

Information & Instructions: Earnest Money Contract For The Purchase Of a Condominium Unit

PREVIEW

1. The agreement in the form that follows relates to the purchase of a condominium unit.
2. It provides that the purchaser shall obtain an undivided percentage of ownership in a condominium project for cash and the assumption of the seller's real estate Note, and that the purchaser shall not receive a Deed to the property until the complete purchase price has been received.
3. In a contract of sale the Seller retains title until the purchaser has paid the full purchase price. In an earnest money contract, the purchaser may or may not have possession of the property until closing; however, at closing the Seller conveys title to the purchaser pursuant to a warrant Deed subject to a Vendor's Lien.
4. The purchaser executes a Deed of Trust to secure payment of the monies owed under the Note.
The contract in the form that follows permits the real property to be assigned, sold, pledged, or transferred by the buyer without first obtaining written consent of seller.
5. Many agreements prohibit sale or transfer without the seller's written approval.
6. The attorney should distinguish between a new sale of a condominium by the developer vs. a resale of the attorney unit by a private owner.
7. Per section 32.53 of the Texas Property Code, the developer should provide the buyer with a "Condominium Information Statement." A re-seller has to provide a "resale certificate" which is obtained from the condominium association. These forms are contained in the Texas Real Estate Commission forms section of this chapter.
8. The contract should acknowledge receipt of the above documents.
9. A provision has been added that provides a warning to the Buyer that the property can be foreclosed on and the Buyer can lose his or her money.

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Form: Earnest Money Contract For The Purchase Of a Condominium Unit

PREVIEW

EARNEST MONEY CONTRACT FOR THE PURCHASE OF A CONDOMINIUM UNIT

State of Texas

County of _____

This Agreement is made on _____ by and between [Seller's name] hereafter called Seller, and [Buyer's name] hereinafter called Buyer, all of [Name of County] County, Texas.

1. PROPERTY

1.1 Seller agrees to sell and convey to Buyer and Buyer agrees to purchase, on the terms and conditions set forth below, the following described real property:

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[description]

All those certain parcels of property and premises consisting of the apartment, parking space or garage, and the undivided _____ percentage ownership interest in the common elements (Apartment Unit), located in and being part of that certain condominium apartment project located in [city], [Name of County] County, Texas, as follows: Unit _____, Building " _____," of [name of complex] as shown in Volume _____, Page _____ of _____ Records of [Name of County] County, Texas.

THIS DOCUMENT

2. PAYMENT TERMS

2.1 Buyer agrees to pay to Seller at [city], [Name of County] County, Texas, for the above described real property the principal sum of \$[Amount], this purchase price to be payable as follows: \$[Amount], cash, the receipt of which is hereby acknowledged, and an additional amount of \$[Amount] cash due and payable at closing to be held on or before _____, and the balance to be evidenced by Buyer's assumption and promise to pay, according to the its terms, all principal and interest remaining unpaid on that one certain Promissory Note in the original principal sum of \$[Amount], dated _____, executed by Seller and payable to the order of [name of lender] described in and secured by a Deed of Trust as shown in the Clerk's File No. _____, of the Deed of Trust Records of [Name of County] County, Texas, the Note to be without any existing default with interest paid to date of closing, to have an unpaid principal balance of \$[Amount], the cash to be paid by Buyer under this agreement to be adjusted to compensate for any difference in the amount stated above and the actual unpaid principal balance at time of closing; provided, however, that difference does not total more than \$[Amount]. Buyer is to assume all obligations of the Grantors named in the Deed of Trust.

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2.2 Any Note to be executed by Buyer under this agreement shall be secured by Vendor's Lien and Deed of Trust with power of sale on the property, and shall contain the usual covenants and provisions as to taxes, hazard insurance, etc. in addition to a trusty on account of certain and attorney's fees. The Note and Deed of Trust, with the Trustee named by Seller, are to be on

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current forms of the State Bar of Texas or at Seller's election on forms meeting the approval of the attorneys named below. Unless otherwise provided below, the furnishing and recording of the Note and Deed of Trust shall be at the expense of Buyer.

3. BUYER'S COVENANTS

3.1 Buyer covenants and agrees as follows

a To make prompt payment of the indebtedness as it shall become due and payable, and to do and perform all the covenants and agreements imposed on Buyer by this Contract.

b To keep the improvements on the property in good repair and condition and not to permit or commit any waste of the property or improvements, and to permit Seller or Seller's agent or representative to enter the premises at all reasonable times for the purpose of inspections.

c That in the event Buyer fails to keep the improvements in good repair and condition, as required, Seller may, but is not required to, make such repairs as Seller deems necessary. Any sums which may be paid out by Seller for any such repairs shall bear interest from the date of payment at the rate of _____ percent (____%) per annum and shall be paid by Buyer to Seller on written demand at the same place at which the installments on the Note are payable.

d To keep the improvements occupied so as not to impair the insurance carried on them.

e Buyer shall pay all closing costs.

4. SELLER'S COVENANTS

4.1 Seller's covenants and agrees as follows:

a To pay all indebtedness due and owing on the property, including, but not limited, to all mortgage payments and maintenance fees due on the property as they shall become due and payable until the date of closing, and to do and perform all of the covenants and agreements imposed on Seller by this Contract.

b To pay when due all taxes and assessments of every nature and kind, inclusive of State, County, City, and School Taxes, that fall due on the property until the date of closing.

c To insure and keep insured until the date of closing all improvements now or hereafter placed on the property against loss or damage by fire and other perils, to the extent of the full insurance value of the improvements, in such form and with such Insurance Company as may be approved by Buyer, with loss payable to the parties as their interest may appear, and to deliver the policy of insurance to Buyer and to file for renewal of the policy to Buyer at least ten days (10) before any such insurance policy expires. Any sums that may become due under any

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such policy may be applied by Buyer, at Buyer's option, to reduce the indebtedness of Buyer, or Buyer may permit Seller to use the proceeds to repair or replace all improvements damaged or destroyed and covered by the policy.

d. To provide Buyer with copies of all canceled checks evidencing that all mortgage payments and maintenance fees have been paid within six (6) weeks of their due date.

e. That in the event Seller fails to make all mortgage or maintenance fund payments promptly when due, fails to keep the improvements insured, or fails to pay promptly when due all taxes and assessments, Buyer may, but is not required to, make the mortgage payments or maintenance fund payments, pay the taxes and assessments, or insure and keep insured the improvements, and any sums which may be so paid out by Buyer shall be deducted from the \$[Amount] cash payment to be made by Buyer to Seller on or before _____ . Or Buyer may, at Buyer's option, declare this contract to be null and void and all monies paid under this contract shall be fully refunded to Buyer.

4.2 Closing is to be held on or before _____.

5. CONVEYANCE OF TITLE

5.1 When the entire purchase price, both principal and interest, as well as all other indebtedness owed under this contract, has been paid by Buyer in accordance with the terms and provisions of this contract, Seller will convey the property to Buyer by Warranty Deed, on current form of the State Bar of Texas, conveying good and indefeasible title, with covenant of general warranty, subject to the conditions and restrictions, if any, existing against the property, then current taxes and any other exceptions that may be specifically set forth below.

5.2 It is further agreed that on execution and delivery of the Deed from Seller to Buyer, Seller shall furnish Buyer at Buyer's expense an Owner's Policy of Title Insurance on a form prescribed by the State Board of Insurance of the State of Texas, dated as of the date of closing and issued to Buyer in the amount of the total sales price under this agreement, guaranteeing Buyer's title to be good and indefeasible, subject only to any exceptions provided in this contract and the standard exceptions in Owner's Policy.

5.3 If at closing Seller is unable to deliver good and indefeasible title to the property as evidenced by an Owner's Policy of Title Insurance, Buyer may, at Buyer's option, declare this contract to be null and void and all monies paid under this contract shall be fully refunded to Buyer.

6. GENERAL PROVISIONS

6.1 If at any time prior to closing Seller's credit becomes impaired for any reason that in effect impairs title to the property, including, but not limited to, the filing of bankruptcy, either voluntary or involuntary, Buyer may at Buyer's option declare this contract to be null and void and all monies paid under this contract shall be fully refunded to Buyer.

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6.2 It is agreed that so long as Purchaser performs all of the covenants and agreements imposed on Buyer by this contract, Seller shall have the right to the possession of the property, but in the event of the cancellation of this contract due to default on the part of Buyer, Buyer agrees to surrender and deliver possession of the property to Seller immediately. In the event of the failure of Buyer to do so, Buyer shall from and after the cancellation be and continue as the tenant at will of Seller, and Seller shall be entitled to institute and maintain an action for forcible detainer of the property in the Justice Precinct in which the property, or any part of the property, is situated.

6.3 Neither this contract nor the property described in this contract may be assigned, sold, pledged, or mortgaged by the Buyer without first obtaining the written consent of Seller.

6.4 This Contract shall be consummated on or before _____.

6.5 The covenants and agreements contained in this agreement shall inure to the benefit of and be binding on the parties and their respective heirs, legal representatives, successors, and assigns.

6.6 Seller will vacate premises on or before _____.

NOTICE: IF YOU ARE LATE IN MAKING YOUR PAYMENT UNDER THIS CONTRACT THE SELLER HAS THE RIGHT TO TAKE POSSESSION OF YOUR HOME AND TO KEEP ALL PAYMENTS YOU HAVE MADE TO DATE.

[If this contract is for a new unit sold by the developer add the following statement:

I hereby acknowledge receipt of a Condominium Information Statement which has been provided to me by the seller.

If this contract is for a re-sale unit sold add the following statement:

I hereby acknowledge receipt of a Condominium Resale Certificate which has been provided to me by the condominium owner's association.

[See Texas Real Estate Commission Form number 32-0 for the Condominium Resale Certificate.]

Signed on _____.

THANK YOU
PURCHASER

SELLER

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