



# **Contracts and Leases**

## Lesson 3

### LA Residential Agreement to Buy or Sell Part I

45 Hour Louisiana Post-Licensing

I. **LOUISIANA RESIDENT AGREEMENT TO BUY OR SELL – PART I**

A. **DUTY OF REAL ESTATE LICENSEES TO USE PURCHASE AGREEMENT FORMS (R.S. 37:1449.1)**

**(RULES LAC 46:LXVII. CHAPTER 39).**

Rule LAC46:LXVII. Chapter 39 requires any Licensee representing either the Buyer or Seller of residential real property to complete the Purchase Agreement Form prescribed by the Louisiana Real Estate Commission in making an offer to purchase or to sell residential real property. That person shall not alter the Purchase Agreement Form; however, addendums or amendments to the Purchase Agreement Form may be utilized.

The “Purchase Agreement Form” means a document in a form prescribed by the Louisiana Real Estate Commission. “Residential Real Property” means real property consisting of one, or not more than four, residential dwelling units which are buildings or structures, each of which are occupied or intended for occupancy as a single family residence.

These sections taken together simply mean that as a licensee you must use the form prescribed by the Louisiana Real Estate Commission and found on their web site. Second, it is clear that, other than filling in blanks, no strike-outs or modifications of any kind can be made to the printed form. Any matters that need to be covered that are not a part of the printed form can be done in the section entitled “Additional Terms and Conditions” found at lines 284-292 of the Louisiana Residential Agreement to Buy or Sell (the “Purchase Agreement”). Any modifications to the printed form should be done by an attached addendum which references the lines that are to be changed and the changes that you are making to them.

B. **HYPOTHET FOR REFERENCE.**

Sue and Bob Smith (Sellers) decided to put their home up for sale. They contact their longtime friend Ann Lister (Lister) to market their home and sign a listing agreement. The property is Lot 85, The Oaks Subdivision. (Line 6-7)

The Sellers have a few items in the home and on the lawn that they want to keep, namely a swing and playground set that Sellers made for their children, and an heirloom camellia bush that they moved from Bob’s mom’s house after her death. (Line 9-19)

The list price is \$325,000.00. The Sellers tell Lister they are wary of contingencies since they want to move the property quickly.

**Meanwhile, John Agent (Agent) has been working with Ed and Katie Buyer (Buyer) who are shopping for a home. Agent spots the Seller home in MLS and arranges a visit with Buyer at the home. Buyer decides this home is what they want and ask Agent to write an offer. Buyer must obtain financing for the purchase. The Agent, after checking with several local lenders and making a market study, advises Buyer to make an offer for \$305,000.00. For financing, he advises that 30 year 80% loans are their best route with interest not to exceed 4-1/2% interest. Agent also advises that they should ask for a long period within which to close, due to long loan approval time he has experienced. (Line 38-39)**

Agent recommends sixty (60) days. Agent then discusses the mineral rights option and Buyer decides that with a surface waiver they are not important. Agent then discusses the inspection and due diligence contingency. (Line 157)

Buyer intends to do extensive remodeling and wants to use the inspection period to also get estimates from contractors. They decide thirty (30) days would be appropriate. The warranty options are carefully discussed with Buyer. Buyer is concerned that in the remodeling process they may discover defects. Since they cannot do “destructive” inspections, Buyer is concerned about what may be hidden behind the walls, so buyer opts for a sale with warranties. (Line 210)

As for time to cure defects to title, Agent recommends that this time be short. If there is a major issue that will take time to cure, they should cancel the agreement and look for another home. (Line 228)

Agent fills out the approved Louisiana Residential Agreement to Buy or Sell (Agreement) accordingly. The Buyer signs and sets the Expiration time of the offer for Thursday, February 10 at 5:00 P.M., giving Seller four days to respond. Agent delivers the Agreement to Lister. (Line 351)

Lister presents the offer. She explains that they can (1) reject the offer by noting on the Agreement that it is rejected, or by simply letting the time for acceptance expire; or (2) make a counter offer by noting items they want changed, using the approved counter offer attachment; or (3) accept the offer as written in which case the Buyer (not Buyer’s agent) must receive a written notice of acceptance within the deadline.

After consideration, they counter the offer by raising the price from \$305,000.00 to \$315,000.00 and change the deadline to obtain financing from sixty (60) days to forty-five (45) days and reserve from items sold the swing and playground set and the heirloom camellia bush. Lister explains that by making a counter offer, they are rejecting the original offer and making a new offer; in other words the original offer cannot be accepted if the counter offer is rejected. Lister recommends that Buyer be given three (3) days to accept. Lister presents the counter to Agent who presents it to Buyer. Buyer accepts and notice of acceptance is sent to Lister and Lister presents it to Seller within the three (3) day deadline.

Buyer makes their loan application the next day. Preliminary Loan approval is made thirty (30) days later and Seller is advised of this. (Line 73-78)

Meantime, Buyer has ordered an inspection. Three recommendations are made by the inspector: (1) repair roof area over the garage; (2) replace damaged outside window sill in the office; and (3) repair chipped tile in kitchen. Within 72 hours as required, Seller agrees to items (1) and (2), but not item (3). Within 72 hours, Buyer decides to accept the Seller response. (Line 158-183)

Title work is done, final loan approval is made and the matter is set for closing. Within five (5) days of closing, Buyer makes its final walk through and finds all items have been repaired satisfactorily. At closing, Buyer agrees, by written documentation, that Seller will have five (5) days to remove the swing and playground set and Camellia bush, in default of which they become the property of Buyer. (Line 228 and Line 239-242)

**C. THE INFORMATION AREA AND IMPORTANCE OF THE OFFER AND ACCEPTANCE CONTEXT.**

This information area should be filled in as carefully and accurately as you can. It provides all the necessary contact information and persons to be contacted. It also has the information on delivery to the designated Agent and a note of when it was received by the designated listing Agent. There is also a line for comments to make any notes that need to be made concerning delivery of the agreement. Since this section deals with the initial delivery of the offer, it has an important role in the context of offer and acceptance, and the timing thereof. Offer and acceptance will be discussed in detail previously and below.

**D. THE CONTRACT.**

1. **Line 3 – Date.** This is critical information, since it will set the beginning for all subsequent time lines in the Purchase Agreement whether to accept the offer or any other matters which would run from that date. It should coincide with the date on Line 369, which is the date that either the Buyer or the Seller is making the offer.
2. **Lines 5 - 10 – Property Description.** Earlier we talked about the “Object of the Contract.” It is possible for a property description to be so vague that no “object” is provided in the contract and, therefore, the contract would be unenforceable. Specificity is required. A lot number and subdivision name are always very clear. Unsubdivided parcels provide more of a headache. It is critical that the listing agent establish an appropriate property description. These can often be found from the documents whereby the Seller acquired the property or other documentation in the Seller’s possession. It is never a good idea to simply use the municipal address of the property, since the municipal address performs a function other than a property description.
3. **Lines 10 - 18 –** deal with what is “real estate” (immovable property in Louisiana) and what is not. The critical inquiry here is that if it is real estate, it will be sold as part of your Purchase Agreement. If it is not real estate under the definition of Louisiana law, it will not be sold with your real estate unless, as the Purchase Agreement does, items are specifically listed to define what is being sold whether it is real estate or not.
4. **Lines 20 - 28 -** form a savings clause for removable items that are not listed in lines 10-18. Coming to an agreement on this is a critical part of the function of both the listing agent and the Buyer’s agent. The listing agent should carefully inquire in the listing if there are any items that are not to be sold along with the property. The Buyer’s agent must make similar inquiries of its clients as to any expectations they have as to property that may be movable that they desire to purchase along with the home.

Louisiana law defines immovable property (real estate) as tracts of land. Also, buildings or other constructions attached to the ground, (which are called component parts of the land when they belong to the owner of the land), are real estate.

Real estate also includes things incorporated into a tract of land, a building or “other construction” so as to become an integral part of it, such as building materials. These are all pretty clear. The problem in Louisiana law (and most other states) is the next category. Real estate also includes component parts of a building or other construction that are attached to a building and that according to “prevailing usages” serve to complete a building of the same general type without regard to its specific use. These include doors, shutters, gutters, cabinetry, as well as plumbing, heating, cooling, electrical and similar systems. Other things that are component parts of the building are those that are attached to such a degree that they could not be removed without substantial damage to themselves or to the building or other construction that they are attached to.

Within the context of these definitions, there is much room for confusion as to some particular items. Therefore, care must be taken as noted above by both the listing agent and the Buyers agent to ensure that Buyer and Seller have a complete written understanding of any items that may cause doubt as to whether they are part of the real estate.

**Example:** The house being sold has custom drapery, a sub-zero refrigerator disguised to be part of the kitchen cabinetry, a secondary refrigerator in the outdoor kitchen and a brand new washer/dryer set. Buyer's and Seller's expectations as to these items should be discussed. Seller may intend to take the drapery to his new home, but draperies are clearly "window coverings" and included in "real estate" per lines 13-14. The sub-zero refrigerator would likely be considered "built-in appliances" per line 12. The secondary refrigerator and washer/dryer set likely do not fall within the definition of "real estate." Depending on the circumstances, these items should be listed on lines 20-22 (if no value and being transferred to Buyer), lines 27-28 (if being excluded from the transfer), or lines 284-292 (if being transferred to Buyer, but part of the consideration for the purchase price).

5. **Lines 30 - 32 – Mineral Rights.** There are two components of mineral rights that we need to be aware of. First, who in fact does own the minerals under the ground. Mineral rights can be owned separately from the real estate. If the mineral rights are owned by the landowner, they are able to be transferred in whole, or in part, and reserved in whole or in part. The transfer or reservation of mineral rights in residential context is often overlooked unless the property is in a known "hot" area of mineral activity. Oftentimes, mineral activity will occur years after the sale and then the parties go back to re-visit their documents. These usually produce a couple of law suits.

**Example:** Vendors of property brought action against the attorney who handled the closing to challenge failure to reserve mineral rights in the act of sale. The buyer and seller executed a purchase agreement that contained the terms and conditions of the proposed sale and a description of the property. The purchase agreement contained an express stipulation that the seller was to retain all mineral rights on the property. The act of sale was prepared by the closing attorney, but it made no mention of mineral rights on the property. It was not discovered until later that the reservation was not included until the seller tried to lease the mineral rights. *Varnado v. Insurance Corporation of America*, 484 So.2d 813 (La.App. 1 Cir.,1986).

**Example:** Lot purchasers did not have knowledge that a prior owner had retained mineral rights, even though the prior deeds of transfer contained mineral rights reservations and were duly and properly recorded prior to their purchase. The vendor had furnished the agent/attorney for lot purchasers to verify clear title existed, and agent/attorney verified checking the public records and found the title to be good, even though he had knowledge of the mineral reservations. *Coleman v. Burgundy Oaks, L.L.C.*, 71 So.3d 352 (La.App. 2d Cir., 2011).

Second, and most importantly, the owner of the mineral rights has the absolute right to go on the surface of the property for any purpose of developing the mineral rights. This includes drilling, pipelines, storage tanks, seismic work and all the other activities intended to explore for minerals. It is NOT acceptable in the residential context for the surface rights to be separately owned from the owner of the property. That is why the waiver of the surface rights is automatic and part of the standard form Purchase Agreement.

6. **Lines 34 - 36 - Price.** To have a valid sale, and therefore a valid Purchase Agreement, under Louisiana law only three things are necessary: First the thing, which is the Property being sold; second, consent, which is self-defining, and third the price. For a sale to occur, the price has to be expressed in money. There are ways to transfer property for something besides money (for example, an exchange), but the standard form Purchase Agreement contemplates a sale. The price should be stated in the written words and in numerals. Please check to be sure that they reconcile as a disparity between the two occurs more often than one would think. If property is to be transferred for something other than a dollar amount, then your clients should seek outside legal help, as that documentation is beyond the scope of the standard form Purchase Agreement.
7. **Lines 38 - 42 - Act of Sale.** It is traditional in Louisiana for the sale to be closed by the Buyer's representative. It is not necessary that it be so, and if it is to be closed by the Seller's representative, or someone not chosen by either Buyer or Seller, then that should be expressed in an addendum. The date for closing is critical as it is the "term" (as discussed above) for performance. If the parties have not performed by that date, that is close the sale, the term for performance ends. If it is ended because someone has breached the contract (discussed below), then there are consequences. If it is not closed due to a failure of condition, like obtaining financing, that has implications which are also discussed below. The time for performance can certainly be extended if it is done so in writing. It must be done by an addendum and not by marking out of the standard form Purchase Agreement. Any extension should be signed by Buyer and Seller prior to, or on the closing date. The term "good funds" is defined in La. R.S. 22:512 (10), formerly cited as La. R.S. 22:2092.2, as money or "items" as that term is defined in R.S. 10:4-104(a)(9), meaning an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Chapter 4A or a credit or debit card slip; and "checks" as that term is defined in La. R.S. 10:3-104 (f) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order".
8. **Lines 44 - 45 - Occupancy.** The change of occupancy from Seller to Buyer normally occurs at the act of sale or, as the Purchase Agreement states "unless mutually agreed upon in writing." Many closing attorneys have on hand separate occupancy agreements in the event this is to occur. It is very important that if occupancy is to be maintained by the Seller after the sale that it be documented properly. What occurs if occupancy continues in the Seller after the sale is a lease, and lease law in Louisiana is very complex in many ways, especially as to liability and insurance coverage. Therefore, post-closing occupancy must be documented properly and separately, as it is beyond the scope of the Purchase Agreement itself. Note that most residential mortgages include a representation that the mortgagor will use the property as his or her "primary residence," which would not be the case if there is extended post-closing occupancy by the Seller.
9. The "**initialing lines**" at the bottom of all pages of the Purchase Agreement. The importance of having Buyer and Seller initial each page cannot be overstated. In a multi-page document, especially one as readily available as ours is on a web site, a person could do what is called "slip page." This simply means inserting a page into the context of the document that may have different terms on it than as originally signed. Initialing of each page prevents this from being easily done.

10. **Lines 47 - 51 - Contingency for Sale of Buyer's Other Property.** As discussed earlier under Conditions, this would fall under the category of a "suspensive condition." To restate the material above, there is a valid and binding contract, however, the performance is suspended until the condition happens. Please note that if the sale is contingent on sale of another home, that the specific addendum referenced in the Purchase Agreement should be used. In all cases, one of the two boxes should be checked and not left blank.
11. **Line 53 - All Cash Sale.** This simply means what it says, that the Buyer has or will have at closing, cash to close the sale. This cash must be delivered to the closing attorney as "good funds" as discussed above. The Buyer should be advised of the requirement of "good funds" at closing.
12. **Lines 55 - 71 - Financed Sale.** Referencing the materials above on Conditions, the conditioning of a sale on the ability of the Buyer to borrow the money is a suspensive condition. As noted in the material above, the Buyer must make a "good faith" effort to obtain financing. If the sale is to be financed, the licensee should work very hard to make sure that this section is filled out accurately and completely. You will note that the Condition allows the Buyer to set a flat sum of money in terms of dollars or express the amount to be borrowed as a percentage of the sale. Next, the Buyer is setting an outside limit on the amount of interest that they will pay. If they are unable to obtain a loan at an interest rate at that number or below, the financing contingency will not be met. The same is true for the number of years of the financing. The Purchase Agreement then addresses seven methods of financing and one box for other. One of these boxes should be checked. Next, the Seller limits the amount of fees that he will pay for the lender (noting that different types of financing mechanisms require Seller to pay some fees). Next Buyer sets an outside limit on the amount of discount points that he is willing to pay. As discount points are related to the interest rate, it is very important for the Buyer to set this outside limit in the context of the maximum interest rate that the Buyer has expressed that he is willing to pay. The box designated "other financing conditions" requires a thorough inquiry by the licensee of the Buyer as to any other matters that may need to occur in the obtaining of financing and, if there are any, they should be clearly expressed in writing in this portion of the Purchase Agreement. Before we leave this section, it is again important to note that all items must be filled in to obtain a complete picture of the contingency, so that both Buyer and Seller will know if it is been met or if it has failed.
13. **Lines 73 - 83 – Deals with Process of Loan Application.**
- Lines 73 – 76: The first time frame period to be identified is the number of calendar days for the buyer to make written loan application. That time period must be inserted in the blank space on Line 74. A reasonable timeframe for a buyer to make a written loan application is 3 or 5 calendar days after the acceptance of the offer.
  - Lines 77 – 83: The second time period is the number of calendar days that the buyer is allotted to meet the criteria for the "Verification of Loan Application" and to provide the seller with written evidence, from the lender, that all of the criteria described in lines 78 through 81 have been completed by the buyer.

These lines serve two purposes: 1) to state the four minimum criteria that the buyer must comply with to satisfy the "Verification of Loan Application", and 2) to state the timeframe agreed to for compliance.

- The four criteria are:
  - A formal loan application has been completed by the buyer and received and reviewed by the lender;
  - The buyer's credit report has been received and reviewed by the lender;
  - The lender has received all initial documentation from the buyer of the buyer's income and assets, as requested by the lender;
  - The lender has received and reviewed the appraisal of the property.
- Lines 83 – 88: The third time period is the number of additional calendar days a buyer may have to obtain any missing criteria as described in lines 78 through 81. The additional calendar days are inserted in the blank space on line 84 and act as an extension, should the buyer not provide written verification of the loan application within the deadline set on line 82.

If the buyer has not complied with the four criteria on lines 78 through 81 because the timeframe on Line 82 has elapsed without meeting the four criteria, the buyer has another opportunity to fulfill the contract. Line 84 provides the buyer with an extension period for compliance. If the buyer cannot provide a written verification of loan within the additional timeframe stipulated on Line 84, the seller may declare the contract null and void. A suggested "reasonable" timeframe for Line 84 is 10 calendar days; however, this is just a suggestion and the period of time may vary, depending on the circumstances in each transaction.

If the buyer fails to provide the seller with the required "Verification of Loan Application" within the time specified on Line 82 of the contract, the seller must send the buyer a written notification of the intent to terminate the contract. That written termination notice must specify that the seller intends to terminate the contract if the "Verification of Loan Application" is not provided to the seller within the additional number of days specified on Line 84 of the contract. No other notice is required after that date, and the contract is then declared null and void.

Please note that the parties to the contract, may upon mutual agreement, amend the contract and extend these timeframes in order to provide the buyer with additional time to meet the criteria set forth in this section of the Residential Purchase Agreement.

Next, the buyer must obtain written proof from the lender that the application has been made and this written proof shall be supplied to the seller. The 2013 Purchase Agreement has added to and changed some items in this section. The primary difference is to require "Preliminary Loan Approval" be obtained as opposed to "Final Loan Approval."



In an attempt to define what a basic Preliminary Loan Approval is, the required information is (1) that a loan application has been made; (2) a credit report has been obtained and reviewed by the lender; (3) a preliminary loan commitment has been secured from the same lender; and (4) financing equal to the loan amount provided is available to complete the transaction. Care must be taken in deciding how long this process will take, and what the particular lenders mechanics are for distributing this Preliminary Loan Approval. The next line explains why. It says any extension of this date shall be in writing and shall be signed by all parties. The meaning of this is very clear; if these items are not obtained within the time allowed, there is a failure of the suspensive condition and the Purchase Agreement fails. Lines 76-77 simply authorizes and instructs the lender to release to the seller or seller's broker or designated agent written verification of a loan application and final loan approval. This is necessary due to current privacy laws.

14. **Lines 85 - 88** – This sentence reserves the rights of the Seller to provide financing to the Buyer on the same terms as expressed in lines 54-65, if the Buyer is unable to secure financing.
15. **Lines 90 - 98** – deal with who pays the costs of the transaction and how they are to be paid. The primary items for proration are real estate taxes, flood insurance premium if assumed, rents, assessments, condominium dues, assessment and/or other dues to homeowner's association and the "like" for the current year to be pro-rated to the act of sale. Proration can sometimes be a little tricky. For example, taxes are easy to prorate because they are due in Louisiana on December 31<sup>st</sup>. Therefore, if you are closing on January 30<sup>th</sup> the Seller will hand over to the Buyer 30 day's worth of taxes so that at the end of the year, the next following December 31<sup>st</sup> the Buyer will have 1/12<sup>th</sup> of the year's taxes, and he is liable for the balance. Other prorations have a different start date. For example, if condominium dues are due on July 1<sup>st</sup> and were paid, and the closing is on January 30<sup>th</sup> and they were paid in advance, the Buyer must reimburse the Seller for five (5) months of condominium dues. While the actual prorations are usually handled by the closing attorney, the method of proration should be carefully explained to Buyer and Seller alike so that there are no surprises at closing.

It is traditional in Louisiana that the Buyer pay for all costs obtaining financing (except those specifically disallowed by a lender), title insurance and documentation. This is not a legal requirement; it is simply a practice. The Seller normally pays for all release certificates and cancellations and closing fees which are specifically allocated to the Seller, for example, any documentation necessary to clear the title. The last lines of that clause simply point out that the Seller is responsible for all prior assessments and taxes up to the date of sale.

16. **Lines 100 - 107** – deal with appraisal of the property. First, one of two boxes must be checked. Either the sale is not conditioned on appraisal or it is. If the sale is conditioned on the appraisal, then the Purchase Agreement is conditioned upon the appraisal not being less than the sales price. The next few lines deal with the valuation in the appraisal. If the appraised value is equal to or greater than the sales price, the Buyer pays the sales price agreed upon in the Purchase Agreement. If not, the Buyer must immediately provide written notification to Seller of the appraised value and Buyer's request for Seller to reduce the sales price. Within a certain number of calendar days after Seller's receipt of the written notification of the appraised value, Buyer has the option to pay the sales price agreed upon prior to the appraisal, or void the agreement unless the Seller agrees in writing to reduce the sales price to the appraised value or all parties agree to a new sales prices.

**Example:** Buyer's obligation to purchase is conditioned upon appraisal. Buyer receives an appraisal for \$1,000 less than the purchase price. Buyer does not want to cancel the Purchase Agreement or demand reduction of the purchase price for a relatively small amount. Buyer should send Seller written notification of the appraised value and notice that Buyer will pay the purchase price previously agreed upon. If Buyer neglects to send the appraisal notice at all, is Buyer in default under the Purchase Agreement? Probably not. The appraisal condition favors Buyer and thus can be waived by Buyer at anytime (recall II.B15(c)(iii)). Thus, Buyer will likely be deemed to have waived the condition.

17. **Lines 109 - 115 – Deposit.** First it is to be noted that a deposit is not required under Louisiana law to have a valid Purchase Agreement. It is a practice and seems to be expected by Sellers and Buyers alike. However, to repeat, it is not necessary to have a deposit to have a valid Purchase Agreement. Therefore, this clause could be deleted by addendum. However, if not deleted, there is a requirement for immediate delivery of the deposit in the amount set forth in the blank. Please note that the deposit can be a particular dollar amount or a percentage of the sales price. The deposit can be made under the form either in cash, check, or a promissory note. **LRREC §2717** titled “Deposits” states that funds received in a real estate sales, lease or management transaction shall be deposited in the appropriate sales escrow checking account, rental trust checking account or security deposit trust checking account of the listing or managing broker unless all parties having an interest in the funds have agreed otherwise in writing.

Promissory notes as deposits need to be carefully thought through. You should try to put the due date of the promissory note as close to the closing date as possible, unless special circumstances exist. For example, assume there is a sixty (60) day gap between the Purchase Agreement and the date of closing, and Buyer expects funds from some source within thirty (30) days, he plans to redeem the promissory note with cash. In that case, the date can be adjusted. When a Seller gets a promissory note, it is nothing more than that, a promise to pay. Therefore, if the Seller tries to collect on the deposit for some reason, for example, in the event of a breach, the Seller must go to court to obtain a judgment on the promissory note and then collect it using legal means. This is an added expense and should be considered when a promissory note is taken or given. Most promissory notes provide that in the case of legal collection process, that the maker of the note, in our case, the Buyer, will be liable for all fees, expenses and attorney fees.

18. **Lines 117 - 122 – Failure to Deliver the Deposit.** Failure to deliver the deposit is an act of default under the agreement. The result of the default will be discussed later as to the Buyer. (Lines 228 -232) You will note that line 112 of the Purchase Agreement sets forth that a particular person must be named to hold the deposit. If the deposit is held by a broker, it must be held in the broker's authorized trust account. Thereafter, if there is any dispute as to the disposition of the deposit, the broker must abide by the rules and regulations set forth by the Louisiana Real Estate Commission. Those rules provide that when a dispute exists in a real estate transaction regarding the ownership or entitlement to funds held in a sales escrow checking account, the broker holding the funds shall send written notice to all parties and licensees involved in the transaction. Within 90 days of the scheduled closing date or knowledge that a dispute exists, whichever occurs first, the broker shall do one of the following:

1. disburse the funds upon the written and mutual consent of all of the parties involved;
2. disburse the funds upon a reasonable interpretation of the contract that authorizes the broker to hold the funds. Disbursement may not occur until 10 days after the broker has sent written notice to all parties and licensees;
3. place the funds into the registry of any court of competent jurisdiction and proper venue through a concursus proceeding;
4. disburse the funds upon the order of a court of competent jurisdiction. LREC §2901.

19. **Lines 124 – 141 – Return of Deposit.** This section declares two things. First, under the circumstances listed in numbers 1 thru 5 below, the deposit shall be returned to the Buyer. The operative word here is shall, that is, the broker must return the deposit if the conditions are met. Second, the agreement is declared null and void without demand if the conditions are met. The term “without demand” is an important item under Louisiana law. We have elaborate rules about putting someone in “default.” However, the Purchase Agreement waives the demand requirements. All of the conditions set forth in lines 124 thru 138 are specific and obvious. The conditions for return of the deposit are:

1. If the Buyer declares the agreement null and void during the inspection period.
2. If the Buyer had conditioned the agreement on getting a loan and cannot get the loan  
AND
  - (a) The Seller has not offered to finance the property; AND
  - (b) The Buyer has complied with the conditions of making timely application and making a good faith effort to obtain the loan;
3. If the Purchase Agreement conditions the sales price on the appraisal and (i) the appraisal is less than the sales price; (ii) the Seller will not reduce the sales price as set forth in the agreement; and (iii) Buyer will not pay the price set forth in the Purchase Agreement, then the agreement is null and void and the deposit is returned;
4. The Buyer exercises his right to terminate the agreement after reviewing the leases or assessments as set forth in lines 140-144;
5. The Seller is unable to deliver to Buyer an approved sewerage and/or water inspection report as required under the agreement.

20. **Lines 143 - 147 – Leases/Special Assessments.** Real estate leases in Louisiana pose some special problems. If they are recorded, the Buyer will take the property subject to the lease, that is, the Buyer must honor the lease. If a lease is unrecorded, then the Buyer takes the property free and clear of the lease. However, there is a real danger here for the Seller. Even though the Seller has sold the property, the Seller will remain liable to the tenant because under the lease, the Seller is still the landlord. As such, if the Buyer under an unrecorded lease evicts the tenant, the tenant can turn around and sue the landlord for breach of the lease and damages. Therefore, to protect themselves, Sellers will require that

the Buyers assume the lease. To assume the lease, the Buyer simply takes over as the landlord and must honor all the provisions of the lease.

This section requires the Seller to deliver to the Buyer within five (5) calendar days of acceptance of the Purchase Agreement copies of all Leases and unpaid special assessments (mineral leases are excluded because they are not possessory in nature.) Buyer then has five (5) calendar days after receipt of the aforementioned documents to notify Seller, in writing, of Buyer's intent to terminate the agreement. This gives the Buyer an opportunity to review the terms and conditions of the lease or assessments to make sure they are acceptable to the Buyer. The lease will provide both the term of the lease, that is, how long it will run, and other items such as rent, insurance and liability issues.

Special assessments are defined in the Purchase Agreement as an assessment levied on property to pay the costs of local improvements. While these are now rare, they do still exist. Special assessments usually come about in older parts of a town or in rural areas. They are commonly used to pay for improvements such as road improvements, drainage or road lighting. The way they usually come about is that local governments issue bonds and use the money to make capital improvements. Therefore the governmental agency issuing the bonds will assess property. Assessments can be based on front footage, square footage or any other method determined by the agency issuing the bonds. The assessments are normally paid annually and are collected by the same governmental agency that collects property taxes. Again, the Buyer has five (5) calendar days after receipt of this information to decide whether they are acceptable or to cancel the Purchase Agreement.