



JK Closing Attorneys, PLLC

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## JK Contract Review Course Outline – FR/BAR “As Is” Contract

### I. THE PARTIES

#### A. OWNER OF RECORD

Always check the original deed for the owner of the Property. Seller may tell you it's held by them, but you can never be certain until you check the chain of conveyances. Martial statuses may be incorrect, different parties may own the property altogether. Do not write "Owner of Record" on the contract.

Broward: <http://www.bcpa.net>

PBC: [http://oris.co.palm-beach.fl.us/or\\_web1/or\\_sch\\_1.asp](http://oris.co.palm-beach.fl.us/or_web1/or_sch_1.asp)

Miami-Dade: <https://www2.miami-dadeclerk.com/officialrecords/StandardSearch.aspx>

**\*\*Please make sure the parties names are spelled properly from the beginning\*\***

#### B. POWER OF ATTORNEY

We do not accept POAs for deeds. The owner of record must sign. POAs do not survive death. A copy of the original POA, including all amendments, is needed when submitting a contract.

#### C. OUT OF STATE SELLERS OR BUYERS

On documents that need to be recorded in Florida (deeds, mortgages, etc.), a public notary must be used. Out of state attorneys cannot acknowledge documents as members of the bar, even if allowed in their own state. If either party is going to be signing documents out of state, please alert our office to ensure timely closing.

#### D. TRUSTS, DECEASED PARTIES, CORPORATIONS

If either party is a trust, a copy of the original trust, including all amendments, is needed.

If a party is deceased, a death certificate is needed (a copy up front is fine, but a certified original is needed for closing).

For Corporations and LLCs, a copy of the Operating Agreement is needed.

### II. SECTION 1: PROPERTY DESCRIPTION

Fill in areas with proper address and legal descriptions. The proper legal description can be found on the previous deed. (Hopefully!)

Personal property included in the sale: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), intercom, light fixture(s), drapery rods and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), security gate and other access devices, and storm shutters/panels.

Buyer must add in any other personal property items on lines 20-21. Seller must exclude any of the above listed in lines 23-24.

**\*\*Washer/Dryer is not included in personal property. It must be added.\*\***

**\*\*Add in any expensive personal property that may be in non-standard locations such as the garage.\*\***

**\*\*If you are unsure about an item, either add it or exclude it.\*\***

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### III. SECTION 2: PURCHASE PRICE

#### A. INITIAL DEPOSIT

Defaults to “within 3 days after the Effective Date.” Please refer to our Counting Days worksheet for information on how to count days in the As Is agreement. If you are unsure of the Effective Date, or the due dates of any deposits or inspection periods, it is always best to speak to the other side and execute an addendum outlining important dates.

If this initial deposit is missed, Buyer is in DEFAULT.

We will issue an escrow deposit letter upon receipt of the initial deposit.

**STANDARD S. COLLECTION or COLLECTED: “COLLECTION” or “COLLECTED” means any checks tendered or received, including Deposits, have become actually and finally collected and deposited in the account of Escrow Agent or Closing Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by Closing Agent until such amounts have been COLLECTED in Closing Agent’s accounts.**

#### B. ESCROW AGENT

Our Escrow Agent Information (Lines 32-34):

Name: JK Closing Attorneys, PLLC

Address: 5489 Wiles Rd. Ste. 304, Coconut Creek, FL 33073

Phone: (954) 332-3111 Email: Contract@JKClosings.com Fax: (954) 688-2561

**\*\*If you are sending the contract directly to one of our staff members, you can use their email address\*\***

**\*\*EMAIL IS BETTER THAN FAX\*\***

#### C. ADDITIONAL DEPOSITS

If the deadlines for any additional deposits are missed, Buyer is in default and Seller may be able to cancel the agreement and retain any deposits as liquidated damages.

#### D. BALANCE TO CLOSE

Please do not write “Balance” on the line. Include the dollar amount that is due at closing. Note: This amount does not include closing costs, prepaids, or prorations.

### IV. SECTION 3: TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE

#### A. TIME FOR ACCEPTANCE AND COUNTER-OFFERS

If not signed by Buyer and Seller, and an executed copy **DELIVERED** to all parties on or before \_\_\_\_\_ this offer shall be deemed withdrawn and the Deposit, if any, shall be returned to Buyer. (Lines 44-45)

**\*\*Please do not ask us to review a contract who’s offer is only good for that day unless you will be able to get Seller to sign and RETURN back to Buyer within the timeframe\*\***

**\*\*Please do not leave the time for acceptance blank! If you submit an offer on behalf of your Buyer with no time for acceptance, that offer is open until you formally withdraw it in writing\*\***

Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day the counter-offer is delivered. (Lines 46-47)

Please include a date and time for acceptance of an offer or counter-offer. If a contract is signed **AFTER** the expiration of an offer, it is **NOT VALID**.

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*Eg. If the time for Acceptance is 1/31 and the offer has not been accepted on 1/31, on 2/1 can you change the date to 2/2 and have Buyer and Seller initial?*

*Answer: NO. The offer has already been withdrawn and a new offer is needed.*

*Eg. Time for acceptance is 1/31. You represent the Seller, and Buyer submits an offer to you on 1/30. Seller signs and gives the contract back to you. You give the fully executed contract to Buyer on 2/1. Do you have a contract?*

*Answer: NO. You must DELIVER the contract within the timeframe.*

## B. EFFECTIVE DATE

The Effective Date of the contract is when the fully executed agreement is **DELIVERED**. If Seller is the final signer/initialler then the Effective Date is when the contract is delivered to Buyer. (Lines 48-49)

**Standard F. TIME:** Calendar days shall be used in computing time periods. **Time is of the essence in this Contract.** Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, or a national legal holiday (see 5 U.S.C. 6103) shall extend to 5:00 p.m. (where the Property is located) of the next business day.

## V. SECTION 4: CLOSING DATE

Please do not write “or before” in the blank. A Closing Date “on or before” the actual Closing Date can create the presumption for your clients that they can close whenever they are ready. This is not true! Both parties, the closing agent, and the lender (if there is one) must agree to close before the Closing Date if it is a possibility.

## VI. SECTION 5: EXTENSION OF CLOSING DATE

If Buyer is financing the deal, the Closing Date can be extended up to 10 days if Lender does not meet certain CFPB Requirements (such as providing a CD 3 business days prior to closing).

**Standard G. FORCE MAJEURE:** Buyer or Seller shall not be required to perform any obligation under this Contract or be liable to each other for damages so long as performance or non-performance of the obligation, or the availability of services, insurance or required approvals essential to Closing, is disrupted, delayed, caused or prevented by Force Majeure. “Force Majeure” means: hurricanes, floods, extreme weather, earthquakes, fire, or other acts of God, unusual transportation delays, or wars, insurrections, or acts of terrorism, which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended a reasonable time up to 7 days after the Force Majeure no longer prevents performance under this Contract, provided, however, if such Force Majeure continues to prevent performance under this Contract more than 30 days beyond Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

## VII. SECTION 6: OCCUPANCY AND POSSESSION

### A. PRE-OCCUPANCY

Seller is taking on risk by allowing Buyer to occupy the Property prior to Closing. What happens if the Buyer cannot close? What if Buyer does not leave? Who should maintain insurance during this time?

Buyer assumes all risks of loss and maintenance to the Property upon occupancy and also waives any issues with property conditions.

Pre-Occupancy agreements should be extremely rare, only used in very special circumstances, and mirror language used in regular residential leases.

### B. POST-OCCUPANCY

Buyer is taking on risk by allowing Seller to occupy the Property after Closing. What happens if Seller does not leave when they are supposed to? Is Buyer allowed to let Seller stay if they are financing? Who should maintain insurance?

Post-Occupancy agreements should be extremely rare. The better option is to extend the Closing Date as necessary.

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## VIII. SECTION 7: ASSIGNABILITY

If Buyer wants to assign the Contract prior to Closing, either of the first two boxes must be checked. The first box is pro-Buyer, the second box is pro-Seller. The third box does not allow assignment.

## IX. SECTION 8: FINANCING

### A. CASH DEAL

There is no financing contingency. After all inspection periods and any other periods allowing Buyer to withdraw are exhausted, Buyer is obligated to close.

### B. FINANCING CONTINGENCIES

There is no such thing as a “Loan Commitment” in the FR/BAR As Is contract. Either Buyer has a Loan Approval within the timeframe, or they do not.

If Lender rejects Buyer **AFTER** the Loan Approval period, Buyer is still obligated to close, or is in Default.

If financing is contingent upon sale of another property, it is not considered sufficient Loan Approval. (Line 93-94)

Loan Approval is not required to be in writing, however Buyer must promptly deliver written notice of Loan Approval. (Line 103)

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#### 1. GOOD FAITH AND DILIGENT EFFORT

Buyer is obligated to make the mortgage loan application and use “good faith and diligent effort” in obtaining Loan Approval. If Buyer does not use “good faith and diligent effort,” they are in Default, even if the Lender denies them during the Loan Approval period.

**\*\*Please do not make the Closing Date and Loan Approval Period simultaneous\*\***

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#### 2. BUYER CAN WAIVE LOAN APPROVAL IF LOAN NOT OBTAINED

In Buyer’s notice that Loan Approval was not obtained, Buyer may either: (a) terminate the contract or (b) waive obtaining Loan Approval. If Buyer waives obtaining Loan Approval, Buyer remains obligated to proceed pursuant to the terms of the contract.

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#### 3. SELLER MAY ELECT TO CANCEL IF LOAN APPROVAL IS DEEMED WAIVED

Should Buyer fail to timely deliver notice, the approval period is deemed waived. Seller may choose to cancel the agreement within 3 days after the expiration of the Loan Approval Period. Buyer is entitled to their deposit. (Lines 109-115)

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#### 4. BUYER FAILURE TO CLOSE

After the Loan Approval Period ends, or notice of Loan Approval is given, and Buyer fails to close, Seller is entitled to all deposits unless failure to close is due to: (1) Seller Default, (2) Property conditions related to Loan Approval haven’t been met, (3) appraisal obtained by Lender does not meet terms of Loan Approval. (Lines 116-122)

**\*\*You should still include an appraisal contingency for your Buyer\*\***

## X. SECTION 9: CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS

Some items can be shifted from Seller to Buyer depending on whether 8(c)(i), (ii), or (iii) is chosen. 8(c)(i) is typical for Palm Beach, and 8(c)(iii) is typical for Broward and Miami-Dade. 8(c)(ii) is the most advantageous to a Seller in terms of Closing costs.

### A. COSTS PAID BY SELLER

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In addition to items listed under 9(a), Seller will be responsible for Title Insurance premiums and associated costs if 8(c)(i) is checked.

Seller pays Title Search/Examination Fees if 8(c)(i) or (iii) is checked. Seller can limit these costs in line 168 to save money on the Title Search and Abstract.

## B. COSTS PAID BY BUYER

In addition to items listed under 9(a), Buyer will be responsible for Title Insurance premiums and associated costs if 8(c)(ii) or (iii) is checked.

## C. LIEN AND PERMIT SEARCHES

Please note, not all Closing Agents order Municipal Lien Searches or Permit Searches. A title search should show any liens placed by a municipality on a property, however, if a fine exists that has yet to become a lien, it will not show up. JK Closing Attorneys order City Lien and Permit searches on all our title files.

Permit searches must be completed within the Inspection Period if Buyer wishes to use fines or open permits as a reason to cancel the contract.

## XI. SECTION 10: DISCLOSURES

### A. 10(B) PERMITS DISCLOSURE

Where Seller discloses to Buyer that there are improvements on the property that are missing permits, Seller is now obligated to provide Buyer with plans and information Seller has in Seller's possession regarding the improvements. Seller may have these documents and information if a previous owner provided them to Seller, or where the Seller is the one that made the improvements.

### B. 10(J) SELLER DISCLOSURE

A Seller who has been notified by a governmental entity that there is a currently uncorrected building, environmental or safety code violations on the property is obligated to disclose same to Buyer in writing. The written component of the disclosure is new to the 4/17 As Is contract, not the disclosure requirement itself.

## XII. SECTION 11: PROPERTY MAINTENANCE

If, prior to Closing, Seller is unable to meet the AS IS Maintenance Requirement as required by Paragraph 11 a sum equal to 125% of estimated costs to meet the AS IS Maintenance Requirement shall be escrowed at Closing. If actual costs to meet the AS IS Maintenance Requirement exceed escrowed amount, Seller shall pay such actual costs. Any unused portion of escrowed amount(s) shall be returned to Seller.

## XIII. SECTION 12: PROPERTY INSPECTION; RIGHT TO CANCEL

### A. PERMITS

The Inspection Period defaults to 15 days (line 249), though many contracts cut that period to 7 days. Please note, that city lien and permit searches often take longer than 7 days, and sometimes take longer than 15 days.

### B. ADDITIONAL TERMS

Buyer and seller agree, at least 5 days prior to closing, Seller, at Seller's expense, will close out any and all open permits or Buyer may cancel the contract and receive their deposit back.

### C. LIABILITY

Seller could be liable for fees for not closing if the above language is in the additional terms and Seller is unwilling to pay to have the permits closed out. If Seller is held liable, the Seller's Agent may be liable to Seller.

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## XIV. SECTION 13: ESCROW AGENT

An Escrow Agent can be an Attorney, Title Company, or Broker. Each is governed by specific ethical rules and best practices guidelines.

### A. WIRE INSTRUCTIONS AND FRAUD

Electronic wire fraud is rampant. Agents, Lenders, Attorneys, and others involved in Real Estate transactions are susceptible to electronic breach of their information systems. For that reason, JK Closing Attorneys has adopted a policy of requiring any party sending a wire to verify wire instructions via phone call to our office.

## XV. SECTION 14: PROFESSIONAL ADVICE; BROKER LIABILITY

Know the line between acting as a Real Estate Agent or Broker and providing legal advice. If you are unsure whether or not you should be advising a client on their questions, please give us a call.

## XVI. SECTION 15: DEFAULT

If Buyer defaults, Seller may elect to keep the Deposit as liquidated damages, or may sue to enforce the contract.

If Seller defaults for any reason other than failure to make title marketable, Buyer may elect to receive their deposit back, and pursue further legal remedies or specific performance.

## XVII. SECTION 16: DISPUTE RESOLUTION

Buyer and Seller must attempt to resolve their issues via mediation before filing suit.

## XVIII. SECTION 17: ATTORNEY'S FEES; COSTS

Mediation fees are split evenly between the parties, and each party is responsible for their own legal fees. Should the dispute rise to litigation, the prevailing party is entitled to recover costs and fees, including reasonable attorney's fees.

## XIX. SECTION 18: STANDARDS

Several standards have been included above.

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### 1. STANDARD A. TITLE:

Be careful when dealing with Title Companies if your client is not represented by an attorney. JK Closing Attorneys works to clear title on each transaction where we are acting as the Closing Agent. On transactions where we are representing Seller or Buyer, we work with the Closing Agent to clear title, rather than allow Buyer to take title subject to exceptions on their title policy (with certain exceptions depending on the transaction).

If Seller is unable to timely cure title defects, Buyer may elect to cancel the contract and receive all deposits back.

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### 2. STANDARD D. LEASE INFORMATION:

If the contract is subject to a lease, we ask that the lease be submitted with the sales contract. Also, an estoppel from Tenant will be required to close.

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### 3. STANDARD F. TIME:

Calendar days shall be used in computing time periods. **Time is of the essence in this Contract.** Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, or a national legal holiday (see 5 U.S.C. 6103) shall extend to 5:00 p.m. (where the Property is located) of the next business day.

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#### 4. STANDARD K. PRORATIONS; CREDITS:

If current year's tax assessment is not available, then taxes will be prorated on prior year's tax. In all cases, due allowance shall be made for the maximum allowable discounts and applicable homestead and other exemptions. A tax proration based on an estimate shall, at either party's request, be readjusted upon receipt of current year's tax bill. This STANDARD K shall survive Closing.

#### XX. SECTION 19: ADDENDA

Several of the Addenda, including the Condominium Rider and Homeowner's Assn. addendum may require the contract to be contingent upon Buyer's approval by the Association.

#### A. EXTENSIONS

See the attached Addendum to Contract example

#### XXI. SECTION 20: ADDITIONAL TERMS

There are way too many lines here.

#### A. "IF, THEN"

Make sure your additional terms tell us what happens if the condition is not met.

*Bad Eg. Seller agrees to make the following repairs prior to Closing...*

#### **THEN WHAT?**

*Bad Eg. Buyer requests Seller make the following repairs prior to Closing...*

#### **A REQUEST IS NOT A REQUIREMENT**

*Good Eg. Buyer and Seller agree Seller will make the following repairs at least 5 days prior to closing. If Seller fails to make these repairs, then Buyer shall be due a \$100.00 credit at Closing.*