


THE ANATOMY OF THE ASSIGNMENT OF CONTRACT

INVESTORDEALS.COM

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*“One goal of law —
as we learn in law
school from the first
day of contracts —
is to deter bad
behavior.”*

MARVIN AMMORI
AMERICAN INNOVATION LAWYER

THE ANATOMY OF THE ASSIGNMENT OF CONTRACT

The assignment of contract is not a mystery, but it must be done correctly for all parties involved.

What happens when rights, duties and obligations under a contract are passed off to a third party?

An assignment of contract occurs when one party to an existing contract (the "assignor") hands off the contract's obligations and benefits to another party (the "assignee"). Ideally, the assignor wants the assignee to step into his shoes and assume all their contractual obligations and rights.

Real estate assignment contracts are legal documents in which the person who holds the existing contract, in this case a real estate wholesaler, assigns the contract to another party for a fee.



HOW ASSIGNMENTS WORK

How an assignment of contract plays out depends on many factors, especially the language of the contract. Some contracts may contain a clause prohibiting assignment; other contracts may require the other party to consent to the assignment.

Here's an example of a basic assignment of a contract:

Mary contracts with a seller to purchase her property for \$100,000 cash and to close by Feb 28 and other terms and conditions. Mary assigns her contract to another investor Bob, -her contract is now with Bob and he has to perform on what she agreed within the confinements of the contract.

An assignment doesn't always relieve the assignor of liability. As an investor who went under contract with that seller, you gave your word both written and verbal so you are obligated to see that it closes.



WHEN ASSIGNMENTS WILL NOT BE ENFORCED

An assignment of a contract will not be enforced in the following situations.

- 1** The contract prohibits assignment - Contract language, typically referred to as an anti-assignment clause, can prohibit (and "void") any assignments.
- 2** In most commercial contracts there is a box to check if the contract is assignable or not assignable.
- 3** You can also find a clause in addendums by banks selling REO and HUD contracts properties that their contracts are not assignable.



ASSIGNMENT OF CONTRACT CONTRACT VERBIAGE

THIS ASSIGNMENT OF CONTRACT OF SALE (“the Assignment”) is executed this ____ day of _____ 20 __, by and between _____ (the “Assignor”) _____ (the “Assignees”).

The date of the assignment execution needs to be documented.

The parties to the contract are stated. Make sure that however you wrote the “Buyers” name on the contract is the same as the “Assignor” on the assignment. You will also want to double-check how the end investor “Assignee(s)” wants their name/entity to be written on the assignment as that is the how it will appear on the title to the property.

WHEREAS, Assignor, as Purchaser, and _____ (the “Seller”), as Seller, have previously entered into a certain Contract of Sale (the “Contract”), dated _____ 20 __, of regarding the conveyance _____ the “property”).

Reference the seller as it is written in the contract along with the date of the execution of the contract (the day the contract was signed by all parties).

Then identify the address of the property.

All as more particularly described therein; and
WHEREAS, Assignee desires to acquire the rights, title, and interest of Assignor under the Contract, and Assignor desires to transfer its right, title, and interest under the Contract to Assignee.

This states the rules. The end investor “assignee” accepts and will perform all the rights, title, and interest in the contract that you “assignor” are willing to deliver to them under this Assignment of Contract with the following terms outlined.

NOW, THEREFORE, for and in consideration of the terms set forth in Paragraph #5 below and other good and valuable consideration, Assignee and Assignor do herein and hereby agree as follows:

Here is where you tell them, Here Are the Terms!

Politely remind them to look for your compensation for doing the deal.

ASSIGNMENT OF CONTRACT CONTRACT VERBIAGE

1. Assignor does hereby ASSIGN, TRANSFER, SET OVER, CONVEY, and DELIVER unto Assignee, its successors and/or assigns, all of the rights powers, privileges, and interest of Assignor pursuant to the Contract.

You are giving the end investor (assignee) all rights and privileges to purchase the subject property and for them to perform and close the deal.

2. By acceptance, hereof, Assignee shall become obligated to keep, fulfill, observe, perform, and discharge each and every covenant, duty debt and obligation that may accrue and/or become performable, due or owing after the effective date hereof by Assignor under the terms, provisions, and conditions of the Contract.

Once they sign this Assignment of Contract they have committed to everything that you have agreed upon in the contract and they have to act upon each provision of the contract. They are now responsible for all terms and provisions of the contract, to see that the stated earnest money is deposited, and that the closing date is met.

3. The provisions, representations, and conditions of the Contract, as assigned hereby, shall remain in full force and effect, enforceable in accordance with their terms.

Everything stated in the contract stays the same. It is not changeable unless there is an amendment of the contract and all parties on the original contract must agree.

4. The Assignment shall be binding upon the successors and/or assigns of the parties hereto and shall be construed in accordance with the laws of the State of Texas.

Follow the law! This Assignment of Contract is a legally binding contract.

5. It is agreed between Assignor and Assignee that Assignee will pay \$ _____ to Assignor upon closing and funding of the property, with the total sales price being \$ _____ + _____ closing cost.

Here is where you state how much you will get paid! You must disclose and here is where you do it. Then add your fee to the contract sales price and this is what your buyer will be paying for the property.

This avoids any confusion. After closing cost, I state who pays for the closing cost, so there is no surprise and they are made aware up front right where the contract is talking about money.

“I have a reputation in my professional work, negotiating contracts, where I've gone into deals where other people haven't closed the deal, and I've been able to get it done.”

KEITH ROTHFUS
CONGRESSMEN & CONTRACT LAWYER

ASSIGNMENT OF CONTRACT CONTRACT VERBIAGE

6. Buyer purchases property as is, where is in its present condition. Assignee acknowledges that repairs are needed on this property, and Assignee shall determine cost of such repairs.

The disclosure of the condition of the property is extremely important and that they are buying as is, where is. The end investor (assignee) will determine the cost of the repairs as they are the only one that knows how they want to fix up the property and what their cost of labor and material will be. Not everyone fixes properties to the same standards. Not everyone has the same labor cost, as they might be doing the work themselves or have a "brother in-law" type of situation. The cost of materials can also vary from one place to another and whether the end investor elected to go with new or used materials.

7. Assignor does not guarantee any future profits from the purchase of said property.

None of us have a crystal ball and we cannot predict the future of the real estate market. Nor do we know how the rehab will happen and in what time frame and with whom.

8. Assignee has agreed to pay all closing cost on this property.

A bone of contention is closing costs. No one wants to pay for them, as they do not see something tangible that they are buying. So we state it again to make sure they understand they will be paying unless otherwise noted above.

9. Closing to take place by _____ 20__ or before.

State the closing date again. The closing date it is stated in the contract, but state it again to clarify the date. You want to make this date happen for 2 reasons.

- 1. One you told the seller that this is the day they will be closing on their property and I am sure they are making plans for that date.*
- 2. You want to get paid on that date or sooner, so you want to make it happen.*

ASSIGNMENT OF CONTRACT CONTRACT VERBIAGE

10. Assignee contains a \$ _____ escrow (credit) that is held at _____. This money will be credited to the sale price at the time of closing, and is only refundable in the event that title cannot be conveyed. This does not transfer any earnest monies that the assignor may have on deposit.

The controversial earnest money.

The earnest money is what is stated in the contract and is not changed on the assignment. Write in the contract what you expect for the end investor (assignee) to put up for earnest money, then there is no question on how much it has to be.

Next, state the title company who will be holding the earnest money and where the closing will occur.

You are telling end investor (assignee) that they will be credited this money at closing to their balance owed, and that it is only refundable if the seller cannot give clear title to close. It is also clarified that any earnest money that you the original buyer may have deposited with the title company will not be credited to them and will be refunded to you.

IN WITNESS THEREOF, the parties hereto have executed this Assignment effective as of the day, month, and year first hereinabove written.

ASSIGNOR:

ASSIGNEE:

Email: _____

Email: _____

Phone: _____

Phone: _____

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

This is the legally binding signatures. Each party needs to put their email and phone number on this form so that all parties involved will know how to contact them.

And that is it! Now it's time to find your next deal.

The Assignment of contract or any contract can be daunting at first glance. With a little patience, some due diligence, and going over contracts line by line you end up realizing that most contracts are not as complicated as they seem. We at Investor Deals hope this has helped explain what you need to do as a wholesaler when assigning contracts.

DISCLAIMER

Cathy Crowe is not offering legal advice. She is stating her experience in wholesaling since 1990.

Please consult your attorney of choice for legal advice.

Cathy offers you to use the assignment of contract for professional standards in the investment community.

Please use the assignment of contract at your own risk and discretion.

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