

# Wholesaling

## *Nuts - Bolts - Screws*



FIRST ALLIANCE  
— TITLE —

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# Why You Should Not Consider Anything I say Legal Advice or Even Reliable Information or Education

I'm not your lawyer  
Facts vary -- circumstances  
I probably don't know what you need  
I didn't get much sleep  
I'm easily confused....you may be also



# What Is Wholesaling?

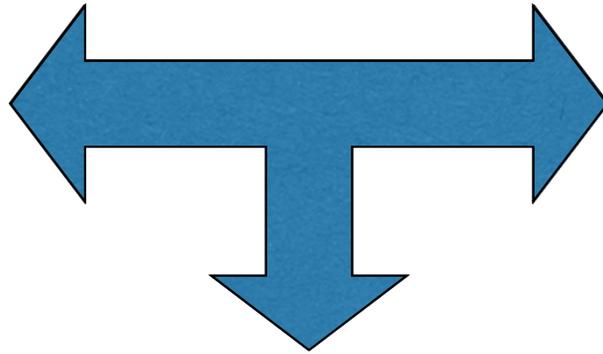
*Find a motivated seller willing to sell a property for less than it's worth, buy it, and then sell the property to someone else for a profit.*

# My Three Laws

1. DO NOT act as a real estate broker!
2. ONLY sell to INVESTORS, not retail.
3. BE HONEST– Disclose what you're doing.  
Your reputation (and more) is on the line!

# Methods for Wholesaling

Assignment  
of Contract



Transfer of  
Entity

Back-to-Back  
or  
Double Close

# Assigning Contracts

You are selling your contract, not the property

You contract  
to buy



You sell (assign)  
your contract to  
new buyer

New buyer becomes the  
actual buyer to close

# Can You Assign ?

- No Bank Seller
- No Short Sale
- Greg's Law #2 (who is your buyer?)

# Critical Issues for Assignment

- ✓ Contract should allow it.
- ✓ Seller should know you might do it.
- ✓ You need to get paid.
- ✓ Buyer needs to know it's on the hook

# 3 Steps/Documents

1. Contract with Seller
2. Assignment Agreement with New Buyer
3. Contract Amendment to Substitute Buyer

# My Three Laws

1. DO NOT act as a real estate broker!

# Fred the Finder



"Real estate broker" or "broker" means any person, . . . who, in consideration of compensation by fee, commission, salary, or anything of value or with the intention of receiving or collecting such compensation, engages in or offers or attempts to engage in, either **directly or indirectly**, by a continuing course of conduct or by any single act or transaction, any of the following acts: (I) **Selling, exchanging, buying, renting, or leasing real estate, or interest therein, or improvements affixed thereon**; (II) Offering to sell, exchange, buy, rent, or lease real estate, or interest therein, or improvements affixed thereon; (III) Selling or offering to sell or exchange an existing lease of real estate, or interest therein, or improvements affixed thereon; (IV) **Negotiating the purchase, sale, or exchange of real estate, or interest therein**, or improvements affixed thereon; (V) Listing, offering, attempting, or agreeing to list real estate, or interest therein, or improvements affixed thereon for sale, exchange, rent, or lease; (VI) Auctioning or offering, attempting, or agreeing to auction real estate, or interest therein, or improvements affixed thereon; (VII) Buying, selling, offering to buy or sell, or otherwise dealing in options on real estate, or interest therein, or improvements affixed thereon or acting as an "option dealer"; (VIII) Performing any of the foregoing acts as an employee of, or in behalf of, the owner of real estate, or interest therein, or improvements affixed thereon at a salary or for a fee, commission, or other consideration; (IX) Negotiating or attempting or offering to negotiate the listing, sale, purchase, exchange, or lease of a business or business opportunity or the goodwill thereof or any interest therein when such act or transaction involves, directly or indirectly, any change in the ownership or interest in real estate, or in a leasehold interest or estate, or in a business or business opportunity which owns an interest in real estate or in a leasehold unless such act is performed by any broker-dealer licensed under the provisions of article 51 of title 11, C.R.S., who is actually engaged generally in the business of offering, selling, purchasing, or trading in securities or any officer, partner, salesperson, employee, or other authorized representative or agent thereof; (X) Soliciting a fee or valuable consideration from a prospective tenant for furnishing information concerning the availability of real property, including apartment housing which may be leased or rented as a private dwelling, abode, or place of residence. Any person, firm, partnership, limited liability company, association, or corporation or any employee or authorized agent thereof engaged in the act of soliciting a fee or valuable consideration from any person other than a prospective tenant for furnishing information concerning the availability of real property, including apartment housing which may be leased or rented as a private dwelling, abode, or place of residence, is exempt from this definition of "real estate broker" or "broker". This exemption applies only in respect to the furnishing of information concerning the availability of real property.

A real estate finder falls under the definition of a "real estate broker". The definition of a real estate broker does not recognize a distinction between a broker and a finder. The legislative intent is to extend the definition to include the full spectrum of activities related to the sale of real estate. *Amedeus Corp. v. McAllister*, 232 P.3d 107 (Colo. App. 2009).

Term "real estate broker" includes all activities related to sale of real estate. The legislative history of this section reveals a legislative intent to enlarge and extend the definition of the term "real estate broker" to include the full spectrum of activities related to the sale of real estate. *Brakhage v. Georgetown Associates*, 33 Colo. App. 385, 523 P.2d 145 (1974).

Purpose of the exemptions in subsection (4) is to permit an owner of property to sell it, or to permit one to purchase property for his own account without having to procure a real estate license. *Seibel v. Colo. Real Estate Comm'n*, 34 Colo. App. 415, 530 P.2d 1290 (1974).

# Step 1 -Buy Side Contract

## **Needs to be assignable**

Additional provisions: Seller understands and agrees that the Buyer shall have the right to assign this contract to another buyer and that Seller's prior consent is not required.

**30. ADDITIONAL PROVISIONS.** (The following additional provisions have not been approved by the Colorado Real Estate Commission.)

**CLOSING COSTS PAID BY BUYER.** *Buyer will pay for Buyer's title insurance policy and all closing costs, including recording fees, transfer fees, state documentary fees, and title and escrow settlement charges. Seller will only be required to pay (1) outstanding liens/mortgages /judgments against the Property, (2) unpaid property taxes, (3) unpaid water/sewer charges, and (4) standard prorations per Section 16 of the Contract.*

**NO SELLER COMMISSIONS.** *Seller warrants that Seller is not represented by a real estate broker, and Seller shall pay not commissions to Buyer or any real estate broker of Buyer.*

**INVESTMENT BUYER.** *Seller understands that buyer is an investor and hopes to make a substantial profit on the Property. Seller understands Seller has had ample opportunity to explore other options to sell the property, including listing it with an agent or selling to another party, and Seller has decided to sell Property to Buyer.*

**INTENT TO RESELL FOR PROFIT.** *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. 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 RIGHTS.** *From time to time a property will precisely fit the criteria of another investor in Buyer's network. Buyer may choose to assign this Contract to that third party, called the New Buyer, in which case Seller will close with that New Buyer under the exact same terms of this Contract. Seller agrees to sign any documents necessary to complete the assignment. Seller understands that Buyer may receive a fee from the New Buyer for assigning the contract.*

**BUYER FINANCING.** *Buyer may choose to get a loan to purchase the Property, which will in no way negatively impact the Seller nor change any of the terms and conditions in the Contract. This Contract does NOT have a financing contingency.*

# Steps 2 & 3

## Assignment Side

2. Execute Assignment Agreement
3. Amend the Contract

*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.

**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 \_\_\_\_\_.

**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.

# Assignment Closing

- New Buyer Closes with Seller
- Assignment fee either paid in advance and shown on Closing Statement as paid in advance, or the fee is paid at closing on Closing Statement.

# My Three Laws

2. ONLY sell to INVESTORS, not retail.

# Assignment Don'ts

- x Don't assign short sale contracts unless lender specifically approves - which is never.
- x Don't treat it as a commission paid by seller. (Remember Law #1)
- x Don't keep the seller in the dark. (Remember Law #3)



# Back to Back or Double Closings

## STEPS

1. Buy the property
2. Sell the Property
3. Profit on spread

## CHALLENGES

- Money to Buy
- Timing/Buyer Fallout
- Costs/Fees

1152 **INVESTMENT BUYER.** Seller understands that buyer is an investor and hopes to make a  
1153 substantial profit on the Property. Seller understands Seller has had ample opportunity to  
1154 explore other options to sell the property, including listing it with an agent or selling to  
1155 another party, and Seller has decided to sell Property to Buyer.  
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1161 day Buyer purchases from Seller. The subsequent sale by Buyer will be for a purchase price  
1162 higher than the price at which Seller sells to Buyer. Seller is giving up any equity that may  
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1172 to a third party.  
1173

# Solving the Money Problem

Transactional Funding  
Using Your Buyer's Money  
Seller Carry/Subject to

# Solving the Timing/Buyer Fallout Problem

Closing Contingency  
Escrow Agreement

# Assignment Entity Transfer

Owner of XYZ  
Contracts to Sell  
XYZ



At Closing, New  
Owner of XYZ funds  
the XYZ Purchase  
and Home Purchase

XYZ, LLC Contracts  
to Buy House

XYZ, LLC Owns the  
House

# Five Parts

1. Formation of XYZ, LLC
2. Contract to buy the property.
3. Contract to Sell the LLC to Investor
4. Closing (simultaneous LLC Sale and Property Sale)
5. Follow-Up

# Greg's Three Laws

1. DO NOT act as a real estate broker!
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## **Appendix A**

### **TITLE INSURANCE CLOSING PROTECTION LETTERS (CPLs)**

The purpose of this appendix is to provide information regarding the issuance and protections of Closing Protection Letters (“CPLs”).

Colorado Insurance Regulation 8-1-3 states, in part, that title insurance companies may issue CPLs and, in addition, that title entities may conduct or sponsor certain types of educational courses, if the standards of Regulation 8-1-3 are met. In the event a title entity is sponsoring or conducting a course related to real estate or mortgage issues, the title entity must provide this appendix to the individuals taking the course.

CPLs contractually obligate a title insurer to indemnify certain parties to a real estate transaction for certain improper actions of the agent of the title insurer.

CPLs can be issued to lenders, buyers and sellers. Key protections may include:

- Loss due to fraud, dishonesty, or negligence, misappropriation of funds or defalcations by the title insurance agent, and
- Loss due to failure to comply with the closing instructions of the lender as provided for by the terms of the CPL.

For more information regarding CPLs, please contact your local title agent or title insurance company.

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# Olivier and the Option



(1.5) "Option dealer" means any person, firm, partnership, limited liability company, association, or corporation who, **directly or indirectly, takes, obtains, or uses an option to purchase**, exchange, rent, or lease real property or any interest therein **with the intent or for the purpose of buying, selling, exchanging, renting, or leasing** said real property or interest therein **to another** or others whether or not said option is in that person's or its name and whether or not title to said property passes through the name of said person, firm, partnership, limited liability company, association, or corporation in connection with the purchase, sale, exchange, rental, or lease of said real property or interest therein.