The NABOR Sales Contract from a Legal Perspective

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The NABOR Sales Contract is arguably the oldest continuously utilized form of sales contract used in Florida. In fact, the NABOR Sales Contract was first used approximately a decade before the first FR/BAR contract was. Every two years, a hardworking group of Realtors and attorneys gather in a room lined with mahogany wood shelves and many leather bound books to discuss, debate, argue, finesse and work through updates and refinements to the form contracts. That hard work and dedication has resulted in a balanced, well-reasoned set of contracts that have stood up to legal debate and review.

As well thought out and reasoned as any legal contract can be, there will always be disputes and disagreements that are unavoidable. Fortunately, the number of reported appellate decisions involving the NABOR Sales Contract are limited (but they are instructive). These are set forth below:

In *Bowen v. Sherman*, 374 So. 3d 895 (Fla. 6th DCA 2023), the parties entered into the Sales Contract-As Is (Residential Improved Property) for the purchase and sale of vacant property. On the first page the parties identified one specific property by address and legal description. The purchase price was $2,000,000. Thereafter, in the "Other Terms and Conditions" section, the parties identified four properties. A dispute arose as to whether the $2,000,000 purchase price was applicable to the one parcel or to all four parcels. The seller refused to close (it was the seller's position the $2,000,000 was only for the 1 parcel). The buyer sued for specific performance (it was the buyer's position the $2,000,000 was for all 4 parcels). The court reasoned that the use of two different legal descriptions in the contract constituted a patent ambiguity that precluded enforcement of the contract. As stated by the court "the conflict in a material term of this contract, its subject matter, renders the contract unenforceable; without a meeting of the minds as to what real estate was being bought and sold, the contract fails for indefiniteness, and it cannot be revived by parol evidence." Id. At 898 (emphasis added).

Practice Tip: Using the terms and conditions section of the contract to modify or change any term that is filled in elsewhere in the contract (i.e. price, legal description, deposit structure, financing terms, etc) has the potential to create a patent ambiguity (if the terms conflict) which can render the contract unenforceable. Great caution should be used when inserting material terms into the "Other Terms and Conditions" section and we would highly suggest you contact a real estate lawyer to assist.

In *Bridgham v. Skrzynski*, 873 So. 2d 496 (Fla. 2d DCA 2004), the parties were utilizing the 2002 version of the NABOR sales contract. The parties entered into the contract on August 7, 2002. The contract included a financing contingency. The property did not appraise and the buyers ending up terminating the contract under the financing contingency. The parties then executed an addendum to sales contract which reduced the purchase price, but it provided that all terms and conditions of the original contract were to remain the same. The buyers ordered a survey and the survey reflected an encroachment of the screen enclosure into a Marco Island Civic Association (MICA) required setback. Once it was confirmed that MICA would not waive the setback issue, the buyers again canceled the contract and requested a return of their deposit. The sellers contended that the buyers were outside of their survey review period and were not entitled to a return of the deposit. The trial court entered summary judgment in favor of the sellers and the buyers appealed. On appeal, the District Court grappled with determining whether the second contract was considered a new contract or a reinstatement of the old contract. It found that because the effective date of the second contract was September 12, 2002 (when the last of the parties signed the addendum), there wasn't thirty (30) days left until the scheduled October 11, 2002 closing date. As such, the Quick Closing provision of the contract overrode the preprinted survey period, and this extended the time period for the buyers to obtain a survey (until the closing date). As the buyers obtained the survey prior to the closing date, the buyers were in compliance with the terms of the contract and properly raised the survey objection. The District Court reversed the trial court and remanded for entry of summary judgement in favor of the buyers.

Practice Tip: Calculation of time periods and deadlines under the contract is critically important. Great care should be given to determining deadlines under contracts when the closing is scheduled for less than thirty (30) days. In that situation, except for a few specified time periods set forth in Standard N, the deadlines can get extended to the closing date.

The NABOR Sales Contract has stood the test of time, and continues to be one of the most formidable contracts in Southwest Florida. Great minds dissect and improve the contract every two years (or more often as needed) so that it stays current with ever-changing laws and regulations. It is a form of contract that NABOR members can be confident and proud to use in their business.