

# Resale Contracts, timelines & duties, Oh My!

The Residential Specialist's guideline and timeline for getting from Start to End of a Sales Contract, and how to set expectations in advance  
BY: RENEE RYAN-EDWARDS, CRS, CRB

[ 1 ]

## What form do I use?

- Resale Contracts
- New Construction Contracts
- Builder's Own Contracts
- Model Homes
- State Forms and Addendums

[ 2 ]

# Knowledge is Power!

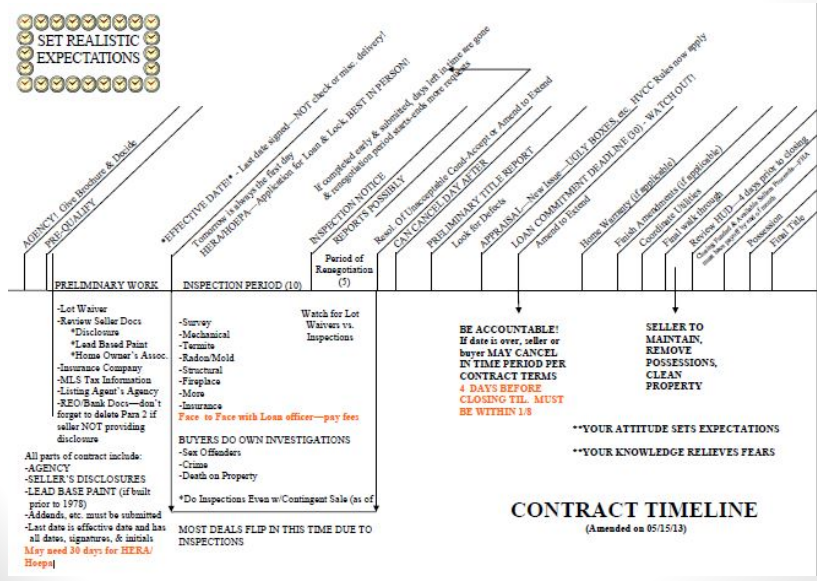
## Your Attitude and Knowledge can relieve fears, set expectations

- Know your terms!
- Explain what “the other side” might think
- Setting expectations or realistic steps



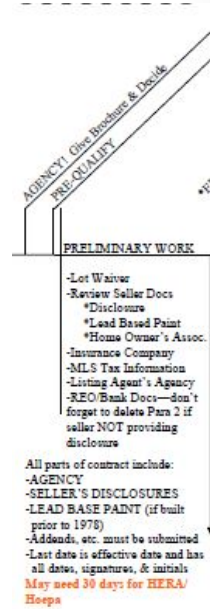
{ 3 }

# What is a Contract?



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# Getting Prepared and Buyers Aware of the Process



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# You are their teacher in this process and they want to learn

- **Preliminary work**, when you have time, makes the difference on preparing the Buyer for many caveats.
- While reviewing the Contract with them, get in front of the concerns they may have, like **what happens to Earnest Money**, will they get it back, what if they find a problem with inspections, what happens if they feel like there is an issue with disclosures, conditions and more.
- Explain what REO's are, if applicable, and why they don't provide a Seller's Disclosure and the liability of finding a good inspector to find as many of the hidden defects as possible.
- Explain Lot Waivers, also known as "First Right of Refusal", if applicable, and the process of that, plus delays that have to be added in to the Contract process for it. This is in the Seller's Disclosure.

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## Talk to them about the Lending Process & what NOT to do!

- The process has changed GREATLY.
- The truth is, the federal regulations make people much more liable for giving someone a loan!
- Things NOT to do?
  - Do NOT buy furniture, cars, even check credit numbers or it can change if they can buy or not. "Play Mother May I".
  - Do NOT change jobs or even positions in work during this.
  - Do NOT make large untraceable deposits.
- I have pages of these types of things, so if you would like a copy, leave me a business card and I will forward, but be sure you set that expectation that the buying process is more difficult these days.

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## TIME IS OF THE ESSENCE

- NEARLY ALL terms of the Contract are based on CALENDAR DAYS with the exception of Earnest Money Deposits!
- **IF TODAY IS THE EFFECTIVE DATE, TOMORROW IS ALWAYS THE FIRST DAY OF THE NEXT PART OF THE TIMELINE!**



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## Writing the Terms

- We will be going through the actual Contract in the next hours, but REMEMBER:
- **Effective Date** is:
  - 1) The DATE OF FINAL ACCEPTANCE BY THE LAST PARTY TO SIGN THIS CONTRACT, OR A COUNTER OFFER ADDENDUM,
  - 2) AND IT MUST INCLUDE BROKERAGE RELATIONSHIP DISCLOSURE PARAGRAPH,
  - 3) THE SELLER'S DISCLOSURE AND, IF APPLICABLE, LEAD BASED PAINT DISCLOSURE ADDENDUM.



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## BE SURE TO FILL IN BOTH SIDES ON AGENCY!

- As the person filling in the contract, it is YOUR responsibility to fill in both your side of agency AND the seller's side!
- By leaving the seller's side blank, you could cause the deal to flip, as it is not an Effective Contract until it's done right!

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## Things that may change the terms of Effective Time-PLAN!

- If it's a Short Sale, or if there are Lot Waivers, you need to plan for additional time for everything!
- If there is a Short Sale, the Effective Date stays the same for Earnest Money deposits unless otherwise in writing!
- The second page of the Short Sale Addendum points out when these dates will be started.
- **Only the Inspections, Loan Applications/fees will be delayed** for start until the final negotiation is completed between Seller & their Loan Company.
- Terms may be then renegotiated if required by Lender, but once agreed, that will start the Effective Date for other items.
- **REMEMBER, this Contract is between the SELLER AND BUYER, and the requirement of Loan Company approval is only a separate Contingency.**

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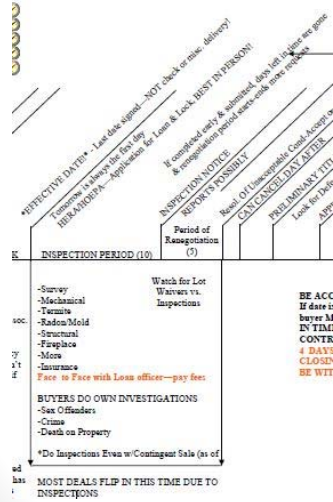
## VERBAL OFFERS

- Are they legal?
- Can texts and emails between agents hold up as contract acceptance?



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# Once the Contract is Effective, The Timeline begins!



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# If TODAY is Effective Date then TOMORROW IS FIRST DAY

- The inspection dates start immediately, so make sure your buyers have already talked about their choices of Inspectors, and **MAKE SURE YOU HAVE ENOUGH DAYS ENTERED** to get Radon/Mold and all other inspections done.
- **The Seller does NOT have to give more time, extending this in the Contract SO PLAN IN ADVANCE!**
- Also, explain the Seller does not have to do any repairs! **All Contracts, with the exception of Termite Treatment, is AS IS with NO REQUIREMENTS to repair unless otherwise negotiated.**



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## 10 days if left blank to inspect

- You have 10 days, if left blank in the contract, but if you get finished in less time and submit the Offer to Renegotiate, the rest of the days left disappear and the next time frame goes into effect.



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## Once Inspection Time is over

- You have three choices:
  - 1) To accept the home **"AS IS"** on the Inspection Notice.
  - 2) To **Cancel** the Contract, and you must provide a copy of the reports, and attach them to the Inspection Notice.
  - 3) To Offer to **Renegotiate**, provide copies of the reports attached to the Inspection Notice, plus the Resolution of Unacceptable Conditions.

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- If you do not get them resolved within the Renegotiation time, then THE CONTRACT CAN BE CANCELLED, but doesn't mean it will be cancelled.
- The Seller may have a back up Offer, and they are waiting for the 6<sup>th</sup> day if you had FIVE days on Contract to renegotiate. Buyer's need to know this before the end of the time frame!
- Either party can cancel only after the time has passed!
- Would you want to take the chance for your client? Resolve early!

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## More details that can cause stress, heartaches and delays

- APPRAISALS ARE A HUGE ISSUE THESE DAYS!
- **WATCH FOR DEFECTS ON PRELIMINARY TITLE REPORTS TOO.**
- **LOAN COMMITMENT DEADLINE (45 days), COULD GIVE YOU A BIG LOOP HOLE FOR SOMEONE TO CANCEL THE CONTRACT IF YOU DON'T HAVE A LOAN COMMITMENT BY THE DAY IN THE CONTRACT. AMEND THIS IF YOU DON'T HAVE IT DONE, SO YOU CAN KEEP CONTRACT TOGETHER AND NOT WORRY.**
- IF YOU ARE NOT CLOSING FOR MORE THAN 45 DAYS, ADJUST THE TIME IN YOUR CONTRACTS.



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## Pre-Closing Details

- Make sure your Home Warranty is in place, and the invoice is at the Closing Company, on the HUD. Send confirmation to coop agent as a courtesy.
- Finish all Amendments in advance of closing and get them to the Closing Company and your office! Don't send to Title or Closing Company to get it done. It's your job to explain the terms of the changes to your client, not theirs.
- Coordinate Utilities with all parties, and get that in writing from coop agent for definite understanding.
- Always do a final walk through. It saves issues later!
- **Get HUD in ADVANCE, check to make sure totals are right and nothing was forgotten. A change in buyer expenses of more than 1/8 of 1% can delay closing three additional days.**

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## CLOSING & POSSESSION



- **Closing & Possession Dates should not be moved around without it being in writing**, even if it says "on or before" in the contract. Big problems are caused by moving it up, then one party says no at the last minute and movers are set, or people close only to find possession stayed the same.
- **Closing takes place, not only with signatures of all parties, but the funding being received by the Buyer's Lender so the seller has their proceeds available.**
- **Buyer's cannot, unless otherwise in writing, place any personal property in this property until funding.**
- ***Seller must maintain the property, remove all possessions and clean the property upon giving possession.*** If you explain this to all parties, the expectation is set in advance, but tell buyer's that everyone has a different idea of clean and this is not a new home.

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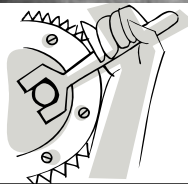
## IT'S OUR JOB TO GET EVERYONE THROUGH CLOSING



- We are not in the business to kill deals! Don't get an attitude!
- Make sure to not get your own opinions wrapped up in theirs. Your clients should make their own decisions and you are not their parents.
- Let Clients get all information, and make a decision after being fully informed.
- Be kind and nurture all the sides of sale through closing.

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## Now for the Nuts & Bolts!



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## Mini Lecture first...



- **Be Professional and deliver the check!** The new terms require the Earnest Money to be delivered within (2) days if left blank, or Seller can Cancel!
- We still have the Regulation of Deposits per the Real Estate Commissions, but getting the check to Escrow Agent is important more than ever!
- *Fill out the information in all areas, including coop agent information, that you have.*
- When transactions go to Attorneys, they look for patterns on lack of details to attack your abilities. **Watch for details, review them twice!**

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## Residential Real Estate Sale Contract

- **This is a RESALE property sale agreement and is not to be used for NEW homes, unless there are a few things to consider:**
- 1) **Model Homes** might have been for sale for a long time and although it wasn't fully lived in, it might have expired warranties on appliances and more. A home warranty might be in order too, on top of the Builder Warranty if offered.
- 2) **New Homes that have been lived in.** They are not new, so don't advertise or sell it as such! You can still ask for a Builder Warranty for one year, but if on the Resale Contract like this, the builder is not liable after closing and usually no warranty.
- A little note, **many builders use their own Contracts and that, like outside Contracts from MAR or KAR, are approved to use but know the terms! They are different than ours.**

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## Updates nearly each year, but...

- The 2015 Forms will have the 2015 Date at the end of the Contract, Addendum, Counter, etc. on the very last page.

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## Explain Terms to Set Expectations and relieve fears

- We are here to negotiate for the Party we Represent.
- They are not as aware as we of when they are giving out a request, and how that might be perceived.
- As you go through the Contract, explain that “This is what you are offering, but just so you can understand the possible Counter Offer if or when it comes in, here is why”.
- Your knowledge can soothe fears, plus gives confidence when they find out you were right!



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## Marital Status

- Remember the term **“It takes only one to buy, but two to sell”?** That is still true! Even if spouse is not on title! Pre-Nups are not recognized in Deed transfers.
- Never assume Marital Status! We have many types of Titles, including Married, Single, Trusts, Corporations, and more, plus it saves time/issues for the Title Companies!
- **ASK YOUR CLOSER WHO WILL HAVE TO SIGN THE DEED AT CLOSING TO MAKE SURE THE CONTRACT MATCH’S THE DEED, AND THE QUICKER THE BETTER!**
- This has become a huge nightmare for the Brokers who find out at the end that someone has signed as an individual, but then it was also titled in someone else’s name and they refuse to sign.
- Real Estate Commissions require them to match!

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## If it’s an REO



- Thoroughly read the required attachments they give!
- Each corporation has different requirements and may waive any return of earnest money, or the right to do repairs.
- We have seen them in the past that allows buyers to do inspections but not get out of the contract if there are unacceptable repairs.
- Be sure you still have AGENCY within the Contract even if not in their terms.
- **BE AWARE OF THE DAYS YOU HAVE TO FINISH INSPECTIONS. IF YOU GO PAST THE DATE, YOU LOSE YOUR EARNEST MONEY AND THEY DON’T CARE WHAT YOUR REASON IS.**

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## Property Address and Legal

- We used to have to use a Legal Addendum when it was attached to a Company Disclosure, but that is no longer true.
- The only reason you might need a Legal Addendum is if the Legal is very lengthy.
- Otherwise, save a tree and just use the space on the Contract!



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## What stays, what supersedes?

- **“This Contract, including the Fixtures, Equipment and Appliances paragraph of the Seller’s Disclosure and Condition of Property Addendum (“The Sellers Disclosure”), not the MLS, or other promotional material provides for what is included in the sale of the Property.”**
- READ THIS PARAGRAPH TO THE BUYERS!
- **DON’T EVER ASSUME SOMETHING IS STAYING, AND WRITE IT IN IF THERE IS A QUESTION OR YOU ARE NOT SURE.**



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## Items listed in Additional Inclusions or Exclusions

- THE ADDITIONAL INCLUSIONS AND EXCLUSIONS PARAGRAPHS SUPERSEDE the Seller's Disclosure and the preprinted list on Contract!
- If there are NO Additional Inclusions or Exclusions listed, THE SELLER'S DISCLOSURE GOVERNS.
- If there are differences between the Preprinted List on Contract, THE SELLER'S DISCLOSURE GOVERNS AGAIN.

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## Attached Items listed on Contract

- This is a great place to review with both sellers AND buyers of what stays!
- Seller needs to make sure that they leave anything attached like bathroom mirrors, fancy light fixtures, window blinds, treatments, mounting components and also mounted TV brackets (not TV's) unless otherwise excluded.
- It makes it easier to remove before marketing if they want to keep them!



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# ATTACHED ITEMS, NEW FIX

“Mounted Entertainment System Brackets” in the preprinted list of items staying now reads: Mounted entertainment brackets.

This clarifies that the brackets stay but the tv or other entertainment components held by the brackets do not stay unless specifically added in the contract.

**RESIDENTIAL REAL ESTATE SALE CONTRACT**

THIS CONTRACT is made between (PRINT NAMES AND INDICATE MARITAL STATUS) IF NOT COMPLETED, SELLER'S NAME TO BE INSERTED BY LICENSEE AGENT/REALTOR PRIOR TO PRESENTATION TO BUYER.

SELLER: \_\_\_\_\_

BUYER: \_\_\_\_\_

Bank-Owned Property (check if applicable): If the real property is bank-owned and the listed owner of record is not known as the Effective Date of this Contract, BUYER and SELLER agree the name of the SELLER is amended to as it is listed in the deed of conveyance and is incorporated herein by reference and to any amendments and address. SELLER warrants it has full authority to sign and perform on this Contract on behalf of the listed owner of record.

**CONTRACT, ADDENDA, EXCLUSIONS AND PROVISIONS**

1. PROPERTY: BUYER agrees to purchase and SELLER agrees to sell the real property and the improvements thereon (the "Property") commonly known as:

Street Address: \_\_\_\_\_ Zip: \_\_\_\_\_ County: \_\_\_\_\_

STATE: (Check one)  Missouri  Kansas

LEGAL DESCRIPTION: (As described below)

\_\_\_\_\_

\_\_\_\_\_

This Contract, including the Fixtures, Equipment and Appliances paragraph of the Seller's Disclosure and Condition of Property Addendum ("Seller's Disclosure"), not the M.L.S., or other promotional material, provides for what is included in the sale of the Property.

Items listed in the "Additional Inclusions" or "Exclusions" below supersede the Seller's Disclosure and the pre-printed list below. If there are no "Additional Inclusions" or "Exclusions" listed, the Seller's Disclosure and the pre-printed list below govern what is or is not included in the sale.

**IF THERE ARE DIFFERENCES BETWEEN THE SELLER'S DISCLOSURE AND THE PRE-PRINTED LIST BELOW, THE SELLER'S DISCLOSURE GOVERNS.** Unless modified by the Seller's Disclosure and/or the "Additional Inclusions" and/or the "Exclusions", all existing improvements on the Property (if any) and appliances, fixtures and equipment (unless SELLER agrees to own them and clear) whether listed, listed, listed, included, listed or otherwise permanently attached to the Property are expected to remain with Property, including, but not limited to:

|    |   |                                 |                                    |
|----|---|---------------------------------|------------------------------------|
| 45 | Bathroom mirrors  | Lighting and light fixtures     | Shelving, racks and towel bars     |
| 46 | Fences  | Mobile equipment                | (if attached)                      |
| 47 | Fireplace glass, screens and/or glass doors (if attached) | Other items of attached         | Storm windows, doors & screens     |
| 48 | Pool coverings (if attached)                              | Painting equipment and fixtures | Window blinds, shades, awnings and |
| 49 |   |                                 | hanging ornaments                  |

SELLER: \_\_\_\_\_ BUYER: \_\_\_\_\_

Residential Real Estate Sale Contract  
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## At the bottom of each page

- Each party must initial, each page!
- **This does not mean they agree to the terms, but “SELLER AND BUYER acknowledge they have read this page”.**



## INCLUSIONS & EXCLUSIONS

- We talked about these paragraphs, but be sure you remember if you ask for Personal Property items, it may not be allowed by your Lender. Do not “hide” these items by taking them off the Contract and putting it on a “side” agreement on a Personal Property Addendum.
- **This is perceived as FRAUD.**
- If the clients want Personal Property, ask them to find a reasonable sales price for the items, and no “\$0) price.
- Exclusions, may want to have swing sets, above ground pools, etc. removed for liability. Set expectations for sellers when listing of the possibility.

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## Limited Home Warranties

- Great Liability Reducer!
- Most people spend all their money getting in with closing costs, moving, utilities, and more, and it never fails, something will go out their first month and then it becomes accusations of hiding broken items and more. This helps!
- This paragraph sets up details of who pays, who is responsible for getting it ordered, how much and more.
- It states the agent may receive a fee for doing it, but there are Class Action Lawsuits being worked on to see if there is a RESPA issue or not.

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## Additional Terms & Conditions plus attached Addenda

- The next paragraph is a **catch all** for the items you don't know where to put!
- For instance ***if you have an REO, and there is no Seller Disclosure, you need to remove the terms of the Contract that requires it be attached or the Contract is not effective.***  
This can also be part of attachments, but just be clear.
- Addenda boxes show what else is attached to your offer AND ALL APPLICABLE BOXES TO BE CHECKED ON COUNTER TOO.



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## EFFECTIVE DATE

- **“THE EFFECTIVE DATE will be at the date of final acceptance by the last party to sign this Contract, or a Counter Offer, Addendum, the BROKERAGE DISCLOSURE PARAGRAPH of this Contract, the SELLER’S DISCLOSURE & CONDITION OF PROPERTY ADDENDUM, AND IF APPLICABLE, A LEAD BASED PAINT DISCLOSURE ADDENDUM for the Property”.**



[ 38 ]

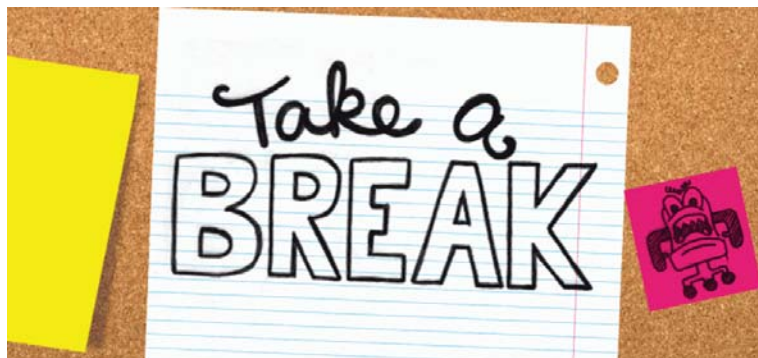
## NO EARNEST MONEY DELIVERED

- Your offer is not Effective for the items in the previous slide.
- Not receiving Earnest Money has nothing to do with that and now the new terms of required delivery time will impress upon everyone of the importance of it.

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## TIME FOR A BREAK!

- YOU HAVE ONLY TEN BRIEF MINUTES SO HURRY!



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## Seller's Disclosure Status

- At the time of Contract, Seller confirms information in the Seller's Disclosure is current as of the Effective Date.
- Seller understands that the law requires disclosure of any material defects, known to Seller(s) in the property to prospective Buyer(s) and that failure to do so may result in civil liability for damages.

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## NOTICE OF DELIVERY

- Paragraphs describe the current ways to communicate as permitted are in person, facsimile, Post Office Service, Courier Service, or email to the address set forth in this Contract.
- **Such notice or communication will be deemed to have been given as of the date and time so delivered. Delivery to or receipt by the Licensee Assisting Buyer/Seller will constitute receipt by the other party. DON'T PUSH IT! MAKE SURE EVERYONE ACKNOWLEDGES THE DELIVERY WITHIN THE RIGHT, REQUIRED TIME LIMIT!**
- And, of course, the Contract adapted to Electronic Transactions Act, BUT all parties have to agree!

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## TIME IS OF THE ESSENCE!

- Time is of the essence in the performance of the obligations of the parties under this contract.
- With the exception of the term BANKING DAYS, as used herein, A DAY IS DEFINED AS A 24 HOUR CALENDAR DAY, SEVEN DAYS A WEEK.

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## Purchase Price Section

- This section has been reformatted a little, but things to watch for are still the same!
- Purchase Price-FILL IT IN!
- Earnest Money-this is the highest area of mistakes and fines on a regular basis. Make sure it's noted who holds the EM, and to make it easy, it's listed on MLS! You cannot hold EM in a file while waiting on REO approvals, etc.
- Earnest Money Amount-Enter Amount of Check you have!
- Additional Earnest Money, may be a good place for delayed deposit, like REO.
- Amount Financed, NO TBD!

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## Closing & Possession

- **SET EXPECTATIONS NOW!**
- USE A REAL CALENDAR TO SHOW THEM DATES OF INSPECTION TIMES, RENEGOTIATION TIMES, TALK ABOUT WHAT HAPPENS IN LOAN PROCESSING, POSSIBLE DELAYS, WHAT THEIR NEEDS ARE, WHAT THE SELLER MIGHT NEED, IF THEY ARE RENTING/SELLING AND THE COORDINATION OF THAT, AND MORE.



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## END OF MONTH CLOSINGS CAN BE A HEADACHE!

- Do yourself and your clients a favor and do not close the last day of the month, and if possible, not the last week of the month!
- Title companies do their best to take care of us, but it's always a challenge to get them all the paperwork and coordinate if the closing is delayed.
- Everyone seems to want to close at the end of the month, so move it up a week to a Wednesday or Thursday the week before.
- **SELLER CONCERN:** If a lender delays closing and it spills over into the next month, the seller may have the expense of another full month's interest if an FHA loan payoff.

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## MORE POSSIBLE Delays of Closing

- Explain that the new laws require that if there is more than 1/8 of 1% change, a new Truth In Lending must be generated and a four day waiting period must take place prior to closing.
- If you have last minute credits due to repairs, or an reason to change the price, then you will have a 4 day waiting period, and if you don't find out until the day before closing, then closing will be delayed.
- Set that expectation, and be sure to get all parties copies of Amendments and resolutions ASAP. No last minute delays!

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## Fast Closings often = big stress

- The loan process is much different now than ever. Be sure to explain that to your clients since it could cause delays on closing and you need to at least think about a back up plan with worst case scenarios.
- These paragraphs talk about the responsibility of the Buyers or Sellers, and the paperwork requirement to close, as well as give a written Closing Date to do so.
- It also covers that they need to have Certified Funds or Wire Transfer for funds to close.
- Also, it covers the terms of what Closing means and the Possession Date.

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## What is considered Closing?

- “When all documents and funds have been executed and delivered into escrow with the Title Company(s) or other Closing Agent(s), the Closing will be completed.
- Seller will deliver possession of the Property to BUYER on \_\_\_\_\_ at \_\_\_\_ o'clock \_\_\_\_ m., (if left blank, Possession will be 5:00 p.m. on the Closing Date).
- **BUYER must not occupy the Property or place personal property in or on it prior to completion of the Closing and disbursement or availability of SELLER’S proceeds, if any, unless otherwise agreed upon in writing by the BUYER AND THE SELLER.**
- **This paragraph was mistakenly put out of order in the contract in 2014, but is fixed in 2015.**

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## A LITTLE CAVEAT ON CLOSING & POSSESSIONS

- If you are moving around the Closing Date, you would be best to get it in writing if more than 24 hours.
- Also, check to make sure the Possession Dates have changed with the Closing Amendment too.
- Then re-coordinate the Utilities again too!



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# Residential Real Estate Sale Contract

The default period to provide evidence of a loan commitment is now 45 days if left blank, rather than 30, OR WITHIN (5) DAYS PRIOR TO CLOSING!!

PUT THIS IN YOUR CALENDAR!

IT'S A LOOPHOLE THAT COULD FLIP YOUR CONTRACT IF BUYER DOESN'T HAVE LOAN COMMITMENT!

Allow for plenty of loan processing time!

297 Interest Rate: \_\_\_\_\_  
 298 Fixed Rate   
 299 Adjustable Rate   
 300 Interest Only   
 301 Other \_\_\_\_\_  
 302  
 303 Amortization Period \_\_\_\_\_ years  
 304 Principal Amount or LTV \_\_\_\_\_  
 305  
 306 All Loan amounts will include financed mortgage insurance premiums or VA funding fee, if any,  
 307 according to the provisions described herein (the "Loan"). The Loan(s) will be secured by a  
 308 mortgage/deed of trust on the Property or as otherwise required by Lender(s), and repayable in  
 309 monthly installments.  
 310  
 311 c. The Loan(s) will bear interest as follows:  
 312 1. Primary Loan \_\_\_\_\_ interest rate not exceeding \_\_\_\_\_% per annum or  
 313 \_\_\_\_\_ the prevailing rate at closing.  
 314 2. Secondary Loan \_\_\_\_\_ interest rate not exceeding \_\_\_\_\_% per annum or  
 315 \_\_\_\_\_ the prevailing rate at closing.  
 316  
 317 BUYER has the option to "lock in" the foregoing interest rate or to "float" the interest rate.  
 318  
 319 If BUYER locks in a rate, BUYER agrees to accept the "locked" rate and terms even if different than  
 320 those stated above. If BUYER floats the rate, BUYER agrees to accept the rate and terms available  
 321 from BUYER'S Lender(s) for which BUYER qualifies at Closing.  
 322  
 323 d. Loan Application(s).  
 324  BUYER IS PRE-APPROVED (See attached Lender(s) letter(s)) BUYER has submitted  
 325 information to \_\_\_\_\_ Lender(s) who has  
 326 checked BUYER'S credit and indicated BUYER can qualify for a Loan(s) in an amount equal to or  
 327 greater than the Loan(s) contemplated in the Contract, subject to satisfactory appraisal of the  
 328 Property and any other conditions set forth in the attached Lender(s) letter(s). The pre-approval  
 329 must indicate the BUYER'S credit is acceptable to Lender(s) and indicate whether or not the pre-  
 330 approval is subject to the sale and Closing of the BUYER'S current property.  
 331  BUYER IS NOT PRE-APPROVED. Within \_\_\_\_\_ calendar days (five (5) days if left  
 332 blank) after the Effective Date of this Contract, BUYER will complete a written application.  
 333 BUYER agrees to authorize Lender(s) to perform all required services (credit report, appraisal, etc.),  
 334 pay the fees required by Lender(s), and provide Lender(s) with all information requested within  
 335 \_\_\_\_\_ calendar days (fifteen (15) days if left blank) after Effective Date.  
 336  
 337 SELLER is aware that pre-approval is not a guarantee that BUYER will receive Lender(s)  
 338 Loan approval(s).  
 339  
 340 e. Loan Approval(s): BUYER agrees to make a good faith effort to obtain a commitment for the  
 341 Loan(s) within \_\_\_\_\_ calendar days (forty-five (45) days if left blank) from the Effective Date  
 342 of this Contract (the "Loan Approval Period") or within \_\_\_\_\_ calendar days (five (5) days if left  
 343 blank) prior to the Closing Date, whichever is earlier.  
 344  
 345  
 346  
 347  
 348

\_\_\_\_\_  
 SELLER / SELLER Initials SELLER and BUYER acknowledge they have read this page. Initials BUYER / BUYER

Residential Real Estate Sale Contract  
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## Appraised Value Contingency

- If Financing is being obtained, the appraisal must be completed within the Loan Approval Period.
- If a CASH SALE, appraisal must be completed within the Inspection Time.
- The next paragraphs what happens if it doesn't appraise.
- If it's under sales price, the Buyer will notify the Seller within \_\_\_ days, in writing and attach a copy of the appraisal then:
- They have \_\_\_ days to reach an agreement to resolve. If they don't, either party may cancel. A reconsideration may be considered.
- **Buyer still doesn't have an obligation to purchase even if Seller comes down to appraisal value.**

## Sale Contingency

- No hiding a Contingency for Sale/Closing of the Buyer's home!
- If the Contract is subject to Closing or Sale of the Buyer's home, it states the Contingency Addendum must be attached!
- Check your Lender Approval Letter to see if it's subject to the sale of a home or receipt of a HUD on their property. Both are Contingencies that need to be disclosed if the buyer doesn't.



{ 55 }

## FINANCIAL TERMS

- This section covers if it's a CASH sale, Financed, type of Financing (owner occupied/investment), Loan type (Conventional/FHA/VA/USDA/etc.), Interest Rate type, Amortization Period (how long), LTV/Principle Amount, and Interest Rate or Prevailing Rate.
- This area also covers the notification that "any changes to the terms after the Effective Date of the Contract have the potential to delay Closing and/or change costs due to federal regulations." Again, this is the HERA/HOPA rules and if there are any cost differences of more that 1/8 of 1%, there will be an additional four days to wait after a new TIL is given in writing.
- **This can happen even if it's to the Buyer's benefit!**

{ 56 }

## Loan Application

- If the Buyer is Pre-Approved, the Lender Letter must be attached and indicates that the buyer can qualify for a Loan in amount equal or greater than Loan amount, subject to satisfactory appraisal of the Property and any other conditions set forth by Lender, and must indicate if its subject to Buyer's home selling/closing.
- If NOT pre-approved, Buyer agrees to apply within \_\_ (5) days.
- Buyer agrees to authorize Lender to perform all required services (credit report, appraisal, etc.) and pay the fees, plus provide Lender with all requested information within \_\_ (15) days after Effective Date.
- SELLER IS AWARE THAT A PRE-APPROVAL IS NOT A GUARANTEE THAT BUYER WILL RECEIVE LENDER'S LOAN APPROVAL.
- **If waiting for lot waivers, longer inspections, etc. add extra days.**

{ 57 }

## LOAN APPROVAL



- BUYER agrees to make a good faith effort to obtain a commitment for the Loan within \_\_\_ (45 if left blank) from the Effective Date or within \_\_ (5) days prior to Closing Date, whichever is earlier.
- WATCH YOUR DATES & MAKE SURE YOU HAVE ENOUGH TIME OR "If BUYER is unable to obtain a commitment for the Loan within the Loan Approval Period, SELLER may cancel this Contract by written notice". This can be a loop hole so be sure to address this time period frequently and Amend to Extend the time if necessary.
- If you don't have closing for 60 days, get dates in order here!
- Also, "Upon written evidence of rejection provided by BUYER'S Lender, BUYER OR SELLER may cancel this contract by written notice".
- Be sure to explain the EM release to Seller or Buyer to set expectations. Buyer's have the right to cancel at times and sellers don't think so!

{ 58 }

## Lender Appraisal Requirements

- If you feel the house may require some requirements for the Buyer to get the home, this is the paragraph to add some dollars to the Contract to ask the Seller to pay for them!
- Repairs must be in a workmanlike manner with good quality materials when repaired.
- If there are requirements and they exceed the amount in the blank, you must have a resolution in writing for the excess within five days or contract can be cancelled.
- It used to be just FHA or VA that asked for repairs, but now it's open for all types of loans. Be aware of things that may be a flag to a lender and prepare in advance if you can.

[ 59 ]

## UTILITIES



- **Review this with your clients to set expectations on both sides!**
- 1) Seller agrees to leave on all utilities until the date of possession unless otherwise agreed.
- **It is a great idea to coordinate utilities in advance, with a follow up email to confirm the conversation. This will keep down last minute shut offs at the wrong time, like winter and frozen pipes!**



[ 60 ]

## Maintenance of Property

- **Set more expectations!** First with Seller!
- “SELLER will maintain the Property in its present condition and agrees to perform ordinary & necessary maintenance, upkeep and repair to the Property through the day of Possession Date.
- Seller must advise BUYER in writing of any substantial change in the condition of the Property prior to Closing.”
- **Now for setting the expectations for both:**
- “Unless otherwise agreed in writing, SELLER must remove all possessions, trash and debris and clean the Property upon vacating or prior to delivery of Possession.”
- **Seller must be told that all trash and debris must be out, and not left for pick up next trash day.**
- **Buyer must be told that everyone has a different idea of clean and not to expect perfection!”**

[ 61 ]

## Insurance/Casualty Loss & Survey

- “SELLER agrees to keep the Property fully insured until delivery of SELLER’S deed to BUYER.”
- The next paragraphs talk about what happens should a claim happen, and the timing of such, plus the rights by both.
- Survey covers the BUYER’S right to do a survey, at their expense, to make sure there are no defects, encroachments, overlaps, boundary line or acreage disputes, etc.. Survey must be completed in \_\_ (10) prior to closing.
- This talks about a Loan Survey is not a Staked Survey and a title insurance company typically requires a staked survey in order to provide survey coverage to the buyer.

[ 62 ]

# Inspections



- More loopholes and expectations to be set here, so explain to the Seller that the Buyer has the right to CANCEL the Contract during this time, and there is nothing you can do to prevent it in most cases!
- Best case is the Buyer accepts it “as is”, next best is the Renegotiation of Unacceptable Conditions, and the next waiting period starts again. Worst case, cancellation!
- If the Buyer Cancels or offers to Renegotiate, and the deal flips, the Seller must disclose the Inspections in future since it is now “Known Material Knowledge”.
- The Seller’s Disclosure must be updated to include “for informational purposes only”, and attach a copy of the inspections.

63

# Seller’s Disclosure

The reference to “Pre-Inspection” reports was deleted. This section is no longer limited to “pre-inspections.”

TIP: All past inspections must be disclosed if the seller has copies, not just those that are recent. The best way to protect your seller is to attach them to the Seller’s Disclosure.

195 If any of the answers in this section are “Yes”, explain in detail (attach test results and other  
196 documentation):  
197 \_\_\_\_\_  
198 \_\_\_\_\_  
199 \_\_\_\_\_  
200 \_\_\_\_\_

201 13. NEIGHBORHOOD INFORMATION & HOMEOWNER’S ASSOCIATION: ARE YOU AWARE OF:  
202 (a) Any current/pending bonds, assessments, or special taxes that apply to Property? \_\_\_\_\_ Yes  No   
203 If “yes”, what is the amount? \$ \_\_\_\_\_  
204 (b) Any condition or proposed change in your neighborhood or surrounding area or having received any notice of such? \_\_\_\_\_ Yes  No   
205 (c) Any defect, damage, proposed change or problem with any common elements or common areas? \_\_\_\_\_ Yes  No   
206 (d) Any condition or claim which may result in any change to assessments or fees? \_\_\_\_\_ Yes  No   
207 (e) Any streets that are privately owned? \_\_\_\_\_ Yes  No   
208 (f) The Property being in a historic, conservation or special review district that requires any alterations or improvements to the Property be approved by a board or commission? \_\_\_\_\_ Yes  No   
209 (g) The Property being subject to tax abatement? \_\_\_\_\_ Yes  No   
210 (h) The Property being subject to a right of first refusal? \_\_\_\_\_ Yes  No   
211 If “yes”, number of days required for notice: \_\_\_\_\_  
212 (i) The Property being subject to covenants, conditions, and restrictions of a Homeowner’s Association or subdivision restrictions? \_\_\_\_\_ Yes  No   
213 (j) Any violations of such covenants and restrictions? \_\_\_\_\_ N/A  Yes  No   
214 (k) The Homeowner’s Association imposing its own transfer fee and/or initiation fee when the Property is sold? \_\_\_\_\_ N/A  Yes  No   
215 If “yes”, what is the amount? \$ \_\_\_\_\_  
216 Homeowner’s Association dues are paid in full until \_\_\_\_\_ in the amount of \$ \_\_\_\_\_  
217 payable  yearly  semi-annually  monthly  quarterly, sent to \_\_\_\_\_ and  
218 such includes \_\_\_\_\_  
219 Homeowner’s Association/Management Company contact name, phone number, website, or email  
220 address: \_\_\_\_\_  
221 \_\_\_\_\_  
222 If any of the answers in this section are “Yes” (except i and k), explain in detail (attach other  
223 documentation):  
224 \_\_\_\_\_  
225 \_\_\_\_\_  
226 \_\_\_\_\_

227 14. PREVIOUS INSPECTION REPORTS:  
228 (a) Has the Property been inspected in the last twelve (12) months? \_\_\_\_\_ Yes  No   
229 If “yes”, a copy of inspection report(s) are available upon request.  
230 \_\_\_\_\_  
231 \_\_\_\_\_

241 15. OTHER MATTERS: ARE YOU AWARE OF:  
242 (a) Any of the following? \_\_\_\_\_ Yes  No   
243  Title work  Easement Driveways  
244 (b) Any fire damage to the Property? \_\_\_\_\_ Yes  No   
245 (c) Any liens, other than mortgages/leases of trust currently on the Property? \_\_\_\_\_ Yes  No   
246 (d) Any violations of laws or regulations affecting the Property? \_\_\_\_\_ Yes  No

\_\_\_\_\_  
SELLER/SELLER Initials BUYER/BUYER Initials  
Seller’s Disclosure and Condition of Property Addendum – Residential  
Page 5 of 8



## Inspections



- ***The BUYER may, within \_\_\_ days (10) after the Effective Date, at BUYER'S expense, have property inspected by an independent, qualified inspector. These can include nearly everything, even crazy things like cracked tiles.***
- ***During this time, it's best to have the Insurance checked for insurability. Last minute problems arise because you have been through inspections, appraisals and then the Insurance company won't insure at the last minute.***
- Factors affecting Inspections, could be inaccessible areas, weather conditions, furniture blocking areas and more.
- ***If it's on a Septic, be sure to check with Lender and/or local government authority on this.***

{ 65 }

## Inspections, Access, Damage & Quality of Repairs

- Set expectations that the buyer understands WELL that just because they are under contract, it does not give them the right to keep asking for access.
- The Contract says "Seller must provide Buyer REASONABLE ACCESS to the Property to Conduct the Inspections, re-inspections, inspection of any corrective measures completed by seller and or final walk through prior to the Closing Date.
- ***Buyer, is responsible for repairs of damage resulting from inspections so be sure to get insured Inspectors!***
- And Seller agrees any corrective measures which seller performs pursuant to the provisions will be completed in a workmanlike manner with good quality materials.

{ 66 }

## Wood Destroying Insects

This is the only required repair by the Seller if found

- At least for right now, the Contract says THE SELLER AGREES TO PAY TO HAVE THE PROPERTY TREATED for control of infestation by wood destroying insects if a written inspection report of a certified pest control firm reveals evidence of ACTIVE infestation or EVIDENCE of PAST UNTREATED infestation OR OTHERWISE recommends treatment.
- This is to include the main dwelling unit, additional structures if you add them to the contract, and also a 30 foot radius or otherwise required by the FHA/VA lender.
- Add other structures if needed.



[ 67 ]

## Who pays?

- BUYER WILL PAY FOR INSPECTION, if requested by Buyer and or Buyer's Lender, and request to treat must be delivered WITHIN THE INSPECTION PERIOD or after that it is at the Buyer's Expense.
- If treatment is required, SELLER will provide BUYER with a certificate evidencing treatment by a certified pest control firm OF SELLER CHOICE, which certificate BUYER agrees to accept. Treatment will be completed no earlier than 90 days prior to the Closing Date.

[ 68 ]

## Termite Damage



- There is no requirement for the Seller to Repair Damage by Termites, unless negotiated in the Resolution of Unacceptable Conditions!

[ 69 ]

## “WHAT IF” OR “WHAT IS”?

- **What if** Buyer Does not Conduct Inspections? HUGE LIABILITY FOR EVERYONE! They have waived any rights to cancel or renegotiate this Contract due to Inspections.
- **What is** an Unacceptable Condition? ANY condition identified in a written inspection report prepared by an INDEPENDENT QUALIFIED INSPECTOR of Buyer’s choice, which condition is unacceptable to BUYER and not otherwise excluded.
- **What if** Buyer Does Not Give Timely Notice? Same as 1<sup>st</sup> question, and HUGE LIABILITY!
- **What is** NOT an Unacceptable Condition? Items marked EX in Seller’s Disclosure cannot be used as a reason to cancel or renegotiate.
- EXPLAIN THE LIABILITY OF NO INSPECTIONS! GET THEM TO SIGN ADDITIONAL DISCLOSURE IF POSSIBLE. No “Lemon Law” or Right of Refusal after closing!

[ 70 ]

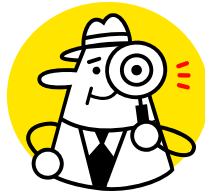
## What if you find something that needs repairs?

- If you cover this in advance, the worry and stress for clients can be reduced.
- The Buyers can:
  - 1) Accept the Property in it's Present Condition (get an Inspection Notice signed to CYA)
  - 2) Cancel the Contract. We don't like for this to happen, and the Seller cannot stop it from happening, but explain it. There can be silly reasons, even just Buyer's Remorse, but the Buyer can walk. Prepare the Seller in case to reduce anger/stress.
  - 3) Offer to Renegotiate. This is the most common, but the **Buyer needs to know that there is NO OBLIGATION for the Seller to do any repairs.** In a Seller's Market, prepare the Buyer to reduce anger/stress or the loss of a Contract!
- **ALL CONTRACTS ARE "AS IS"!**

[ 71 ]

## A couple more issues to discuss

- **If the Contract flips due to Inspections, the Seller must now DISCLOSE and ATTACH the inspections to the Seller's Disclosure.**
- **What if the Seller doesn't agree with the Inspection?**
- **They should still disclose, attach to the Seller's Disclosure and note "Informational purposes only and not guaranteed".**
- **If they have other inspections or receipts of repairs to show issues are repaired or non-existent; attach them to the Seller's Disclosure too. Not all Inspectors are perfect! Show and tell.**



[ 72 ]

## Once More! DELIVERY OF NOTICE



- **DELIVERY OF BUYER'S notice of cancellation or offer to renegotiate terminates the Inspection Period and MUST BE ACCOMPANIED BY THE APPLICABLE WRITTEN INSPECTION REPORTS from the independent, qualified inspector(s) who conducted the inspections.**
- **This means, if you had 10 days on the Contract to do inspections, but completed them all and delivered notice on the 7<sup>th</sup> day, the other days disappear and you then start the next time period for Renegotiation.**
- **Remember, once it's delivered then TOMORROW IS ALWAYS THE FIRST DAY.**

{ 73 }

## Resolution of Unacceptable Conditions

- **BUYER & SELLER will have \_\_\_ calendar days (5 if left blank) after SELLER'S Receipt of BUYER'S Inspection Notice/Resolution of Unacceptable Conditions (the "Renegotiation Period") to reach an agreement resolving the Unacceptable Conditions.**
- Any of the following constitutes an Agreement:
  - 1) Seller signs and agrees to everything in the Resolution requested by Buyer.
  - 2) An Amendment signed by BUYER & SELLER resolving the Unacceptable Conditions.
  - 3) Buyer's signature on the Resolution accepting the home in current condition.

{ 74 }

## What happens if it goes beyond the (5) days to Renegotiate?

- This is a HUGE issue, since after the days in the Contract, either party MAY CANCEL, but doesn't mean it WILL CANCEL!
- Negotiations may continue until something is agreed in writing, but you are taking a risk!
- First, Buyer may find another home and Cancel. Second, Seller may have a back up Contract and Cancel on the 6<sup>th</sup> Day (if 5 for time period) and there is nothing the Buyer can do!
- The Seller has no obligation to disclose Back Up Offers to Buyer.
- Next, Buyer can offer to Renegotiate and if Seller isn't responding, Buyer can accept the home in it's current condition, but **MAKE SURE IT'S DONE PRIOR TO THE END OF THE LAST DAY OF THE RENEGOTIATION PERIOD OR AMEND TO EXTEND THAT DATE!**

[ 75 ]

## Defaults & Remedies

- This section covers what happens if either party defaults, and remember, we are not Attorneys and we cannot say what is considered a "Default of the Contract", but the thing to explain to them is "If as a result of a default under this Contract, either SELLER or BUYER employs an Attorney to enforce its rights, the defaulting party will, unless prohibited by law, reimburse the non-defaulting party for all reasonable attorney fees, court costs and other legal expenses incurred by the non-defaulting party in connection with the default."
- TIME IS OF THE ESSENCE OF THIS CONTRACT!

[ 76 ]

## Additional Disclosures

- This section goes into many of the items a Buyer may need to be concerned of, like Radon, Microbials and other Environmental Pollutants as well as Lead Based Paint Disclosure acknowledgement and the notice of the Buyer's obligation to look up Criminal Offenders if they are concerned.
- If you are testing for things, they need to be done in the inspection time.
- There is also a disclosure that a Franchise may need to be disclosed by one or both brokers.

[ 77 ]

## TIME FOR A BREAK!

- YOU HAVE ONLY TEN BRIEF MINUTES SO HURRY!



[ 78 ]

## AGENCY DISCLOSURE

- **OUR CONTRACTS ARE NOT EFFECTIVE IF THIS PORTION OF THE CONTRACT IS NOT COMPLETE!**
- Both Real Estate Commissions require that *BOTH SIDES MUST BE FILLED IN PRIOR TO SIGNATURES AT THE BOTTOM.*
- You can get the Seller's Agency in MLS.
- If you are ASSISTING and UNREPRESENTED Customer, then the Agent must sign BOTH SIDES.
- Assisting does not imply Agency!
- You may have more than one box checked on each side if applicable.
- **If you are the only Agent in the Transaction, YOUR AGENCY MUST BE THE SAME ON BOTH SIDES.**
- Commission at bottom, explain to both parties that Seller is paying per MLS but some companies have a small Buyer commission too.

79

## Earnest Money

- This section covers the requirements for deposit times and what happens if there is a dispute!
- Earnest Money MUST BE DELIVERED PRIOR TO EFFECTIVE DATE OR CONTRACT COULD BE CONSIDERED IN DEFAULT!
- Kansas requires Earnest Money to be DEPOSITED within five business days.
- Missouri requires Earnest Money to be DEPOSITED within 10 Banking Days.
- This is the only spot that doesn't reference CALENDAR DAYS in the Contract.



80



## Taxes Proration's and Special Assessments Paragraphs

- This is a whole class in itself, but to make it easier for this class, the title company will prorate taxes, rents, homes association dues, special assessments, interest or anything necessary, with the Seller paying for any fees, expenses or more through the date of closing.
- Also, the Taxes will be assessed based on State Laws and more like Contract Purchase Price if appraised value is not available and last years tax levy rate.
- Make sure the buyers review with the Title Company if they are tight on ratios and the taxes seem low. It may cause an issue with higher payment than thought.

81

## Evidence of Title

- **\*BE SURE TO CHECK YOUR PRELIMINARY TITLE REPORT AS SOON AS YOU GET IT TO MAKE SURE NO LIENS ARE ON IT THAT ARE UNKNOWN OR COULD DELAY CLOSING.**
- Seller agrees to provide and pay for an owner's title insurance policy, and any defects on the title will be taken care of prior to closing.
- Bottom line, if they can't do it prior to closing, Buyer may elect to waive the objections, extend the closing date a reasonable time for Seller to remedy the defects, or cancel.
- Times between Effective Date and Closing can vary and if short then Preliminary Title may even be given at closing, which could be delayed if Buyer decides to.

82

## Mechanic's Lien Coverage

- \*WATCH FOR THIS AS MANY TITLE COMPANIES ARE NOT ACTUALLY INSURING WITH THIS! CHECK TO SEE!
- This insures BUYER as of the date of recording of the deed or other document of conveyance, against any lien, or right to a lien for services, labor or material imposed by law and not shown by the public records.
- In Missouri, if seller has had recent construction work permitted (FLIPPING), the SELLER is required to post and record a "Notice Of Intended Sale", as stated in Chapter 429 of the Missouri Revised Statutes in order for BUYER to obtain Mechanic's Lien Coverage. All parties are advised to consult with the title company regarding these requirements.

83

## EXPIRATION OF CONTRACT



- BE SURE TO WATCH THIS DATE!
- **IF YOUR CONTRACT IS COUNTER OFFERED, OR EVEN SIGNED AFTER THIS DATE, YOU HAVE SIGNED A EXPIRED CONTRACT AND MAY NOT BE ENFORCEABLE.**
- When you Counter Offer, make sure the new date is listed in order to allow enough time for everyone to sign before it expires.
- Just because everyone signed it after that date, does not make it automatically extended!

84

## Signature Area

- When you are filling out the Contract, be sure to fill in the coop Broker information!
- These little details show you are good at taking care of details and when it goes to court, they look for things just like this to discredit you!
- It also makes it easier to find contact information for all parties to the Contract, including Title, Mortgage and more.



85

## FINAL EFFECTIVE DATE-who remembers the rules?

- Effective Date to be completed by Licensee assisting the last party signing the Contract.
- *Remember-*
- **THE EFFECTIVE DATE WILL BE:**
- THE DATE OF THE FINAL ACCEPTANCE BY THE LAST PARTY TO SIGN:
  - 1) THIS CONTRACT OR COUNTER OFFER ADDENDUM,
  - 2) THE BROKERAGE RELATIONSHIP DISCLOSURE OF THIS CONTRACT;
  - 3) THE SELLER'S DISCLOSURE AND CONDITION OF PROPERTY ADDENDUM AND, IF APPLICABLE,
  - 4) LEAD BASED PAINT DISCLOSURE ADDENDUM FOR THE PROPERTY!

86

## FORM CERTIFICATION

- To be completed by Licensee preparing the form!
- ***“The undersigned Licensee assisted in completing the blanks in the foregoing form and confirms, to the best of his/her knowledge, that the printed form contains the language approved by Counsel for the Kansas City Regional Association of REALTORS®. The undersigned Licensee further confirms no additions or deletions to the approved language have been made, except such changes as may appear hereon made by hand or computer generation and signed and/or initialed by the party submitting this offer. Licensee’s signature below is not an opinion as to the legal validity or meaning of any provisions contained in this form, but merely confirms, to the best of the Licensee’s knowledge, no changes have been made to the approved form.”***

[ 87 ]

## REFUSAL OF OFFER

2015 there will be a separate box around this area

- Last paragraph can be provided by Licensee Assisting the Seller to prove that the Offer was Presented and the Seller has refused to Counter or Accept their offer.
- The Seller MAY sign, but does not have to.
- The Licensee MUST sign and return if requested by Licensee Assisting the Buyer.
- If it was found out the agent signed this and had not actually presented the offer, there could be serious implications to their license!



[ 88 ]

## DATES OF FORMS

- Only the last page of the form will now show the most currently revised version.

If there are no new dates on the KCRAR website by Jan. 1st, then use the one on the website!

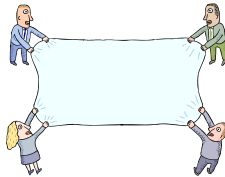


[ 89 ]

## Additional Forms we use

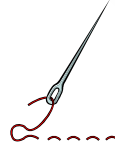


- We will now try to cover QUICKLY some of the Addendums we use in our Contracts.



[ 90 ]

# AMENDMENT



- “This Amendment form is for use in Changing the terms of an EXISTING CONTRACT. IT IS NOT INTENDED FOR USE AS PART OF AN OFFER OR COUNTER OFFER DURING NEGOTIATIONS”.
- To help you out, the U.S. Constitution came first, and then when they went to change it, they had to AMEND.



[ 91 ]

# ADDENDUM



- “This ADDENDUM is for use as an ATTACHMENT to an Offer, Counter Offer or Changes, Modifications Addendum DURING NEGOTIATIONS. **IT IS NOT INTENDED FOR USE AS AN AMENDMENT TO AN EXISTING CONTRACT.**”
- Think of it this way “**ADD**endum” is when you run out of space and need to ADD terms to something you are negotiating.



[ 92 ]

# Seller's Disclosure and Condition of Property Addendum

- THE AGENT IS NOT TO FILL THIS FORM OUT AT ALL!
- If Seller is not providing it, remove it in the Additional Terms at the Front of the Contract that it will not be provided and why.
- Review this form when your Seller's give it to you to see if they have anything that looks out of place, like OS on a new refrigerator, washer and dryer.
- Agents need to look for issues that could delay closing or parts of inspections, like "First Right of Refusal" (15 days or so from delivery of notice usually) or Insurance Issues like wiring or age of roof. You may need additional time to start inspections.
- Look for recent work, and get copies of paid receipts.

93

## Seller's Disclosure NEW ITEMS

Changes to the Seller's Disclosure form were also made to the condo disclosure form.

Specific references to chimney caps, gas lines, dates of repairs, inspections and last use were added to the Seller's Disclosure.

48 5. ROOF.  
 49 (a) Approximate Age: \_\_\_\_\_ years  Unknown Type: \_\_\_\_\_  
 50 (b) Have there been any problems with the roof, flashing or rain gutters? Yes  No   
 51 If "Yes", what was the date of the occurrence? \_\_\_\_\_  
 52 (c) Have there been any repairs to the roof, flashing or rain gutters? Yes  No   
 53 Date of and company performing such repairs \_\_\_\_\_ / \_\_\_\_\_  
 54 (d) Has there been any roof replacement? Yes  No   
 55 If "Yes", was it:  Complete or  Partial  
 56 (e) What is the number of layers currently in place? \_\_\_\_\_ layers or  Unknown.  
 57 If any of the answers in this section are "Yes", explain in detail (attach all warranty information  
 58 and other documentation): \_\_\_\_\_  
 59 \_\_\_\_\_  
 60 \_\_\_\_\_  
 61  
 62 6. INFESTATION. ARE YOU AWARE OF:  
 63 (a) Any termites, wood destroying insects, or other pests on the Property? Yes  No   
 64 (b) Any damage to the Property by termites, wood destroying insects or other  
 65 pests? Yes  No   
 66 (c) Any termite, wood destroying insects or other pest control treatments on the  
 67 Property in the last five (5) years? Yes  No   
 68 If "Yes", list company, when and where treated \_\_\_\_\_  
 69 (d) Any current warranty, bait stations or other treatment coverage by a licensed  
 70 pest control company on the Property? Yes  No   
 71 If "Yes", the annual cost of service renewal is \$ \_\_\_\_\_ and the time  
 72 remaining on the service contract is \_\_\_\_\_ (Check one)  The treatment  
 73 system stays with the Property or  the treatment system is subject to removal by the  
 74 treatment company if annual service fee is not paid.  
 75 If any of the answers in this section are "Yes", explain in detail (attach all warranty information and  
 76 other documentation): \_\_\_\_\_  
 77 \_\_\_\_\_  
 78 \_\_\_\_\_  
 79 \_\_\_\_\_  
 80  
 81 7. STRUCTURAL, BASEMENT, CRAWL SPACE, FIREPLACE AND EXTERIOR ITEMS.  
 82 ARE YOU AWARE OF:  
 83 (a) Any movement, shifting, deterioration, or other problems with walls,  
 84 foundations, crawl space or slab? Yes  No   
 85 (b) Any cracks or flaws in the walls, ceilings, foundations, concrete slab,  
 86 crawl space, basement floor or garage? Yes  No   
 87 (c) Any corrective action taken including, but not limited to piling or bracing? Yes  No   
 88 (d) Any water leakage or dampness in the house, crawl space or basement? Yes  No   
 89 (e) Any dry rot, wood rot or similar conditions on the wood of the Property? Yes  No   
 90 (f) Any problems with driveways, patios, decks, fences or retaining walls on  
 91 the Property? Yes  No   
 92 (g) Any problems with fireplace including, but not limited to firebox, chimney,  
 93 chimney cap and/or gas line? Yes  No   
 94 Date of any repairs, inspections or cleaning? \_\_\_\_\_  
 95 Date of last use? \_\_\_\_\_  
 96 (h) Does the Property have a sump pump? Yes  No   
 97 If "Yes", location: \_\_\_\_\_  
 98 (i) Any repairs or other attempts to control the cause or effect of any problem  
 99 described above? Yes  No

SELLER | SELLER Initials BUYER | BUYER Initials



## APPLIANCES AREA ALSO UPDATED

- It was really antiquated before since appliances have changed so much.
- Look for the updates of what stays



## Septic Inspection Addendum

- Get to know your State Laws as well as Lender Requirements!
- Costs can get expensive quickly, so be sure to let the Buyer's know to get Inspections done, and within Inspection time!
- Who will pay to Clean it out?





## Inspection Notice

- UNLESS PROPERTY IS ACCEPTED IN IT'S PRESENT CONDITION, APPLICABLE WRITTEN INSPECTION REPORTS IN THEIR ENTIRETY MUST ACCOMPANY THIS NOTICE!
- Also, informs Seller of Termite Treatment Requirement.
- The next 3 paragraphs pick:
  - Box 1- accept it as is (with or without inspections) CYA
  - Box 2- Cancellation of Contract by Buyer PRIOR to Expiration of Inspection Period. Must attach all reports as well as a Cancellation.
  - Box 3- Offer to Renegotiate, Must be done prior to end of Inspection Period, Must attach all reports as well as Resolution of Unacceptable' s. This stops the Inspection Period and starts the Renegotiation Period.

[ 97 ]

## Resolution of Unacceptable Conditions Addendum

- What do Sellers and Buyer's agree to do?
- It ends up here, either by repairs and/or by changes in price and/or credits, as permitted by lender.
- This states that Seller must provide proof of repairs if not being paid out of closing. Buyer may inspect work prior to closing.
- Also, if there were any other issues, known or unknown, that the home is "As Is" on any additional issues not negotiated.
- Lastly, if the Buyer does not get a response from Seller within the Renegotiation Time, then they have the right to send over a new section signed PRIOR TO THE END OF THE RESOLUTION that they now Accept the Property in its Current Condition.
- The Seller does not have to sign for it to be Effective.

[ 98 ]

## Contingency Form



- Probably our most difficult to understand, and least explained form too.
- Paragraph 1 states it's subject to the buyers home selling and closing. It gives the Address of the Property and who it's marketed with.
- If you have someone with a Contingency on their home selling and they are going to try and sell it FSBO, do you think the Seller of the home they want will take them as seriously marketing their home? Will they want to tie up their home with a Contingency like this?
- How you handle this form is like a Chess Game!



[ 99 ]

## Non Bona Fide, It just means you have a breathing person only

- There are no guarantees on their home closing, they may have a 10 day inspection time, 5 day renegotiation, then the appraisal, then if there are any issues with any of them, you would have no recourse if they cancel.
- This may be significant if the Seller of this home had gone out (thinking it was a done deal) and put an offer on a home, put down non-refundable Earnest Money, paid for inspections, appraisals and such, only to have it all lost because this one was not a Bona Fide Contract.



[ 100 ]

### Contingency For Sale/Closing of Buyer's Property Addendum

This form has been revised significantly in an effort to clarify the options presented.

**Option 1** is generally for situations where Buyer's home is under contract, all contingencies have been satisfied, and closing is imminent. Although these aren't requirements to select Option 1, **Seller has no kick out rights in Option 1.** Consequently, Seller would want to know that Buyer's home closing is virtually certain.



#### CONTINGENCY FOR SALE AND/OR CLOSING OF BUYER'S PROPERTY ADDENDUM

1 SELLER: \_\_\_\_\_  
 2 BUYER: \_\_\_\_\_  
 3 PROPERTY: \_\_\_\_\_  
 4  
 5 The terms contained in this Addendum are an integral part of the above referenced Contract.  
 6  
 7 **CONTINGENCY FOR SALE AND/OR CLOSING OF BUYER'S PROPERTY.** The Contract is  
 8 contingent upon the sale and/or closing of BUYER'S property located at: \_\_\_\_\_  
 9  
 10 ("BUYER'S Property") which is listed for sale with \_\_\_\_\_  
 11 with terms as provided in either Paragraph 1 or 2 below.  
 12  
 13 **For the purposes of this Addendum, a contract will be considered bona fide when copies of all**  
 14 **purchase documents have been delivered, including all support documents necessary for SELLER**  
 15 **to consider such sale in firm with a Closing Date on or before the Closing Date of the Contract. The**  
 16 **status of the following items are provided:  Inspections  Appraisals**  
 17  Loan Commitment  Other contingencies \_\_\_\_\_  
 18  
 19  
 20 **(CHECK AND COMPLETE APPLICABLE PARAGRAPH #1 OR #2.)**  
 21  
 22  1. **BUYER'S PROPERTY IS CURRENTLY UNDER CONTRACT.** The Contract is contingent  
 23 upon the closing of the sale of BUYER'S Property on or before 5:00 p.m. of the Closing Date  
 24 specified in the Contract.  
 25  
 26 **All parties understand this option does not include Kick-Out Rights as described**  
 27 **below.**  
 28  
 29 If the contract for sale of BUYER'S Property is cancelled or it becomes apparent the purchaser  
 30 of BUYER'S Property will not close in time to permit BUYER to comply with the terms of the  
 31 Contract, under either circumstance at no fault of BUYER, BUYER agrees to notify SELLER in  
 32 writing within 48 hours thereof and the Contract may be cancelled by either BUYER or SELLER  
 33 unless otherwise agreed to in writing. BUYER'S Earnest Money will be subject to provisions of  
 34 Earnest Money and Additional Deposits paragraph of the Contract.  
 35  
 36  2. **BUYER'S PROPERTY IS NOT CURRENTLY UNDER CONTRACT OR IS UNDER**  
 37 **CONTRACT WHICH DOES NOT MEET THE CRITERIA OF A BONA FIDE CONTRACT.** The  
 38 Contract is contingent upon BUYER'S Property being under bona fide Contract for sale on or  
 39 before \_\_\_\_\_ with terms that permit BUYER to comply with the Closing  
 40 Date of the Contract \_\_\_\_\_  
 41  
 42 **All parties understand this option does include Kick-Out Rights as described below.**  
 43  
 44 If the BUYER'S Property is not under a bona fide Contract by the date herein, either party may  
 45 cancel Contract by written notice to the other and BUYER'S Earnest Money will be subject to  
 46 provisions of Earnest Money and Additional Deposits paragraph of the Contract.

\_\_\_\_\_  
 SELLER | SELLER Initials \_\_\_\_\_ SELLER and BUYER acknowledge they have read this page. Initials \_\_\_\_\_ BUYER | BUYER



### Contingency For Sale/Closing of Buyer's Property Addendum

**Option 2:** This section is used when buyer's property isn't under contract OR seller doesn't deem the contract to be a "bona fide" contract.

**Seller has kick out rights under Option 2.**

**"Bona fide" contract:** The determination as to whether or not a buyer has a bona fide contract for the sale of their home is one for the seller to make. Seller can refuse to recognize any contract, even one set to close the next day, as being bona fide.

Buyer's agent must check applicable boxes and provide the status of these items – inspections, appraisals, loan commitment and any other contingencies



#### CONTINGENCY FOR SALE AND/OR CLOSING OF BUYER'S PROPERTY ADDENDUM

1 SELLER: \_\_\_\_\_  
 2 BUYER: \_\_\_\_\_  
 3 PROPERTY: \_\_\_\_\_  
 4  
 5 The terms contained in this Addendum are an integral part of the above referenced Contract.  
 6  
 7 **CONTINGENCY FOR SALE AND/OR CLOSING OF BUYER'S PROPERTY.** The Contract is  
 8 contingent upon the sale and/or closing of BUYER'S property located at: \_\_\_\_\_  
 9  
 10 ("BUYER'S Property") which is listed for sale with \_\_\_\_\_  
 11 with terms as provided in either Paragraph 1 or 2 below.  
 12  
 13 **For the purposes of this Addendum, a contract will be considered bona fide when copies of all**  
 14 **purchase documents have been delivered, including all support documents necessary for SELLER**  
 15 **to consider such sale in firm with a Closing Date on or before the Closing Date of the Contract. The**  
 16 **status of the following items are provided:  Inspections  Appraisals**  
 17  Loan Commitment  Other contingencies \_\_\_\_\_  
 18  
 19  
 20 **(CHECK AND COMPLETE APPLICABLE PARAGRAPH #1 OR #2.)**  
 21  
 22  1. **BUYER'S PROPERTY IS CURRENTLY UNDER CONTRACT.** The Contract is contingent  
 23 upon the closing of the sale of BUYER'S Property on or before 5:00 p.m. of the Closing Date  
 24 specified in the Contract.  
 25  
 26 **All parties understand this option does not include Kick-Out Rights as described**  
 27 **below.**  
 28  
 29 If the contract for sale of BUYER'S Property is cancelled or it becomes apparent the purchaser  
 30 of BUYER'S Property will not close in time to permit BUYER to comply with the terms of the  
 31 Contract, under either circumstance at no fault of BUYER, BUYER agrees to notify SELLER in  
 32 writing within 48 hours thereof and the Contract may be cancelled by either BUYER or SELLER  
 33 unless otherwise agreed to in writing. BUYER'S Earnest Money will be subject to provisions of  
 34 Earnest Money and Additional Deposits paragraph of the Contract.  
 35  
 36  2. **BUYER'S PROPERTY IS NOT CURRENTLY UNDER CONTRACT OR IS UNDER**  
 37 **CONTRACT WHICH DOES NOT MEET THE CRITERIA OF A BONA FIDE CONTRACT.** The  
 38 Contract is contingent upon BUYER'S Property being under bona fide Contract for sale on or  
 39 before \_\_\_\_\_ with terms that permit BUYER to comply with the Closing  
 40 Date of the Contract \_\_\_\_\_  
 41  
 42 **All parties understand this option does include Kick-Out Rights as described below.**  
 43  
 44 If the BUYER'S Property is not under a bona fide Contract by the date herein, either party may  
 45 cancel Contract by written notice to the other and BUYER'S Earnest Money will be subject to  
 46 provisions of Earnest Money and Additional Deposits paragraph of the Contract.

\_\_\_\_\_  
 SELLER | SELLER Initials \_\_\_\_\_ SELLER and BUYER acknowledge they have read this page. Initials \_\_\_\_\_ BUYER | BUYER



## Who are you representing?

### Which hat are you wearing?

- As a Buyer's Agent, you should consider making an offer based on Paragraph 2, even if nothing is done on their offer.
- Many agents do not think of what accepting this might do to their Seller, and they are so glad to just have an offer they proceed with it, not wanting to scare off the Buyer with a Counter Offer.
- If they accept it like this, the Earnest Money is usually refundable if the deal flips. The Seller may not know this and may put costs out thinking it is a secure deal. Explain it!
- Explain to the Buyer that it will probably get Countered, so if it does, they won't be shocked.



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## So we are back to which hat are you wearing when negotiating?

- When writing an offer, as a Buyer's Agent, it would normally be in your clients best interest to leave the Kick-Out Notice at the default of 72 hours, if left blank.
- Why? Because a 72 hour kick out will slow showings, and discourage new buyers.
- As a Seller's Agent, when an offer comes in, it would be in your clients best interest to Counter Offer to 24 hours.
- This makes Buyer's understand they must have their financing in place if they can purchase without selling their home.
- You will often know in advance this way, if the Buyer's intend to proceed upon the Kick Out Notice.
- Setting expectations during negotiations is best.

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## But did you allow one little Contingency slip through?

- When any of these steps take place, and you proceed with the Contract to purchase it, and perhaps a back up Contract is now thrown out because you are moving forward, making your offer the equivalent of a CASH OFFER, the seller might feel secure, right?
- But did you allow the Buyer to make their offer subject to them doing inspections AFTER THE RELEASE OF CONTINGENCY?
- If so, you have now allowed a way for the Buyer to walk away from this Contract, and have no implications.
- You may have even allowed the second offer that came in, be lost. They have often moved on and found another home by the time all this takes place.

[ 105 ]

## If you do not have inspections done upfront

- As a Buyer's Agent, if a Buyer did not do Inspections within days of the Effective Date, then a couple things could happen.
- Their home may go under Contract, get finalized, they move toward this purchase and then when they do inspections, what if they find some really unacceptable conditions they cannot live with? Will they feel pressure to buy the home anyway with the cost of repairs looming ahead?
- The Seller has no requirement to do repairs.
- At that time, if the Seller refuses to do any repairs, they have to decide if there is time to cancel this one, find another, write a contract, pay for more inspections and appraisals, and do it all in time to match the Closing Date, or possibly be subject to a second move.

[ 106 ]

## If you do not have inspections done upfront

- As a Seller's Agent, you should tell them the perils of allowing this to be done at a later time.
- If a second offer comes in, and the first one proceeds as the equivalent of a CASH offer, the second offer releases their offer and moves on.
- But now, the first offer has the right to do inspections, does them and even if there is nothing of severity and they have cold feet, buyer's remorse or anything, they can walk with nothing the Seller can do.
- The first Buyer walks, the second Buyer has most likely already purchased something else, and the Seller went from two offers to none.
- Who will they blame?

{ 107 }

## Be safe for everyone's sake

- The Contingency is a difficult form to understand but each form has its challenges.
- Get to know your forms to make the best decisions and to be able to best advise your clients.
- Know your forms and you will always know which direction our industry is going, and it will also show the INTENT of what was trying to be accomplished, and even then, will reduce the stress and difficulty between agents.
- Thank you for being here! It shows you have what it takes!

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# In Its Present Condition Addendum

Termite treatment by Seller is required if option 1 is selected.

Language was added to option 2 clarifying that BUYER is waiving the right to renegotiate pursuant to inspection provisions of the contract.

No termite treatment by Seller is required if options 2 or 3 are selected.



## IN ITS PRESENT CONDITION ADDENDUM

1 SELLER: \_\_\_\_\_  
 2 BUYER: \_\_\_\_\_  
 3 PROPERTY: \_\_\_\_\_  
 4  
 5 It is further understood by all parties that the sale of the Property in its present condition does not relieve  
 6 the SELLER of the obligation to disclose all material facts of which SELLER has knowledge relating to the  
 7 condition of the Property.  
 8  
 9 Notwithstanding any other terms of the Contract, the Property is being sold in its present condition, which  
 10 includes all latent and patent defects and conditions. Except as herein expressly stated, SELLER makes  
 11 no warranty, expressed or implied, including, without limitation, any implied warranty of merchantability or  
 12 fitness for any particular purpose.  
 13  
 14  1. BUYER is entitled to conduct inspections as outlined in the Inspections Paragraph of the Contract.  
 15 BUYER has the right to ask for repairs.  
 16 SELLER may deny any requests for repairs.  
 17 BUYER understands SELLER has expressed intent to make no repairs. However, per the Wood  
 18 Destroying Insects section of the Inspection Paragraph, SELLER agrees to pay to have the  
 19 Property treated for wood destroying insects.  
 20 BUYER will have the right to cancel the Contract if the results of the inspections are unsatisfactory.  
 21  
 22  2. BUYER is entitled to conduct inspections as outlined in the Inspections Paragraph of the Contract.  
 23 SELLER will make no repairs and/or treatments.  
 24 BUYER will have the right to cancel the Contract if the results of the inspections are unsatisfactory.  
 25 BUYER waives any right to renegotiate pursuant to the inspection provisions in the Contract.  
 26  
 27  3. BUYER waives any right to conduct inspections as outlined in the Inspections Paragraph of the  
 28 Contract.  
 29 SELLER will make no repairs and/or treatments.  
 30 BUYER waives any right to cancel or renegotiate pursuant to the inspection provisions in the Contract.  
 31  
 32  
 33  
 34  
 35 SELLER \_\_\_\_\_ DATE BUYER \_\_\_\_\_ DATE  
 36  
 37 SELLER \_\_\_\_\_ DATE BUYER \_\_\_\_\_ DATE  
 38

Approved by Legal Counsel of the Kansas City Regional Association of REALTORS® for exclusive use by its REALTOR® members. No warranty is made or implied as to the legal validity or adequacy of this Contract, or that it complies in every respect with the law or that its use is appropriate for all situations. Local law, customs and practices, and differing circumstances in each transaction may dictate that amendments to this Contract be made. Last revised 08/14. All previous versions of this document may no longer be valid. Copyright January 2015.

In Its Present Condition Addendum

# Cancellation and Mutual Release

Added spaces for allocation of earnest money.

Added option to address situations where no earnest money was deposited.



## CANCELLATION AND MUTUAL RELEASE AGREEMENT

1 SELLER: \_\_\_\_\_  
 2 BUYER: \_\_\_\_\_  
 3 PROPERTY: \_\_\_\_\_  
 4 The undersigned BUYER and SELLER hereby agree that the Contract for the sale and purchase of the  
 5 Property dated \_\_\_\_\_ is hereby cancelled. The parties hereby release all of their rights  
 6 and interest in the Contract.  
 7  
 8 BUYER and SELLER release any Escrow Agent, Listing Broker and its licensees, Selling Broker and its  
 9 licensees, and any other party holding Earnest Money and Additional Deposits (if applicable) from all  
 10 liability after disbursement in accordance with this Cancellation.  
 11  
 12 BUYER and SELLER agree that the Earnest Money and Additional Deposits in the amount of  
 13 \$ \_\_\_\_\_ are to be disbursed as follows (check appropriate box):  
 14  
 15  Check(s) will be issued:  
 16  
 17 Payable to BUYER in the amount of \$ \_\_\_\_\_ (SO if left blank)  
 18  
 19 Payable to SELLER in the amount of \$ \_\_\_\_\_ (SO if left blank)  
 20  
 21 Payable to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ (SO if left blank)  
 22  
 23 Payable to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ (SO if left blank)  
 24  
 25  No check(s) will be issued. Reason: \_\_\_\_\_  
 26  
 27  
 28  
 29 CAREFULLY READ THE TERMS HEREOF BEFORE SIGNING. WHEN SIGNED BY ALL  
 30 PARTIES, THIS DOCUMENT BECOMES LEGALLY BINDING. IF NOT UNDERSTOOD,  
 31 CONSULT AN ATTORNEY BEFORE SIGNING.  
 32  
 33  
 34  
 35 SELLER \_\_\_\_\_ DATE BUYER \_\_\_\_\_ DATE  
 36  
 37 SELLER \_\_\_\_\_ DATE BUYER \_\_\_\_\_ DATE  
 38

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Cancellation and Mutual Release Agreement  
Page 1 of 1

# WE ARE DONE!

- Thank you for stepping up your knowledge!
- KNOWLEDGE IS POWER!
- IT GIVES SECURITY TO YOUR CLIENTS TOO!
- KEEP UP THE GREAT WORK!



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