

2022 Forms Revisions

In addition to holding four regular committee meetings during the first half of the year, the Forms Committee held three subcommittee meetings to consider changes to the financing contingency in the Purchase Agreement.

A special thank you to Chair Robert Siebenaler and to all members who volunteered their valuable time for the Committee and Subcommittees. Your volunteer service is invaluable to the Minnesota Realtor® community. Thank you to all members who submitted suggested changes for the Committee's consideration. Suggested forms changes can be submitted at mnrealtor.com/member-services/risk-management/forms.

Residential Forms (All forms changes effective August 1, 2022):

Addendum or Amendment to Purchase Agreement: Buyer's Move-in Agreement

- The Insurance section was modified to eliminate the buyer's requirement to obtain \$300,000 of liability insurance and naming the seller and seller's mortgagee as additional insureds. The new language simply states the buyer shall purchase and maintain liability insurance effective on the Possession Date and requires buyer to provide seller with an insurance binder. Buyer is also responsible for buyer's personal property insurance.

Addendum to Purchase Agreement: Subsurface Sewage Treatment System and Well Water Inspection Contingency:

- The title of this form was changed to include the word "water" after "well" to clarify the well inspection contingency in this Addendum pertains to a water quality test to determine if the water is potable or otherwise in compliance with governmental water quality standards.

Buyer Representation and Buyer Facilitator Services Agreements

- The Committee added language to clarify the buyer is authorizing the broker to assist the buyer in purchasing property "located in Minnesota." This was added to eliminate

any confusion for members who work in multiple states.

- Back by popular demand, the Committee reinstated language eliminated last year clarifying that any compensation negotiated by the buyer's broker from the seller or listing broker SHALL or SHALL NOT reduce any obligation of buyer to pay compensation by the amount received by seller or broker.

Disclosure Statement: Seller's Property


- The last part of the General Information section was modified to bring more attention to the question whether the property is part of a homeowners association or has shared amenities. This information is important to know before the buyer makes an offer so the buyer can determine whether the property is subject to the Common Interest Community statutes (Minn. Stat. 515A or 515B). Therefore the committee highlighted this by placing it on a separate line.
- The Committee broadened the question pertaining to the type of insurance claim by eliminating the reference to "Homeowner's Insurance." The question simply asks if seller had an insurance claim related to the property.
- The Committee also eliminated reference to receipt of compensation when inquiring if the items were repaired. The new language simply asks whether the Seller had the items repaired, irrespective of whether the seller received compensation.
- In the Appliances section, we changed "Invisible fence" to "In-ground pet containment system" to be consistent with the language in the personal property section of the Purchase Agreement.

Disclosure Statement: Well

- Line 36 was modified to correct line number references.

Purchase Agreements (PA; Vacant Land; New construction)

- The Mortgage Financing section of the Purchase Agreements were modified in two ways.
 1. First, the language pertaining to approval of a grant, bond program or other loan assistance program was eliminated. The Committee's action to remove this language was in response to member concerns about possible misunderstandings pertaining to a buyer's ability



to complete a transaction using such financing tools, placing those buyers at a disadvantage in the offer process. If such programs have seller input requirements, that can be negotiated in the Seller's Contributions to Buyer's Costs section of the Purchase Agreement.

2. Additionally, in the financing contingency section requiring a Written Statement, the Committee added options for distribution of the Earnest Money when the buyer does not timely provide the Written Statement. Parties can now negotiate whether the earnest money will either be **RETAINED BY SELLER** or **REFUNDED TO BUYER**.

Note these earnest money options were added in two different sections of this contingency. The first is when the buyer fails to timely provide the Written Statement and seller cancels before receiving the Written Statement and before the closing date. The second option is when you reach the closing date and buyer has not provided the Written Statement and seller has not cancelled the Purchase Agreement.

Practice Tip:

This is a notable change to the Purchase Agreement. Previously, if the buyer was not able to obtain and provide a Written Statement by the date specified, and seller cancels or it does not close, the earnest money was automatically refunded to buyer. Buyers will still be relying on their lenders to timely provide them with a Written Statement that meets the requirements of the Purchase Agreement. If the new option **RETAINED BY SELLER** is selected, **BUYER WILL LOSE THEIR EARNEST MONEY IF THEY DO NOT TIMELY PROVIDE A WRITTEN STATEMENT** to seller and seller cancels the Purchase Agreement or it does not close by the closing date specified. Be sure to consult with your buyer clients about their preference for each respective circumstance in this revised financing contingency section.

- Language pertaining to discriminatory restrictive covenants was added to the NOTICES section of the Purchase Agreement. This new language informs consumers that discriminatory restrictive covenants are illegal and unenforceable and explains how property owners can remove such restrictive covenants from the title.

New Residential Forms:

Addendum to Purchase Agreement: Additional Signatures

- A new addendum was created to easily add additional signatures for those transactions with more than two parties.

Addendum or Amendment to Listing Contract or Buyer Representation Contract or Facilitator Services Agreement: Interpreter Appointment

- A new Addendum or Amendment to the representation and facilitator services contracts was adopted to facilitate appointment of an interpreter for clients needing assistance.

Commercial Forms:

Addendum to Commercial Purchase Agreement: Counteroffer

- Language was added to clarify the Counteroffer Addendum is valid upon signature and delivery of the Purchase Agreement.

Commercial Buyer and/or Tenant Representation Contracts: Exclusive and Nonexclusive

- The Committee reinstated language eliminated last year clarifying that any compensation negotiated by the buyer's broker from the seller or listing broker **SHALL** or **SHALL NOT** reduce any obligation of buyer to pay compensation by the amount received by seller or broker.

Commercial Purchase Agreement and Purchase Agreement: Land (Non-Residential)

Language pertaining to discriminatory restrictive covenants was added to the section of the Purchase Agreements pertaining to covenants, reservations, or restrictions. This new language informs consumers that discriminatory restrictive covenants are illegal and unenforceable and explains how property owners can remove such restrictive covenants from the title.