



**REALTORS® ASSOCIATION OF NEW MEXICO
REAL ESTATE CONTRACT – 2016**

CAUTION

THIS FORM IS FOR USE BY ATTORNEYS AND SHOULD NOT BE COMPLETED BY REAL ESTATE BROKERS. REAL ESTATE BROKERS ARE TO USE RANM FORM 2402 – REAL ESTATE CONTRACT ADDENDUM.

THIS IS NOT A PURCHASE AGREEMENT. Unlike a purchase agreement, a Real Estate Contract (this "Contract") has the effect of immediately transferring equitable title to real estate. You should consult your real estate attorney with regards to the effectiveness, validity, or consequences of the use of this form. This form does not contain disclosures required by the Consumer Protection Act "Truth in Lending" (TILA) and/or Federal Reserve Regulation Z (Regulation Z). Use this form only in conjunction with another instrument incorporating the required disclosures or for transactions exempt from TILA and Regulation Z.

Effective January, 2014, TILA has placed restrictions on seller financing. These restrictions apply to **TRANSACTIONS SECURED BY A DWELLING**. Sellers should review RANM Form 2405 – Information Sheet – Seller Financing Under the Truth in Lending Act and consult with a real estate attorney, if necessary, to determine the applicability of these provisions to this transaction and if applicable, to ensure that they are in compliance with the TILA provisions.

TERMS

THIS CONTRACT IS MADE ON _____, _____ (the "Effective Date"), by _____ ("Seller")
 whose address is _____
 and _____ ("Buyer")
 whose address is _____
 who is purchasing as: TENANTS IN COMMON JOINT TENANTS OTHER _____

Seller and Buyer agree:

1. SALE: Seller sells to Buyer the following described real estate (the "Property"):

Address _____ City _____ State _____ Zip _____
 Legal Description
 or see metes and bounds description attached as Exhibit _____, _____ County, New Mexico,

Subject to reservations, restrictions, covenants, easements of record, taxes and assessments and prior obligations as set forth in Paragraph 3 (collectively referred to herein as the "Permitted Exceptions").

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2. PRICE AND PAYMENT.

A. BUYER WILL PAY:

CONTRACT SALE PRICE

(Total of Down Payment, Assumed Prior Obligations \$ _____ and Balance Due Seller)
(_____ Dollars)

(1) DOWN PAYMENT \$ _____
(_____ Dollars)

(2) ASSUMED PRIOR OBLIGATIONS \$ _____
(_____ Dollars)

(3) BALANCE DUE SELLER (including wrapped Prior Obligations) \$ _____
(_____ Dollars)

PAYABLE AS FOLLOWS:

If not sooner paid pursuant to the terms of this Contract, the entire Balance Due Seller shall be due and payable 30 years from the date of the first payment.

B. INTEREST ON BALANCE DUE SELLER. Except as specifically stated to the contrary in Paragraph 2A, the Balance Due Seller will bear interest at the rate of _____% per year (the "Interest Rate") from the Effective Date, and the payments will be paid to Escrow Agent (named below) and continue until the entire Balance Due Seller plus any accrued interest due to Seller is fully paid.

C. LATE CHARGES AND COLLECTION COSTS. Buyer will pay all late charges and all collection costs incurred on all Prior Obligations paid directly by Buyer or through Escrow Agent. A late charge of \$ _____ will be due and payable by Buyer on any payment that is over _____ days overdue. Late charges will be paid to Seller as additional interest.

D. APPLICATION OF PAYMENTS ON BALANCE DUE SELLER.

(1) Initial only one of the following two paragraphs.

_____ **PERIODIC INTEREST.** Payments received by Escrow Agent, excepting prepayments, will be applied to regularly scheduled installments in the order in which payments are due and will be credited as though the payments had been made on their respective due dates, first to interest and then to the Balance Due Seller.

_____ **DAILY INTEREST.** Payments will be applied as of the date of receipt by Escrow Agent, first to accrued interest then to the Balance Due Seller.

(2) All payments will be assumed to be regular payments, and not prepayments, unless otherwise specified by Buyer in writing at the time of delivering the payments to Escrow Agent. Buyer may prepay all or any part of the Balance Due Seller without penalty, *unless* the Property is non-residential and this Contract provides for a prepayment penalty or prohibition against pre-payment. Any prepayment will be credited first to accrued interest, then to the Balance Due Seller, and then to Prior Obligations assumed by Buyer. Notwithstanding any prepayments, Buyer will make the next regularly scheduled payments.

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3. PRIOR OBLIGATIONS.

A. Each of the following Prior Obligations is currently outstanding on the Property:

Type of Lien or Obligation	Holder Loan Number	Recording Data

B. IF ANY PRIOR OBLIGATIONS ARE CURRENTLY OUTSTANDING ON THE PROPERTY, INITIAL ANY OF THE FOLLOWING PARAGRAPHS WHICH APPLY. ONLY THE INITIALED PARAGRAPHS WILL APPLY. Seller and Buyer appoint Escrow Agent as their Attorney-in-Fact for the limited purpose of obtaining account information as needed from the holders of the Prior Obligations.

(1) ASSUMED PRIOR OBLIGATIONS.

(a) PAID THROUGH ESCROW. Buyer assumes and agrees to pay and perform the Prior _____ Obligations in accordance with their terms. Buyer will make the required payments on the _____ Prior Obligations, together with the required payments on this Contract, to Escrow Agent, _____ which will remit the payments to the proper payee. Buyer will advise Escrow Agent of any _____ change in the amount of the payment due on any Prior Obligations. When the Balance Due _____ Seller is fully paid, this Escrow will terminate and Buyer will make the required payments on _____ the Prior Obligations directly to the proper payee. This Paragraph applies to the following Prior _____ Obligations: _____

(b) PAID DIRECTLY BY BUYER. Buyer assumes and agrees to pay and perform the Prior Obligations _____ in accordance with their terms. Buyer will make the required payments on the Prior Obligations _____ directly to the proper payee. If Buyer fails to pay the required payments before they become _____ delinquent, Seller may pay the payment. Payment by Seller will not be deemed a waiver of _____ Buyer's default, and the amount paid by Seller will be immediately due and payable to Seller and _____ will bear interest from date of payment by Seller until paid at the highest Interest Rate provided in _____ Paragraph 2B. This Paragraph applies to the following Prior Obligations: _____

(2) WRAPPED PRIOR OBLIGATIONS.

(a) PAID THROUGH ESCROW. Buyer does not assume and does not agree to pay the Prior Obligations. _____ All required payments due on the Prior Obligations will be remitted by Escrow Agent to the _____ proper payee out of the payments on the Balance Due Seller. If Buyer fails to pay the required _____ payments before they become delinquent, Seller may pay the payment. Payment by Seller will _____ not be deemed a waiver of Buyer's default, and the amount paid by Seller will be immediately _____ due and payable to Seller and will bear interest from the date of payment by Seller until paid at _____ the highest Interest Rate provided in Paragraph 2B. Upon payment of the Balance Due Seller, _____ Seller will obtain a release of the Property from the lien of the wrapped Prior Obligations. Seller _____ will notify the Escrow Agent of any changes in the monthly payment required by the mortgage _____ servicer. Buyer shall pay all late payment penalties on the above-referenced lien. This Paragraph _____ applies to the following Prior Obligations: _____

(b) PAID DIRECTLY BY SELLER. Buyer does not assume and does not agree to pay the Prior _____ Obligations. Seller will be responsible for all payments required under the Prior _____ Obligations and will keep the Prior Obligations in good standing. Upon payment of the _____ Balance Due Seller, Seller will obtain a release of the Property from the lien of the _____ wrapped Prior Obligations. This Paragraph applies to the following Prior Obligations: _____

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IMPORTANT NOTICE: SELLER AND BUYER DO HEREBY ACKNOWLEDGE THAT THE ABOVE-REFERENCED LIEN(S) OR OBLIGATION(S) CONTAIN A "DUE ON SALE" PROVISION, WHICH GIVES THE MORTGAGE/DEED OF TRUST HOLDER THE OPTION TO REQUIRE IMMEDIATE AND FULL PAYMENT OF THE LOAN(S) IN THE EVENT OF SALE OR DISPOSITION OF THE PROPERTY. THE SELLER AND BUYER HEREBY AGREE THAT IF THE ABOVE-REFERENCED MORTGAGE/DEED OF TRUST HOLDER ELECTS TO ACCELERATE THE UNPAID BALANCE OF THE ABOVE-DESCRIBED LOAN(S), THE BUYER SHALL BE FULLY RESPONSIBLE FOR THE PAYMENT OF ALL SUMS REQUIRED ON SUCH LOAN(S) AND ALL AMOUNTS SO PAID SHALL BE CREDITED TO THE UNPAID PRINCIPAL BALANCE AND ACCRUED INTEREST ON THIS CONTRACT. SELLER SHALL NOTIFY BUYER IN WRITING OF ACCELERATION BY THE MORTGAGE/DEED OF TRUST HOLDER AND BUYER SHALL HAVE A PERIOD OF 30 DAYS AFTER MAILING OF SUCH NOTICE TO COMPLY. FAILURE OF BUYER TO COMPLY SHALL CONSTITUTE A DEFAULT UNDER THE TERMS OF THIS CONTRACT.

4. BUYER TO MAINTAIN PROPERTY; PAY INSURANCE, TAXES AND PAVING LIENS; AND SELLERS' RIGHTS.

A. MAINTENANCE. Buyer will maintain the Property in as good condition as on the Effective Date, excepting normal wear and tear. Buyer will obey all applicable laws governing the use of the Property, including but not limited to environmental laws.

B. INSURANCE. Buyer shall maintain the following insurance coverage with an insurance company satisfactory to Seller. Such insurance shall be maintained for the benefit of Buyer and Seller as their interests may appear. Buyer will furnish a copy of the insurance policy or certificate of the insurance policy to Seller annually before expiration of existing insurance stating that coverage will not be canceled or diminished without a minimum of 15 days prior written notice to Seller.

- (1) Insurable improvements upon the Property shall be insured against the hazards covered by fire and extended coverage in the amount of: (Initial either Paragraph (a) OR (b) below)
- _____ (a) \$ _____; OR
- _____ (b) not less than the greater of the replacement cost of the improvements or the Balance Due Seller; and

(2) Public liability insurance in an amount not less than \$ _____ shall be maintained with Seller as additional named insured.

C. TAXES. The property taxes for the current year have been divided and prorated between Seller and Buyer as of the Effective Date and Buyer is responsible for and will pay the taxes and assessments of every kind against the Property. If permitted by the applicable assessor, Buyer will have the Property assessed for taxation in Buyer's name. Unless taxes are paid through an escrow account, Buyer will send copies of paid tax receipts to Seller within 30 days after the taxes become due and payable.

D. PAVING, UTILITY AND OTHER IMPROVEMENT LIENS AND CHARGES. Subject to proration, Buyer assumes any paving, utility or other improvement liens or charges now or later assessed against the Property and will pay all installments of principal and interest thereon that become due after the Effective Date.

E. SELLER'S RIGHTS. If Buyer fails to pay any amounts required to be paid by Paragraphs 4 B, C, and D before the amounts become delinquent, Seller may pay the amounts (but is not obligated to do so) for protection of the Property and Seller's interest in the Property. Payment of the amounts will not be deemed a waiver of the Buyer's default for failure to pay the amounts, and the amounts that have been paid will be immediately due and payable to Seller, and will bear interest until paid at the highest Interest Rate provided in Paragraph 2B.

5. BUYER'S RIGHT TO POSSESSION. Buyer will be entitled to take and retain possession of the Property unless and until Buyer's rights in the Property are terminated by Seller as provided in Paragraph 8.

6. BUYER'S RIGHT TO SELL, ASSIGN, CONVEY, OR ENCUMBER. A sale, assignment, conveyance or encumbrance of all or any portion of Buyer's interest in this Contract or the Property to any person or entity (an "Assignee") constitutes a Transfer under this Contract.

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- A. SALE WITHOUT CONSENT OF SELLER.** A Transfer to an Assignee will not require the consent of Seller. Buyer will not, however, be released from Buyer's obligations under this Contract by any Transfer under this Paragraph. Buyer will deliver a copy of the written evidence of the Transfer (the "Transfer Document") to Escrow Agent.
- B. NO SALE WITHOUT CONSENT OF SELLER. CAUTION: THE FOLLOWING PARAGRAPH SEVERELY RESTRICTS THE RIGHT OF BUYER TO TRANSFER THIS CONTRACT AND THE PROPERTY. To invoke this Paragraph, initial where indicated. If this Paragraph is initialed, paragraph 6A does not apply.**

_____ A Transfer without payment of the Balance Due Seller will require obtaining the prior written consent
_____ of Seller, which Seller will not unreasonably withhold. A Transfer without payment of the Balance Due
_____ Seller, and without the prior written consent of Seller, will be an event of default for which Seller
_____ will have the right to send a Default Notice pursuant to Paragraph 8 and to demand payment of the
_____ Balance Due Seller.

Caution: If the Property is subject to any Prior Obligations, the provisions of such Prior Obligations should be examined carefully for any conflict with Paragraph 6.

- 7. TITLE INSURANCE OR ABSTRACT.** Seller is delivering a Contract Purchaser's Title Insurance Policy to Buyer or Abstract of Title to Escrow Agent at the time this Contract is escrowed, showing insurable or marketable title to the Property as of the Effective Date, subject to the Permitted Exceptions, and Seller is not obligated to provide other evidence of title.

8. SELLER'S RIGHTS IF BUYER DEFAULTS.

- A. DEFAULT NOTICE.** Time is of the essence in this Contract. If Buyer fails to pay or perform any obligation of Buyer under this Contract, the failure will constitute a default and Seller may give notice of default to Buyer, specifying the default and the curative action required (the "Default Notice"), at Buyer's mailing address as follows: _____
or at such other address that Buyer may designate by a written, signed statement delivered to Escrow Agent. If Seller's attorney sends a Default Notice, Buyer will pay within the time allowed the additional sum of \$100.00, plus gross receipts tax and postage, for Seller's attorneys' fees and costs in connection with sending of the Default Notice.
- B. MANNER OF GIVING DEFAULT NOTICE.** Default Notice will be given in writing by certified mail, return receipt requested, and regular first class mail, addressed to Buyer at the address for Buyer provided in Paragraph 8A, with a copy to Escrow Agent. Default Notice given as provided in Paragraph 6A is sufficient for all purposes, whether or not the Default Notice is actually received.
- C. BUYER'S FAILURE TO CURE DEFAULT RESULTS IN TERMINATION OF BUYER'S EQUITABLE RIGHTS IN THE PROPERTY OR ACCELERATION OF BALANCE DUE SELLER.**

(1) If Buyer fails or neglects to cure any default within 30 days after the date Seller's Default Notice is mailed, then Seller may, at Seller's option, either:

- (a) declare the Balance Due Seller to be then due and proceed to enforce payment of the Balance Due Seller, plus any accrued interest, together with reasonable attorneys' fees, postage and costs in which case the special warranty deed will remain in escrow; or
- (b) terminate Buyer's rights in the Property and retain all sums paid as liquidated damages to that date for the use of the Property, and all rights of Buyer in the Property will end. If the Contract is terminated by Seller, Buyer will forfeit all payments made pursuant to this Contract. Buyer waives any claim to the payments if a default occurs and Seller elects to terminate Buyer's rights in the Property. If Buyer's rights in the Property are terminated, Buyer waives any and all rights and claims for reimbursement for improvements Buyer may have made to the Property. Buyer will be liable to Seller to the extent permitted by law for failure to comply with Paragraph 4A.

(2) If the final day for curing the default falls on a non-business day of Escrow Agent, then the period for curing the default will extend to the close of business on the next business day of Escrow Agent.

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(3) Acceptance by Escrow Agent of any payment tendered will not be deemed a waiver by Seller of Buyer's default or extension of the time for cure of any default under this Contract.

D. AFFIDAVIT OF UNCURED DEFAULT AND ELECTION OF TERMINATION. A recordable affidavit (the "Default Affidavit") made by Seller, Seller's agent, or Escrow Agent, identifying the parties, stating the legal description of the Property or the recording date of this Contract, stating the date that Default Notice was given, stating that the specified default has not been cured within the time allowed and that Seller has elected to terminate Buyer's right in the Property, and delivered to Escrow Agent, will be conclusive proof of the uncured default and election of termination of Buyer's rights in the Property.

E. LEGAL RIGHT TO EVICT BUYER. Following Seller's termination of Buyer's right in the Property, Buyer is no longer entitled to possession of the Property and shall immediately surrender possession of the same to Seller. In the event Buyer fails to surrender possession of the Property to Seller as required herein, Seller may file any action permitted by law in the district court in the county in which the Property is located to obtain possession of the Property and to remove Buyer therefrom.

F. NOTICE TO ASSIGNEES. In addition to sending a Default Notice to Buyer, Seller will send all Default Notices to all Assignees who have given written notice of their name, address, and interest in the Property and who have provided a copy of the Transfer Document to Escrow Agent.

G. RIGHTS AND OBLIGATIONS SURVIVING TERMINATION. In the event the Property is rented, upon termination of Buyer's rights in the Property, Buyer will provide an accounting to Seller of any prepaid rents and deposits received by Buyer from the Property, which obligation will survive termination. Notwithstanding the termination of Buyer's rights to the Property, Buyer will be liable to Seller for any failure to maintain the property as required in Paragraph 4A, as well as for any unpaid taxes or utility liens which survive the termination of Buyer's rights, prepaid rent, and rental deposits.

9. BINDING EFFECT. This Contract will bind and benefit the heirs, devisees, personal representatives, successors and assigns of Seller and Buyer.

10. APPOINTMENT OF AND INSTRUCTIONS TO ESCROW AGENT. A. ESCROW AGENT. Seller and Buyer appoint as Escrow Agent:

A. ESCROW AGENT. Seller and Buyer appoint as Escrow Agent: _____

B. ESCROW DOCUMENTS. The following papers (the "Escrowed Documents") are placed in escrow:

(1) Signed copy of this Contract.

(2) Original Warranty Deed signed by Seller.

(3) Original Special Warranty Deed signed by Buyer.

(4) **OTHER:** _____

C. PRIOR OBLIGATIONS. Add the following information, if applicable:

(1) Name and address of mortgagees/escrow agents/servicing agents _____

Account or Loan No. _____

(2) Name and address of mortgagees/escrow agents/servicing agents _____

Account or Loan No. _____

(3) Name and address of mortgagees/escrow agents/servicing agents _____

Account or Loan No. _____

D. FEES.

(1) The escrow fees of Escrow Agent will be paid as follows:

If all or parts of the fees are paid by Buyer, that amount will be in addition to the amounts due from Buyer provided in Paragraph 2.

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- (2) Escrow Agent will accept all amounts paid in accordance with this Contract and remit the amounts received (less applicable escrow fees) as follows:
- E. ACCEPTANCE OF PAYMENTS.** All payments will be deemed provisionally accepted when tendered, subject to determination by Escrow Agent of the correct amount and the timeliness of the payment. After each Default Notice is mailed to Buyer and any Assignee, pursuant to Paragraph 8, and a copy is furnished to Escrow Agent, Escrow Agent will not accept less than the full amount of the sum stated as due in the Default Notice.
 - F. RELEASE AND DELIVERY OF ESCROWED DOCUMENTS.** Upon full payment of the Balance Due Seller and full performance under this Contract by Buyer, other than payment of the assumed Prior Obligations, Escrow Agent is directed to release and deliver the Escrowed Documents to Buyer.
 - G. DEFAULT BY BUYER.** If Seller or Seller's agent delivers a Default Affidavit to Escrow Agent, then Escrow Agent will release and deliver the Escrowed Documents to Seller. Escrow Agent will be entitled to rely on the Default Affidavit as conclusive proof of termination.
 - H. CHANGES IN ESCROW FEES.** Escrow Agent may charge its standard escrow fees current as of the date the service is rendered, but all changes will become effective only after 60 days written notice to the party or parties paying the fee of Escrow Agent.
 - I. INDEMNIFICATION.** Seller and Buyer and any Assignee will each indemnify and save harmless Escrow Agent against all costs, damages, attorneys' fees, expenses and liabilities which Escrow Agent may incur or sustain in connection with this Contract, including any interpleader or declaratory judgment action brought by Escrow Agent, but not for the failure of Escrow Agent to comply with this Paragraph 10 or the negligence or intentional act of Escrow Agent.
 - J. RESIGNATION BY ESCROW AGENT.** Escrow Agent may resign as Escrow Agent by giving Seller and Buyer 60 days written notice of intent to resign. Seller and Buyer will select a successor escrow agent and give written notice to Escrow Agent of the selection. If the parties fail, for any reason, to select a successor escrow agent and give Escrow Agent written notice of the selection within 60 days after mailing by Escrow Agent of notice of intent to resign, then Escrow Agent may select the successor escrow agent.
- 11. SEVERABILITY CLAUSE.** The invalidity or unenforceability of any provision of this Contract will not affect the validity or enforceability of the remainder of this Contract.
- 12. ATTORNEYS' FEES.** If either party uses the services of any attorney to enforce that party's rights or the other party's obligations under this Contract, the prevailing party will recover reasonable attorneys' fees and costs from the nonprevailing party.
- 13. ENTIRE AGREEMENT.** This Contract contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. This Contract may be varied only by a document signed by both parties.
- 14. FORCE MAJEURE.** Neither party shall be liable for delay or failure to perform any obligation under this Contract if the delay or failure is caused by any circumstance beyond their reasonable control, including but not limited to, acts of God, war, civil unrest or industrial action.
- 15. LAW AND JURISDICTION.** This Contract shall be governed by and construed in accordance with the laws of New Mexico and each party agrees to submit to the exclusive jurisdiction of the courts of New Mexico.
- 16. SEVERANCE.** If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Contract had been agreed with the invalid illegal or unenforceable provision eliminated.
- 17. OTHER.**

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CAUTION: PLEASE READ THIS ENTIRE CONTRACT BEFORE SIGNING. IF YOU DO NOT UNDERSTAND THIS CONTRACT, PLEASE CONSULT A REAL ESTATE ATTORNEY.

_____ Buyer Signature	_____ Date	_____ Time
_____ Buyer Signature	_____ Date	_____ Time
_____ Seller Signature	_____ Date	_____ Time
_____ Seller Signature	_____ Date	_____ Time

ACKNOWLEDGEMENT FOR NATURAL PERSONS

STATE OF NEW MEXICO)
COUNTY OF _____)
This instrument was acknowledged before me on _____, _____ by

My commission expires:

_____)
NOTARY PUBLIC

ACKNOWLEDGEMENT FOR ENTITIES

STATE OF NEW MEXICO)
COUNTY OF _____)
This instrument was acknowledged before me on _____, _____ by

My commission expires:

_____)
NOTARY PUBLIC

STATE OF NEW MEXICO)
COUNTY OF _____)
This instrument was acknowledged before me on _____, _____ by

My commission expires:

_____)
NOTARY PUBLIC