Contract is attached hereto as Exhibit A and is incorporated herein by this reference; and

B. Assignor desires to assign its rights and interest to said Sales Contract and Assignee desires to purchase such rights and interests pursuant to the terms of this agreement.

**NOW, THEREFORE**, the parties agree:

1. For the sum of \_\_\_\_\_ ("Assignment Fee") from Assignee to Assignor, Assignor hereby assigns to Assignee the Buyer's right, title and interest in, and the Buyer's obligations under the Purchase and Sale Agreement attached as Exhibit A (hereinafter referred to as the "Agreement"). Assignee shall pay the Assignment Fee as follows:

\$\_\_\_\_\_ shall be paid to Assignor upon execution of this Agreement as a non-refundable installment; and

The balance of \$\_\_\_\_\_ shall be paid to Assignor on or before the Closing of the Sales Agreement.

2. Assignor warrants that (1) the Sales Contract is in full force and effect and has not been modified or amended, (2) Assignor owns and has the right to transfer the rights and interests covered by this assignment, free and clear of any previous transfer or other adverse claim or interest, and (3) neither Assignor nor, to Assignor's knowledge, the Seller under the Agreement is in default in performing any obligations under the Agreement.

3. By accepting this assignment, Assignee agrees to perform all of the obligations of the Buyer under the Sales Contract, including but not limited to all settlement requirements as originally stated in the Sales Contract.

4. If Assignee does not perform as agreed, all monies paid under Paragraph 1 shall be forfeited to Assignor as full settlement of any claims by both parties, and the Assignee shall forfeit its assignment rights and the Sales Contract shall revert back to Assignor as Buyer.

5. Assignee may not assign this assignment or the Sales Contract to another buyer without the written permission of the Assignor.

IN WITNESS WHEREOF, the parties have executed this agreement as their free and voluntary act and deed, on the date indicated by each signature.

ASSIGNOR:

ASSIGNEE:

\_\_\_\_\_

\_\_\_\_\_

Date signed: \_\_\_\_\_

Date signed: \_\_\_\_\_

EDUCATIONAL PURPOSES ONLY

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**ASSIGNMENT OF REAL ESTATE PURCHASE & SALE AGREEMENT  
(Earnest Money Substitution)**

This Agreement is entered into by and between \_\_\_\_\_, (hereinafter called "Assignor");  
and \_\_\_\_\_  
(hereinafter called "Assignee").

**RECITALS**

A. Assignor as Buyer entered into that certain Real Estate Purchase and Sale Agreement ("Sales Contract") between Assignor and \_\_\_\_\_ ("Seller") for the purchase of the real property located at \_\_\_\_\_ (the "Property"). A copy of the Sales Contract is attached hereto as Exhibit A and is incorporated herein by this reference; and

B. Assignor desires to assign its rights and interest to said Sales Contract and Assignee desires to purchase such rights and interests pursuant to the terms of this agreement.

**NOW, THEREFORE**, the parties agree:

1. For the sum of \$ \_\_\_\_\_ ("Assignment Fee") from Assignee to Assignor, Assignor hereby assigns to Assignee the Buyer's right, title and interest in, and the Buyer's obligations under the Purchase and Sale Agreement attached as Exhibit A (hereinafter referred to as the "Agreement"). Assignee shall pay the Assignment Fee as follows:

\$ \_\_\_\_\_ shall be paid to Assignor upon execution of this Agreement as a non-refundable installment; and

The balance of \$ \_\_\_\_\_ shall be paid to Assignor on or before the Closing of the Sales Contract.

2. An addition to the Assignment Fee, Assignee shall immediately deposit substitute earnest money with the earnest money holder to replace the earnest money previously deposited by Assignor under the Sales Contract. Assignee shall pay earnest money in the amount of \$ \_\_\_\_\_ to \_\_\_\_\_.

3. Assignor warrants that (1) the Sales Contract is in full force and effect and has not been modified or amended, (2) Assignor owns and has the right to transfer the rights and interests covered by this assignment, free and clear of any previous transfer or other adverse claim or interest, and (3) neither Assignor nor, to Assignor's knowledge, the Seller under the Agreement is in default in performing any obligations under the Agreement.

4. By accepting this assignment, Assignee agrees to perform all of the obligations of the Buyer under the Sales Contract, including but not limited to all settlement requirements as originally stated in the Sales Contract.

5. If Assignee does not perform as agreed, all monies paid under Paragraph 1 shall be forfeited to Assignor as full settlement of any claims by both parties, and Assignee shall forfeit its assignment rights and the Sales Contract shall revert back to Assignor as Buyer.

6. Assignee may not assign this assignment or the Sales Contract to another buyer without the written permission of the Assignor.

IN WITNESS WHEREOF, the parties have executed this agreement as their free and voluntary act and deed, on the date indicated by each signature.

ASSIGNOR:

ASSIGNEE:

\_\_\_\_\_

\_\_\_\_\_

Date signed: \_\_\_\_\_

Date signed: \_\_\_\_\_

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**AGREEMENT TO AMEND/EXTEND CONTRACT  
(Substitution of Assignee Buyer)**

This agreement amends the contract ("Sales Contract") dated \_\_\_\_\_,  
between \_\_\_\_\_ ("Seller"),  
and \_\_\_\_\_ ("Original Buyer"),  
relating to the purchase and sale of the property located at \_\_\_\_\_  
\_\_\_\_\_ (the "Property").

**RECITALS**

A. Pursuant to the Sales Contract, Original Buyer has full power and authority to assign Original Buyer's rights and interests under the Sales Contract to another party without the consent of the Seller; and

B. By separate agreement ("Assignment Agreement") the Original Buyer has assigned all of Original Buyer's right, title, and interest in the Sales Contract to \_\_\_\_\_ (the "Substitute Buyer"), and Substitute Buyer has agreed to accept the assignment and to assume the performance of all of the duties and obligations under the Sales Contract as the buyer; and

C. The parties wish to amend the Sales Contract to replace Original Buyer with Substitute Buyer.

NOW THEREFORE, in consideration of the forgoing recitals, and on the terms, covenants and conditions contained in this Agreement, the parties agree as follows:

1. **Substitution of Earnest Money.** Substitute Buyer shall deposit with the Earnest Money Holder identified in Section 4.3 of the Sales Contract, the amount of \$ \_\_\_\_\_, in good funds, to be held as substitute earnest money under the terms of the Sales Contract. Substitute Buyer's earnest money deposit shall be paid to Earnest Money Holder no later than \_\_\_\_\_. Upon Substitute Buyer's deposit of the substitute earnest money, the parties agree that the Earnest Money Holder shall be authorized to immediately release the full amount of the original earnest money to the Original Buyer.

2. **Substitution of Buyer.** Seller hereby acknowledges the assignment from Original Buyer to Substitute Buyer and agrees to the replacement of the Original Buyer by Substitute Buyer under the Sales Contract.

3. **Release of Original Buyer.** The parties agree that the Original Buyer shall be released and discharged from all obligation and/or liability under the Sales Contract and that the Seller and Substitute Buyer shall look to one another for performance under the Sales Contract.

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4. **No Other Modification.** All terms of the Sales Contract Agreement shall remain in full force and effect unless specifically modified by this Agreement.

EXECUTED to be effective as of \_\_\_\_\_ 20\_\_\_\_.

**Original Buyer:** \_\_\_\_\_

\_\_\_\_\_  
Original Buyer Signature

Date signed: \_\_\_\_\_

\_\_\_\_\_  
Original Buyer Signature

Date signed: \_\_\_\_\_

**Seller:** \_\_\_\_\_

\_\_\_\_\_  
Seller Signature

Date signed: \_\_\_\_\_

\_\_\_\_\_  
Seller Signature

Date signed: \_\_\_\_\_

**Substitute Buyer:** \_\_\_\_\_

\_\_\_\_\_  
Substitute Buyer's Signature

Date signed: \_\_\_\_\_

\_\_\_\_\_  
Substitute Buyer's Signature

Date signed: \_\_\_\_\_

EDUCATIONAL PURPOSES ONLY