

WHEN CHANGE CANNOT WAIT – NABOR®’s “APPRAISAL CONTINGENCY ADDENDUM” RESPONDS TO RAPIDLY APPRECIATING MARKET

By: Kevin R. Lottes, Esq., Lottes Law Group, PLLC
Florida Bar Board Certified Real Estate Attorney

Although each of NABOR®’s Sales Contract forms are typically reviewed and updated every two years to address changes to the law and the real estate marketplace, sometimes change simply cannot wait. As Southwest Florida real estate values continue to rapidly appreciate in this very active market, often at a pace which exceeds the ability of “comparable sales” to keep up, the REALTOR® and attorney members of NABOR®’s Legal Resources Committee have made a small, but very significant change to NABOR®’s “Addendum to Sales Contract – Appraisal Contingency” form which now allows buyers and sellers to agree that the Sales Contract is contingent upon the subject property appraising for at least a specified appraised value, rather than just at the purchase price.

Under the previous version of NABOR®’s Appraisal Contingency Addendum, the Sales Contract was contingent upon an appraisal showing a market value of at least the purchase price, failing which the buyer would have the right to terminate the Sales Contract unless the seller subsequently agreed to reduce the purchase price to the appraised value. While this approach has, historically, worked well in most instances and has resulted in this form being one of the most commonly utilized addenda to the NABOR® Sales Contract, the realities of today’s rapidly appreciating real estate market has often meant that appraised values -- which are, in large part, based on comparable closed sales -- have largely failed to keep up with negotiated sales prices.

In response and out of an awareness of the frequent failure of closed comparable sales prices to keep up with actual current sales prices, buyers and sellers have increasingly sought an easier way to “tie” the Appraisal Contingency to an appraised value which is less than the negotiated purchase price. This was not possible under the previous version of NABOR®’s Appraisal Contingency Addendum. However, the newly revised version of NABOR’s Appraisal Contingency Addendum, contains the flexibility to permit buyers and sellers link such an appraisal contingency to EITHER the purchase price OR to any other appraised value as may be agreed upon by the parties. The new NABOR® “Addendum to Sales Contract – Appraisal Contingency” form now contains a blank which may be completed by the parties to state an “Appraisal Contingency Price” which is different than the Purchase Price to which the buyer’s right to exercise the appraisal contingency is linked. If, however, the blank is left uncompleted, the form defaults to the use of the Purchase Price relative to the appraisal contingency.

This newly revised form now allows buyers and sellers who wish to agree, by way of example, to a \$500,000 Purchase Price but desire to create an appraisal contingency which would only apply if the appraised value, as established by a formal appraisal, were to come in below a prespecified lower amount (i.e. \$475,000 or \$450,000) – an event which is increasingly likely given the current rapidly appreciating local real estate market in which appraisals established by “closed sales” often fail to keep up.

It is important to note that, in all other respects, the newly revised NABOR® Appraisal Contingency Addendum, works and operates in the same manner as was the case with the previous version of this form. The newly revised version of this form bears the new copyright date of “9/20/2021” which appears in the lower right-hand corner of the form and is available at NABOR.com and all other sources at which NABOR®’s forms may be obtained. All order versions of this form should be discarded.