

APPENDIX J

Small Landowner Conservation Contracts

SMALL LANDOWNER - CONSERVATION CONTRACTS

Habitat Conservation Plans (HCP) are for large landowners (corporate ownerships), where large tracts of forest land are under the control of one decision-making body. An HCP requires biologists, attorneys, foresters, and up to a half million dollars and a year to prepare. HCP's require public hearings, and are commitments for 50 or more years.

Small landowners lack the resources, and state & federal agencies lack the manpower to prepare HCP's for thousands of small landowners. Yet, the management of their land is vitally important to the overall landscape and also to the survival of many forest-dependent species. A small land owner version of an HCP--called a Conservation Contract--may be an agreement into which many of them would enter--.

Conservation Contracts are for family owned tree farms to promote the continuation of a forested environment and the bio-diversity which these owners provide. It is based on the premise that profitable tree farming is the most promising way to keep today's owners, their heirs or assignees to stay in the business of growing trees.

These family forests--interspersed with farms and homes--are under the control of thousands of owners whose random decisions produce a mosaic of diversity across the landscape, and whose un-coordinated non-synchronized decisions will continue to provide much bio-diversity.

Replacing the fear of escalating regulation with regulatory certainty is a primary goal of a Conservation Contract between owners and USF&WS. By stabilizing regulatory commitments by both parties over the long growth cycle of timber brings that certainty. Contracts for 25 years, with an owner option to extend for two additional 25 year periods brings long-term protection to the environment and to landowners.

1. A Conservation Contract with minimal costs to the owners for technical or professional assistance should include such financial and wildlife enhancing activities as

- (a) final harvests at the optimum age for highest economic return based on tree species and regional 'best management practices', thus providing habitat for plants and animals species that flourish in open areas; (promises of "late succession" or "old growth" are beyond their scope);
- (b) prompt reforestation to re-establish a forested condition;
- (c) enhance wildlife habitat for foraging, dispersal and nesting with mid-age thinning;
- (d) provide reasonable stream side buffers for shade and other benefits on fish-bearing streams and fish-rearing wetlands;
- (e) protect threatened or endangered species on their land, giving those that are mobile full protection from harm during the nesting season, after which contractual practices in the area could again begin;
- (f) compensation to the landowner if restrictions are desired at some future date whose costs to the landowner go beyond those in the Contract, or else equal-value trade-offs of contractual restrictions for the desired ones.

2. Management Options within the Contract to achieve those objectives should include,

- (a) sustained yield management by larger family ownerships, wherein harvests in any 10 year period would be no greater than the growth during that period; and

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(b) even-age management by smaller owners whose entire ownership is about the same age when entering into the agreement; (their random harvests assure bio-diversity);

(c) Both options would include a limit on final harvest (clearcut) size based on regional standards for economy of scale, best management practices, and wildlife characteristics in the region ;

3. Emergency Provisions allowing temporary exemptions from terms of the contract for such events as

(a) family illness, death*, divorce, or bankruptcies, which may require immediate harvest income, with adjustments in succeeding years to get back to the Contract goals;

(b) tree farm catastrophes such as fire, wind, flood, or disease which may require immediate action, including harvests, to restore the tree farm to the goals of the Contract.

*families--in contrast to corporations--pay estate taxes every 25 years on the average, when urgent demands for cash to meet IRS time-lines makes accelerated harvests essential.

APPENDIX K

**Summary of Right to Forest Laws Recognized by the National
Woodland Owners Association**

**Snohomish County Amended Ordinance No. 93-083, Right to
Practice Forestry**

Summary of Right to Forest Laws recognized by the National Woodland Owners Assn.:

- Arkansas
- Boundary Paint Posting Law - 1985
Provides that woodland owners may post their property (for no trespassing) by applying visible paint blazes of an approved color on their boundaries. The blazes have same effect as "posted" signs which are difficult to maintain, particularly during hunting season.
- Colorado
- Forest Land Tax Equalization - 1990
 - Forest Products Theft Act - 1986
Makes it illegal to harvest and remove any forest product from a woodland without first securing written permission from the owner. The law mainly protects absentee owners.
- Connecticut
- Forest Practices Act - 1991
This law has 4 major points:
 1. Requires certification of foresters, forest technicians and loggers
 2. Empowers State Bureau of Forestry to regulate forest practices
 3. Allows municipalities to regulate forest practices only if their ordinances conform to statewide guidelines
 4. Establishes a Forest Practices Advisory Board to help draft and implement the program
- Maine
- Sound Forest Practices Act - 1989
This is a balance of management assistance for small woodland owners, reasonable forest practice requirements, and investment tax credits. One important provision gives the law precedence over local tree harvest ordinances which limit the ability of landowners to manage their trees.
- Mississippi
- Forestry Activity Act - 1995
Provides safeguards from "nuisance ordinances" and sets a threshold of 40% at which landowners may seek compensation for property losses due to government regulation. It also exempts woodland owners from local government permitting requirements as long as activity is specifically associated with forestry
- New Hampshire
- Right to Harvest -1990
Amends state's Planning and Zoning law by establishing the legislature's intent in the Declaration of Purpose: "... forestry activities, including harvest and transport of forest products, shall not be unreasonably limited by use of municipal planning and zoning powers or by unreasonable interpretation of such powers."
 - Deceptive Forest Business Practices Act - 1988
Empowers the New Hampshire Division of Forests and Lands to prosecute loggers and log-buyers who deceive landowners by misrepresenting the quantity of timber cut or bought. The act helped landowners who had no idea how much timber they had, sold it

without advice of a forester, and then were reluctant to prosecute because they were embarrassed about being taken. (NWOA estimates that, nationwide, 40% of all timber sales are below fair market value.)

New Mexico • Tree Planting Initiative - 1990

Oregon • Right to Practice Forestry Act - 1985

Acknowledges the need for county and local laws to protect the public interest, while providing assurance that such authority will not be misused to limit good forestry practices.

• Revisions to the Right to Practice Forestry Act - 1991

The law has 5 components:

1. Logged areas must be regenerated sooner
2. Expanded protection for fish habitat zones
3. Improved residual habitat for wildlife
4. Size of harvest areas regulated
5. Forest corridor management zones established along 29 state scenic highways

Wisconsin • Managed Forests Act - 1987

Provides landowners with property tax incentives if they agree to follow specified good forestry practices and if they permit public access to the land for hunting, fishing, and other purposes. An option allows landowners to post against trespass part of their land, although that land is assessed at a higher tax rate. In 1991 several refinements were made to this law.

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON

AMENDED
ORDINANCE NO. 93-083
RIGHT TO PRACTICE FORESTRY; AMENDING
SNOHOMISH COUNTY CODE TITLES 17, 18, 19, 20 AND 32

WHEREAS, the Washington State Growth Management Act (herein after GMA) (36.70A.020 RCW) states in its Planning Goals that local planning efforts should "Maintain and enhance natural resource based industries, including productive timber, agricultural, and fisheries industries" and "Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses"; and

WHEREAS, the GMA (36.70A.060 RCW) requires cities and counties to adopt development regulations which assure the use of lands adjacent to agriculture, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner, of these designated lands for the production of food, agricultural products, timber, or for the extraction of minerals; and

WHEREAS, the GMA (36.70A.060 RCW) requires that counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within 300 feet of, lands designated as agricultural lands, forest lands or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands, forest lands or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration; and

WHEREAS, Snohomish County has experienced rapid population growth which has resulted in increased residential use of rural lands near agricultural, forest and mineral resource industries; and a high number of complaints from residents regarding the presence of resource industries; and

WHEREAS, Snohomish County population growth is forecast to continue at a high rate resulting in more residential and non-resource land uses being located adjacent to and near agriculture, forest and mineral resource land; and

WHEREAS, Snohomish County adopted an Interim Forest Land Conservation Plan by County Council Motion No. 92-283 and implementing ordinances 92-101 and 92-102; and

Ordinance 93-083

As amended and adopted by County Council on October 11, 1993

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WHEREAS, Section 2, Planning Policy 2 in Ordinance No. 92-101, which implements the Interim Forest Land Conservation Plan, states "within six months of the date this ordinance is adopted, the county shall adopt a "Right to Practice Forestry" ordinance that discourages adjacent landowners from filing a nuisance suit against a designated forest land owner who is operating under best management practices as defined by current Washington Forest Practices Rules and Regulations";

NOW, THEREFORE, BE IT ORDAINED:

New Section; Section 1: A new chapter 32.20 Right to Practice Forestry, is added to Snohomish County Code Title 32 as follows:

Chapter 32.20

RIGHT TO PRACTICE FORESTRY

Sections

- 32.20.010 Purpose
- 32.20.020 Definitions
- 32.20.030 Forest management activities - presumed reasonable and not a nuisance
- 32.20.040 Circumstances for notice and disclosure
- 32.20.050 Disclosure text
- 32.20.060 Exemption from special benefit assessments
- 32.20.070 Severability
- 32.20.080 Effective date

32.20.010 Purpose. Forest management activities conducted on forest land near urbanizing areas are often subjected to nuisance complaints, and such complaints encourage requests for premature conversion of those forest lands. The purpose of this chapter is to help assure that the use of lands adjacent to designated forest land does not interfere with the continued use, in the accustomed manner, of the designated forest land for the production of timber and other forest products, as required by the Growth Management Act (36;70A.060 RCW). This is accomplished by recognizing that forest management activities conducted in compliance with current Washington Forest Practice Rules and Regulations (WAC 222) on designated forest land are accepted activities which should be protected from nuisance complaints and lawsuits. A further purpose is to encourage a good neighbor relationship between forest landowners and residential landowners by promoting greater awareness of forest management activities through notification of owners of land in, adjacent to and near designated forest lands of forest management activities.

Ordinance 93-083

As amended and adopted by County Council on October 11, 1993

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32.20.020 Definitions.

(1) "Designated Forest Land" means any land designated as interim forest land pursuant to RCW 36.70A.070 (1) by the Interim Forest Land Conservation Plan adopted by Snohomish County Council Motion 92-283.

(2) "Forest Management Activities" means the growing and harvesting of trees, including all forest practices, as defined and regulated under the authority provided by Chapter 76.09 RCW, associated with continued management of forest lands for forest products and excluding those forest practices associated with the conversion of forest land to a non-forest use except for those areas that are reforested to acceptable stocking levels as defined by WAC 222-34. Municipal sewage sludge application to forest lands shall not be considered a forest management activity under this chapter.

(3) "Building Permit" means a permit issued under Title 17 SCC, except permits for Group M Occupancies, plumbing and mechanical.

(4) "Development Permit" means a permit requiring discretionary review, including but not limited to subdivision approval, short plat approval, planned residential development approval, special use permit, shoreline substantial development permit, and a conditional use permit.

(5) "Person" means an individual, corporation, partnership, association, or other legal entity.

32.20.030 Forest management activities - presumed reasonable and not a nuisance.

Forest management activities conducted on designated forest land in compliance with best management practices as defined by the current Washington Forest Practices Rules and Regulations (WAC 222) and in compliance with Washington's Pesticides Regulations (WAC 16-228-185(5)), and established prior to surrounding non-forestry activities, are presumed to be reasonable and shall not be found to constitute a nuisance unless the activity has a substantial adverse effect on the public health, safety and/or environment.

Nothing in this section shall affect or impair any right to sue for damages.

32.20.040 Circumstances for notice and disclosure.

(1) The disclosure text set forth in section 32.20.050 shall be used under the following circumstances and in the following manners:

(a) Within 90 days of the effective date of this chapter and each three years after the effective date, Snohomish County shall mail a copy of the disclosure text in 32.20.050 SCC, with an explanatory informational attachment to owners of designated forest land and real property within approximately 300 feet of designated forest land. Seven years after the effective date of this chapter, the Planning Commission shall evaluate the effectiveness of this notification method and recommend to the County Council its retention, modification or deletion.

(b) Development permits and building permits for land designated forest land or land adjacent to or within 300 feet of designated forest land shall include or have attached the disclosure text in 32.20.050 SCC on the final development or building permit in a location determined by the community development director. Said disclosure notice shall apply to the real property which is subject to the development or building permit as of the date of development or building permit approval and may not be applicable thereafter if areas designated forest land are changed from designated forest land.

(c) Prior to the closing of a transfer of real property designated forest land or real property adjacent to or within 300 feet of designated forest land, by sale, exchange, gift, real estate contract, lease with option to purchase, any other option to purchase or any other means of transfer (except transfers made by testamentary provisions or the laws of descent), the transferor shall provide the transferee a copy of the disclosure text in 32.20.050 SCC and shall record with the county auditor a copy of the same showing an acknowledgement of receipt executed by the transferee in a form prescribed by the director of community development. The form of the acknowledged disclosure text shall include a statement that the disclosure notice applies to the subject real property as of the date of the transfer and may not be applicable thereafter if areas designated forest land are changed from designated forest land.

(2) In no case shall liability attach to Snohomish County for any actions, errors or omissions of any person subject to the requirements of this section.

32.20.050 Disclosure text. The following shall constitute the disclosure required by this section:

"The real property subject to this notice is designated forest land or land adjacent to or within 300 feet of designated forest land on which a variety of forest management activities could occur that may not be compatible with residential development for certain periods of limited duration. These forest management activities include, but are not limited to, TIMBER HARVEST, ROAD AND TRAIL CONSTRUCTION, THE OPERATION OF MACHINERY, TRUCKS AND AIRCRAFT, BRUSH CONTROL, SLASH BURNING, THE APPLICATION BY SPRAYING OF FOREST CHEMICALS AND OTHER FOREST MANAGEMENT ACTIVITIES, which activities are lawful if conducted in compliance with Title 222 WAC.

In addition, forest management activities may cause physical and aesthetic risks to residences and other structures within 200 feet of forest lands including FALLING TIMBER AND INCREASED FIRE HAZARD. Due to these risks, Snohomish County encourages landowners to locate structures at least 200 feet from adjacent forest land boundaries.

Snohomish County has adopted a Right to Practice Forestry Ordinance (Chapter 32.20 SCC) which provides in part, that "Forest management activities conducted on designated forest land in compliance with best management practices as defined by the current Washington Forest Practices Rules and Regulations (Title 222 WAC), and Washington's Pesticide Regulations (WAC 16-228-185(5)), are presumed to be reasonable and shall not be found to constitute a nuisance unless the activity has a substantial adverse effect on the public health, safety and/or environment." A copy of Chapter 32.20 SCC may be obtained from Snohomish County.

This disclosure applies to the real property which is subject to a development or building permit as of the date of the development or building permit approval or, in the case of real property transfers, the disclosure applies to the subject property as of the date of the transfer. This disclosure may not be applicable thereafter if areas designated forest land are changed from designated forest land."

Nothing in chapter 32.20 SCC shall affect or impair any right to sue for damages.

32.20.060 Exemption from special benefit assessments. Forest land designated and classified pursuant to chapter 84.33 RCW shall be entitled to the exemption from special benefit assessments provided by RCW 84.33.210.

32.20.070 Severability. If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, it shall not affect the remaining portions of the chapter.

32.20.080 Effective Date. This chapter shall be effective on December 22, 1993.

The disclosure provisions of 32.20.040 and 32.20.050 SCC shall apply to all building and development permit applications and real property transfer transactions which occur on or after April 1, 1994.

Section 2. Section 17.04.035 last amended by Ordinance 93-040 on August 4, 1993 is hereby amended to read as follows:

17.04.035 Interim Resource Lands. The provisions of this title are subject to the requirements of chapters 32.13, 32.14, ~~((and))~~, 32.15 and 32.20 SCC. In the event of a conflict between a provision of this title and chapters 32.13, 32.14 ~~((and))~~, 32.15 and 32.20 SCC, the requirements of chapters 32.13, 32.14 ~~((and))~~, 32.15 and 32.20 SCC shall control.

Section 3. Section 18.11.035 last amended by Ordinance 93-040 on August 4, 1993 is hereby amended to read as follows:

18.11.035 Interim Resource Lands. The provisions of this title are subject to the requirements of chapters 32.13, 32.14, ~~((and))~~, 32.15 and 32.20 SCC. In the event of a conflict between a provision of this title and chapters 32.13, 32.14 ~~((and))~~, 32.15 and 32.20 SCC, the requirements of chapters 32.13, 32.14 ~~((and))~~, 32.15 and 32.20 SCC shall control.

Section 4. Section 19.08.015 last amended by Ordinance 93-040 on August 4, 1993 is hereby amended to read as follows:

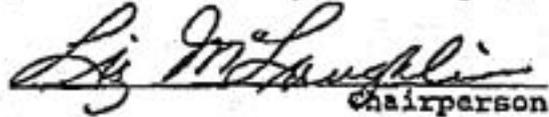
19.08.015 Interim Resource Lands. The provisions of this title are subject to the requirements of chapters 32.13, 32.14, ~~((and))~~, 32.15 and 32.20 SCC. In the event of a conflict between a provision of this title and chapters 32.13, 32.14 ~~((and))~~, 32.15 and 32.20 SCC, the requirements of chapters 32.13, 32.14 ~~((and))~~, 32.15 and 32.20 SCC shall control.

Section 5. Section 20.12.035 last amended by Ordinance 93-040 on August 4, 1993 is hereby amended to read as follows:

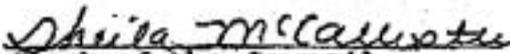
20.12.035 Interim Resource Lands. The provisions of this title are subject to the requirements of chapters 32.13, 32.14, ((end)), 32.15 and 32.20 SCC. In the event of a conflict between a provision of this title and chapters 32.13, 32.14 ((and)), 32.15 and 32.20 SCC, the requirements of chapters 32.13, 32.14 ((and)), 32.15 and 32.20 SCC shall control.

PASSED this 11th day of October, 1993.

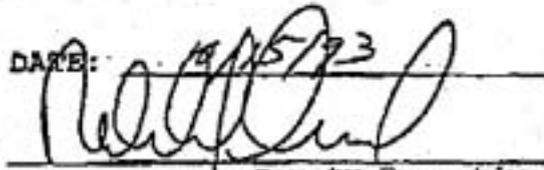
SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington


Chairperson

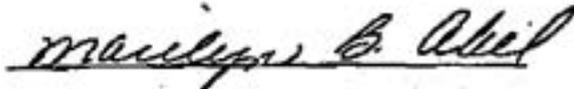
ATTEST:


Clerk of the Council

- APPROVED
 VETOED
 EMERGENCY

DATE: 10/15/93

County Executive

ATTEST:



Snohomish County
Planning

Robert J. Drewel
County Executive

M/S # 604
3000 Rockefeller Avenue
Everett, WA 98201-4046

March 22, 1994

To Owners of Designated Forest Land or Real Property within
Approximately 300 feet of Designated Forest Land in
Snohomish County, Washington:

In October 1993, Snohomish County adopted a "Right to Practice Forestry" Ordinance (Chapter 32.20 SCC). The ordinance seeks to encourage a good neighbor relationship between forest landowners and residential landowners by promoting greater awareness of forest management activities to property owners near designated forest land. The ordinance also declares that legal forest management activities conducted on designated forest land are not a nuisance if they do not have a substantial adverse effect on the public health, safety and/or the environment.

County assessor's maps indicate that you own property that is designated as forest land or within 300 feet of designated forest land. The "Right to Practice Forestry" ordinance requires the county to mail the attached disclosure statement to all landowners of designated forest land or real property within 300 feet of designated forest land.

The "Right to Practice Forestry" ordinance also requires that, when your property is transferred to a different owner through sale or other means, that the attached disclosure statement be provided by the seller or transferor of the property to the buyer or transferee of the property. Prior to closing the transfer or sale of property, the attached disclosure statement must be signed by the new property owner and recorded with the county auditor. Therefore, please retain this disclosure statement and provide it to the buyer or transferee of your real property upon sale or transfer. DO NOT DISCARD! Licensed real estate agents who conduct business in Snohomish County are aware of this provision and can provide assistance.

You may copy this disclosure statement for your use or obtain additional copies from a licensed real estate agent or the Snohomish County Community Development Department at:

Community Development
5th Floor, 3000 Rockefeller
Everett, WA

Evergreen State Fairgrounds (Tues. only)
Building 300
Monroe, WA

Copies of "Right to Practice Forestry" (Chapter 32.20 SCC) may be obtained at the above offices. If you have questions concerning this notice, or feel that your property is not within the area covered by this disclosure statement, please call the Community Development Department, Operations Permit Counter, at 388-3311.

Stephen L. Holt, Director
Planning Department

IMPORTANT REAL PROPERTY DOCUMENT - DO NOT DISCARD

FILED FOR AND RECORDED AT THE REQUEST OF _____

THIS SPACE PROVIDED FOR RECORDER'S USE

WHEN RECORDED RETURN TO

Name _____

Address _____

City, State, Zip _____

SWANWICH COUNTY "RIGHT TO PRACTICE FORESTRY" DISCLOSURE STATEMENT

Name of Transferor: _____

Name of Transferee: _____

Legal Description of Property (attach an addendum if additional space is not used)

A. INSTRUCTIONS:

1. This Disclosure Statement must be provided to the Transferee whenever there is a transfer of (1) real property designated as forest land or (2) real property adjacent to or within 300 feet of designated forest land. This Disclosure Statement applies to transfers by sale, exchange, gift, real estate contract, lease with option to purchase, any other option to purchase, or any other means of transfer (except transfers made by testamentary provisions or the laws of descent).
2. The Transferor must provide the Transferee a copy of this Disclosure Statement prior to closing.
3. The Transferor must record a copy of this Disclosure Statement, showing an acknowledgment of receipt executed by the Transferee, with the Swanshich County Auditor prior to closing.
4. Fill in the names of the Transferor (Seller) and Transferee (Buyer) prior to recording this form.

B. DISCLOSURE:

"The real property subject to this notice is designated forest land or land adjacent to or within 300 feet of designated forest land on which a variety of forest management activities would occur that may not be compatible with residential development for certain periods of limited duration. These forest management activities include, but are not limited to, TIMBER HARVEST, ROAD AND TRAIL CONSTRUCTION, THE OPERATION OF MACHINERY, TRUCKS AND AIRCRAFT, BRUSH CONTROL, SLASH BURNING, THE APPLICATION BY SPRAYING OF FOREST CHEMICALS AND OTHER FOREST MANAGEMENT ACTIVITIES, which activities are limited if conducted in compliance with Title 222 WAC.

In addition, forest management activities may cause physical and aesthetic risks to residences and other structures within 200 feet of forest lands including FALLING TIMBER AND INCREASED FIRE HAZARD. Due to these risks, Swanshich County encourages landowners to locate structures at least 200 feet from adjacent forest land boundaries.

Swanshich County has adopted a Right to Practice Forestry Ordinance (Chapter 22.20 SDC) which provides in part that "Forest management activities conducted on designated forest land in compliance with best management practices as defined by the state of Washington Forest Practices Rules and Regulations (Title 222 WAC), and Washington's Pesticide Regulations (WAC 16-329-1001), are presumed to be reasonable and shall not be found to constitute a nuisance unless the activity has a substantial adverse effect on the public health, safety or the environment." A copy of Chapter 22.20 SDC may be obtained from Swanshich County.

This disclosure applies to the real property which is subject to a development or building permit as of the date of the development or building permit approval or, in the case of real property transfers, the disclosure applies to the subject property as of the date of the transfer. This disclosure may not be applicable to transfers if forest designated forest land are changed from designated forest land."

Nothing in chapter 22.20 SDC shall affect or impede any right it may have for damages.

C. NOTE TO CLOSING AGENT:

Transferee and Transferor authorize and direct Closing Agent to record this Disclosure Statement with the Swanshich County Auditor before closing. The copy to be recorded must bear (1) an acknowledgment of receipt executed by the Transferee, (2) the signature of a witness, and (3) the full description of the property being transferred.

_____ (Transferor)	_____ (Transferee)
NEEDY ACKNOWLEDGMENT AND WITNESS SIGNATURE	
_____ County Right to Practice Forestry Disclosure Statement form	
Dated this _____ day of _____, 19____	
_____ Signature of Transferor	
_____ Print Name of Transferor	
By _____	
In _____	
Witnessed by:	_____ Signature of Witness
	_____ Name
	_____ Address
	_____ Date

NOTE: The above "Witness" section must be completed. A real estate agent or licensee who is involved in the transaction **MAY** act as a witness and is permitted to complete the above "Witness" section.

