

SYNOPSIS OF NEW AND REVISED NMAR FORMS– TO BE RELEASED IN INSTANET AND ZIPFORMS ON JULY 15, 2019 (DotLoop soon thereafter).

REVISED FORMS:

1. **2104 - Purchase Agreement:** NOTE: Paragraphs 11-14 were re-numbered. Language added to Para. 4 - Earnest Money (see Section D below) - caused both the Cost-to-be-Paid Grid and the Document-Delivery Grid to be divided into two pages. The renumbering was necessary so the entirety of each of the grids remained on one page.
 - A. **Cover Page I – Broker Duties** – has been divided into Section A and B. This was done for ease of reference when identifying Broker Duties owed by Transaction Coordinators (See Item 1(B)(ii)(b) below).
 - B. **Cover Page II – Additional Broker Disclosures**
 - i. Page has been reorganized to have all Buyer’s Broker’s Disclosures at the top and all Seller’s Broker’s Disclosures at the bottom
 - ii. “Additional Disclosures” - Para. 4 in Buyer’s Broker’s Section and Paragraph 2 under Seller’s Broker’s Section:
 - a. A box for “Other Written Agreements” has been added; this disclosure is required by changes to the New Mexico Real Estate Commission Rules that occurred January 1, 2019; and
 - b. Under the Licensed Transaction Coordinators (“TC”) Section, a line has been added so that Brokers can disclose the name(s) of Licensed TCs here, instead of using Form 2100 – the Supplemental Disclosure (Form 2100 may still be required for other disclosures). In addition, this Section now includes reference to the Broker Duties owed by a Licensed Transaction Coordinator, so that Form 2100A – Licensed TC Broker Duties – is no longer required with 2104. Please see the supplement, “How to Disclose Licensed Transaction Coordinators When Using Revised Forms”.
 - C. **Cover Page III - Broker/Brokerage Information**
 - i. This page was located after the Purchase Agreement; it has been moved to the front of the packet. This form is not, and has never been part of the Purchase Agreement, so it made better sense to have all non-contractual pages at the front of the document (opposed to two non-contractual pages in the front and one at the back).
 - ii. Additional space has been added under both the Buyer and Seller’s Broker’s Sections to allow for the identification of two brokers on either side of the transaction (in the event there are co-listing brokers or multiple brokers working with the buyer).
- NOTE: THE ABOVE COVER PAGES HAVE BEEN SIMILARLY REVISED ON ALL NMAR PURCHASE AGREEMENTS.**
- D. **Para. 4 – Earnest Money** – Second to the last sentence is new: *“If the lender prohibits the credit of any portion of the Earnest Money towards the Purchase Price, down payment and/or closing costs, the Earnest Money or applicable portion thereof shall be refunded to Buyer after closing.”* It was added at the request of several lenders and title companies.
 - E. **Para. 5 (D)(i) and (ii) – Fixtures and Personal Property** – in each section it references their respective definitions in Paragraph 31. See Section L below for more information on rationale.
 - F. **Para. 6 - Financed or Cash Purchase**
 - i. **Subparagraph A(ii) – Loans** – Currently, if the buyer does not provide the Pre-Qualification letter in a timely matter, the Purchase Agreement automatically terminates. This language has been changed to state that failure of the Buyer to provide the Pre-Qualification Letter in a timely matter is considered a default of the Purchase Agreement. As a reminder, a default allows the seller to CHOOSE whether he/she wishes to terminate the contract - in Seller’s sole discretion. See Default Paragraph of Purchase Agreement.
 - ii. **Subparagraph C – Cash Purchase** – Currently, if the buyer does not provide proof of funds in a timely matter, the Purchase Agreement automatically terminates. This language has been changed to state that failure of the Buyer to deliver proof of funds in a timely matter is considered a default of the Purchase Agreement. As a reminder, a default allows the seller to CHOOSE whether he/she wishes to terminate the Purchase Agreement - in Seller’s sole discretion. See Default Paragraph of Purchase Agreement.
 - G. **Para. 8- Appraisal** –
 - i. **Para. 8(B) “Order Date”** was added. It requires the party ordering the appraisal to do so by this date and clarifies that if the Buyer is getting a loan, it is the Buyer’s responsibility to assure the lender orders the appraisal by the date indicated in this section.

- ii. **Para. 8(C)(i) – Appraisal Contingency** – this was changed to say that the Appraisal Contingency applies to all loan programs requiring an appraisal (it currently names conventional, VA and FHA names specifically).
- H. **Para. 14 – Cost-to-be-Paid Grid** (previously Para. 11). Asterisks have been added after “Loan Related Costs and Fees” and after “HOA/COA” (in the Miscellaneous Section of the Grid). The asterisks are explained below the Grid. The first asterisk explanation is not new. The second asterisk explanation is new and addresses who pays for HOA/COA costs other than the Disclosure Certificate and Resale Certificate (which is covered in the Grid). This is a catch-all for the various documents (and names of documents) that a lender or title company may require to make the loan/insure the property.
- I. **Para. 18 - Survey/ILR** – In Section A, Delivery Deadline, it clarifies that the Delivery Deadline ONLY applies if the Seller is obligated to deliver the survey or ILR to the Buyer. If the buyer is ordering the survey/ILR, the Delivery Deadline does NOT apply to the date the surveyor is expected to deliver the survey or ILR to the Buyer; that can be negotiated between the Buyer and the surveyor outside of the Purchased Agreement. Of course, the Buyer must be cognizant of the Objection Deadline, and remains responsible for getting the survey/ILR in time to meet that Objection Deadline.
- J. **Para. 21 (F)(i) – Inspections - Delivery Deadline** - Clarifies that the Delivery Deadline ONLY applies if the Seller is expected to conduct the inspection and deliver an inspection report to the Buyer. If the Buyer is ordering the inspection, the Delivery Deadline does NOT apply to the date the inspector is expected to deliver the inspection report to the Buyer; that can be negotiated between the Buyer and the inspector outside of the Purchased Agreement. Of course, the Buyer must be cognizant of the Objection Deadline, and remains responsible for getting the inspection report in time to meet that Objection Deadline.
- K. **Para. 21(I) – Resolution** - Clarifies that if in Seller’s Response, Seller does not agree to cure all of Buyer’s objections as requested by Buyer, that Buyer may then either terminate the Purchase Agreement or Buyer may continue to negotiate with the Seller. **Note:** The Purchase Agreement currently (and continues) to state that if Buyer makes objections, Buyer may NOT withdraw his/her objections and terminate the Purchase Agreement before Seller has had an opportunity to respond.
- L. **Para. 31 – Definitions –**
 - i. **Subparagraph J – Fixture** – language was added to address a situation where an item/unit has multiple components, some of which are fixtures and others of which are personal property. In the event the item/unit includes fixtures and that fixture relies on personal property items to function in its intended capacity, the item, as a whole (the fixture and the personal property) are together considered a “Fixture”. **Examples:**
 - a. a security system has multiple components, one of which is the doorbell/camera which is affixed to the real property with screws; the other component(s) of the system is a monitoring and/or Wi-Fi device that sits on a table. The doorbell/camera is a fixture and the monitoring device is personal property, but the two components are intended to be used together, therefore, they are both considered a “Fixture”;
 - b. a murphy bed, where the frame is attached/secured to the real property. The mattress on the murphy bed is personal property; however, in order to use the murphy bed as it was intended to be used, one must have a mattress, so the mattress becomes a “Fixture” as well.
 - ii. **Subparagraph L – Personal Property** – references the definition of “Fixture”, since sometimes a personal property item may be considered a “Fixture” as explained above.
- M. **Para. 35 – Earnest Money Dispute** - One sentence was added regarding Interpleader actions. Reference to Interpleaders was removed some time ago, because generally, title companies are not filing Interpleader Actions; however, one of the largest title companies in the state continues to do so if no resolution is reached on the distribution within approx. 180 days post termination. Beforehand, the title company will alert the buyer and seller to the fact they will be doing so.
- N. **Para. 47 – Acceptance, Entire Agreement and Amendments in Writing.** – First sentence added which clarifies that a contract is not accepted UNTIL fully executed by the Seller and delivered to the Buyer (implicit in this is the fact that if a counteroffer is involved, a contract is not fully executed until the final counter offer is fully executed and delivered to the other side). The reason I added this was to emphasize that acceptance can NOT be assumed; that performance under the Purchase Agreement without a signed and delivered Purchased Agreement does not create a legally binding contract (important because there is case law in NM to the contrary).

O. **Above the Buyer's Signature: New Language added:** *"ATTENTION BUYERS AND SELLERS: THE OBLIGATIONS/RESPONSIBILITIES SET FORTH IN THE PURCHASE AGREEMENT ARE THOSE OF THE PARTIES TO THE PURCHASE AGREEMENT AND NOT OF THE BROKERS."*

2. **Cover Pages/Disclosure:** On the Cover Pages of the following Forms: 1) a space was added for Brokers to disclose "other written agreements in the transaction" as required by changes to the New Mexico Real Estate Commission Rules that occurred January 1, 2019; and 2) the Licensed Transaction Coordinator Duties have been incorporated into Cover Page 2 of the Listing Agreements and 1206 and into Cover Page 1 on 1203 (so neither Form 2100, nor 2100A is required when disclosing a Licensed Transaction Coordinator). Please see the supplement, "How to Disclose Licensed Transaction Coordinators When Using Revised Forms".
- A. 1106 - Listing Agreement and all other Listing Agreements
 - B. 1203 - Compensation to Broker Agreement / Unlisted Property
 - C. 1206 - Buyer Broker Agreement

3. **2100 - Broker Duties Supplemental Disclosure:**

- A. Boxes at top of form where Broker would explain the reason for the Supplemental Disclosure Form were removed. Now that Brokers are familiar with the Form, the boxes seemed unnecessary and were causing confusion.
- B. Space was added for Brokers to disclose "other written agreements in the transaction" as required by changes to the New Mexico Real Estate Commission Rules that occurred January 1, 2019.

4. **2301 - Property Disclosure Statement:**

- A. **Section A(11)** - the following highlighted language was added: Type of Exterior: Synthetic (EIFS) Synthetic Concrete Do Not Know Other
- B. **Section G(14)**, the following language was added: "Does Property have a Pool that has been filled-in? Yes No Do Not Know"

5. **2503 - Buyer's Contingency:** The following highlighted language was added to Para. 2(A). **MARKETING CONTINUES.** Seller shall have the right to offer the Subject Property for sale and to consider additional offers until Buyer delivers written notice to Seller that Buyer has entered into a contract for the sale of Buyer's Property ("Marketing Period"). **Buyer may notify Seller by (check all that apply) Email Text Hand-Delivery Other _____ that Buyer has entered into a contract for the sale of Buyer's Property.**

6. **5105 - Termination Agreement:** The following highlighted language was added to Para. 3 to address situation where the buyer pays a TOM Fee and therefore, no Earnest Money has been deposited or given to Seller. **EARNEST MONEY/RECOVERY OF DAMAGES. Select one ONLY IF Earnest Money has been deposited with the title company or brokerage or paid to the Seller; otherwise, leave this Section blank.**

7. **5109 - Objection Resolution Waiver Notice and Agreement:** In Section 4(C), the box/line for "Other" was removed.

NOTE: Section 4(C) is intended to be used only when Seller is proposing a price reduction or seller concession. If, in response to Buyer's request for cures, Seller wishes to propose something other than a price reduction or seller concession, Seller should do so in Section 4(B).

NOTE: If Seller is using Section 4(C), Seller should mark Section 4(C)(i) and/or (ii) and place the proposed price reduction and/or seller concession on the Amendment (Form 2101) and send back to Buyer. If the price reduction or amount of the seller concession on Seller's Amendment is not acceptable to Buyer, then Buyer should create his/her own Amendment with the price and/or concession acceptable to Buyer. This process should continue until the parties have one Amendment on which both can agree.

8. **HOA Forms:** The following forms were updated to reflect changes to the Homeowner Association Act which took effect July 1, 2019. **NOTE:** Pay special attention to the information in the Box at the top of Form 4700.
- A. **4600 - HOA Information Sheet** - multiple changes. Please review entire form.
 - B. **4700 - HOA Document and Disclosure Certificate** -

- i. **Box at top**, language amended/added; *“Per New Mexico law, a Seller/Homeowner must provide the documents/information herein to a Buyer prior to closing. Within 10 business days after receipt of a written request from a Seller/Homeowner, an HOA must make the documents listed in Section 1 available to a Seller/Homeowner and must provide to a Seller/Homeowner the information listed under Section 2 (the “Disclosure Certificate”). An HOA may not charge more than 10 cents a copy for documents in Section 1 and no more than \$300 for the Disclosure Certificate. The HOA may only charge a fee for the Disclosure Certificate at closing and ONLY IF the transaction closes. THE ANSWERS TO QUESTIONS B AND C OF THE DISCLOSURE CERTIFICATE (italicized below) ARE ONLY VALID FOR 60 DAYS. If after 60 days, the Seller/Homeowner requests that the HOA update the answers to the italicized questions, the HOA must provide the updated information within 3 business days of request and may charge no more than \$50.00 to do so. Such updated information shall be valid for 60 days. A Buyer has 7 days from date of receipt of the Disclosure Certificate to terminate the Purchase Agreement.*
- ii. Section 1(A) – Language added: *“The Declaration is often the first section of the Covenants, Condition and Restrictions.”*
- iii. Section 1(C) – Language added: *“The Rules of the HOA may also be referred to as the “Policies” of the HOA.”*

NEW FORMS:

1. **Form 1725 - NEW Auctioneer Agreement:** Exception to the New Mexico Real Estate Brokers Act that allows a Qualifying Broker to hire an unlicensed auctioneer (someone who does not hold a NM Broker’s License) to auction real property. QB must enter into a transaction-specific written agreement with the auctioneer that meets the criteria set forth in this new form. Amendment to Broker’s Act took effect June 22, 2019.
2. **Form 5106 - NEW Notice of Revocation of Offer/Counteroffer:** Form signed by Buyer or Seller revoking the Offer of Counter Offer. For more information on revocation of offers and counteroffers, please click on the link to the NMAR Voice Article, *“Revocation of Offers in the Day and Age of Transaction Brokerage”*.
3. **Form 6107 - NEW Vendor Certification for Brokers/Property Managers –** New Mexico Real Estate Commission rules effective January 1, 2019 require Brokers who hire vendors to perform maintenance or repairs on properties to ONLY hire vendors that are properly licensed, insured and bonded, as required by New Mexico law. This does NOT mean that all vendors must be licensed, insured and/or bonded; it means that those vendors providing services that require licensure, insurance and/or bonding under New Mexico law, have the required licensure, insurance and/or bonding. This Form assists Brokers in determining whether the task at issue requires licensure, insurance and/or bonding and if it does, if the vendor being hired to provide the service has the proper licensure, insurance and/or bonding. The Form addresses in detail the exception under New Mexico law for “Handymen”. **NOTE: This Form will be used predominately by Property Managers; however the regulation specifically states that the Rule applies to ALL BROKERS (not just Property Managers), which means that if a Broker hires a vendor for a seller or buyer in the context of a sale/purchase of a property, this Rule would apply and the Broker hiring the vendor would have to confirm the vendor was properly licensed, certified, insured and/or bonded in accordance with the law. This Rule would NOT apply if a Broker (or his/her TC or assistant) simply made a call to a vendor to schedule the repair provided that the vendor was selected and compensated by the buyer or seller.**



WATCH FOR THE RELEASE OF TWO SUBSTANTIALLY REVISED FORMS IN AUGUST, 2019. THE RELEASE WILL INCLUDE VIDEOS BY NMAR GENERAL COUNSEL, ASHLEY STRAUSS-MARTIN, ON HOW TO PROPERLY USE THE FORMS.

- **FORM 5103 - THE NOTIFICATION OF MULTIPLE OFFER FORM; THIS FORM WILL REPLACE THE INVITATION TO OFFER FORM**
- **FORM 1530 - THE BACK-UP PURCHASE AGREEMENT FORM, WHICH HAS BEEN MODIFIED FOR USE IN BOTH A SINGLE BACK-UP OFFER SITUATION AND A MULTIPLE BACK-UP OFFER SITUATION**

 **ALSO, JOIN ASHLEY STRAUSS-MARTIN FOR THE NMAR LEGAL UPDATE AT ISLETA HOTEL AND CASINO, AUGUST 23, 2019 – 3 HRS OF CONTINUING EDUCATION CREDIT WILL BE OFFERED.**