

UNDERSTANDING THE IMPORTANT REVISIONS TO NABOR'S CONTRACT FORMS

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Approximately every two years, the REALTOR® and attorney members of NABOR's Legal Resources Committee review, revise and update NABOR's sales, listing and related contract forms to address important changes in the law and the real estate marketplace. The revised NABOR forms are the product of nearly one year's worth of study, input, evaluation and deliberation by the members of NABOR's Legal Resources Committee. The updated forms have been approved by NABOR's Board of Directors, the Marco Island Association of REALTORS® and the Collier County Bar Association and are now available for use.

All of the NABOR forms have been re-issued bearing the new copyright date of October 1, 2022, shown as “© 10/1/2022” which appears in the lower right-hand corner of each NABOR form. All older versions of the NABOR forms should be discarded and should not be used.

Although this article does not address every change in every NABOR form and each of the revised forms should be reviewed carefully, the following is a brief explanation and guide to the most significant which have been made to the NABOR forms and are important for buyers, sellers and realtors to know.

As in the past, all of the revised forms are available at NABOR.com, Transaction Desk, Form Simplicity, ZipLogix, the Florida Realtors website (www.floridarealtors.org) and in ZipForms disc format that can be ordered through the NABOR store. In addition, NABOR has offered several live and zoom seminars addressing changes to the NABOR forms.

NABOR SALES CONTRACT AND RELATED FORMS

NABOR SALES CONTRACT

NOTE: The paragraph references are to the NABOR “Sales Contract (Residential Improved Property)”. Similar changes, where applicable, have also been made to the corresponding provisions of the following NABOR forms:

- “Sales Contract – AS-IS (Residential Improved Property)” (unless noted with a *);
- “Sales Contract (Residential Vacant Land)” (unless noted with a ++);
- “Listing of Residential Improved Property – Exclusive Right and Authority to Sell Contract”; and
- “Listing of Residential Vacant Land – Exclusive Right and Authority to Sell Contract”.

ADDED – Inclusion of Electric Vehicle Charging Equipment, Sales Contract, Page 1 ++: The first page of the Sales Contract has been revised to specifically include, as part of the Property to be conveyed, “electric vehicle charging equipment including all operational components”.

*ELIMINATED – Elimination of Previously-Available “Checkbox” in Section 8 of “Sales Contract (Residential Improved Property)” Referencing Attachment of “As Is Sale of Property/Due Diligence” Addendum, Sales Contract, Paragraph 8 * ++:* Paragraph 8 of the Sales Contract (Residential Improved Property) has been revised to eliminate the previously-existing “checkbox” referencing the attachment of the NABOR “As Is Sale of Property/Due Diligence” Addendum. Please note that such NABOR “As Is Sale of Property/Due Diligence” Addendum remains in the NABOR forms library.

ELIMINATED – Elimination of \$150.00 Title Evidence Credit for Failure to Provide Prior Title Policy, Sales Contract, Standard B: Although the Seller is obligated to furnish to the Buyer with “any [prior] owner’s title insurance policy in Seller’s possession”, Sales Contract Standard B has been revised to eliminate the prior requirement that the Seller give the Buyer a \$150 “title evidence credit” in Collier County transactions in which the Seller fails the Buyer with a copy of such owner’s title insurance policy.

REVISED – Prior Survey to be Provided by Seller, Sales Contract, Standard C(1): Sales Contract Standard C(1) has been revised to require the Seller to provide to the Buyer a “complete copy of any survey of the Property in Seller’s possession”, whether or not such survey was certified to the Seller. The prior version of the Sales Contract required such prior survey to be provided only if it was certified to the Seller.

ADDED – Additional Basis for Survey Objection, Sales Contract, Standard C(1): Sales Contract Standard C(1) has been amended to give the Buyer the right to assert a Contractually-defined “Survey Objection” if the Real Property “does not meet the applicable development standards of the local government having jurisdiction over the Real Property (and is not otherwise deemed legally non-conforming)”.

ADDED – Ambient Noise Levels, Sales Contract, Standard D(1)(c)(4): Sales Contract Standard D(1)(c)(4) has been revised to include “ambient noise levels” to the list of items which the Buyer is advised may not be addressed in the relevant association documents.

ADDED – Seller’s Obligation to Cure Association Violations, Sales Contract, Standard D(2)(c): The “Seller’s Maintenance Obligation” as referenced in Sales Contract Standard D(2)(c) has been expanded to require the Seller to cure “any and all violations documented by the Association”.

ADDED – Additional Seller’s Instruments and Expenses, Sales Contract, Standard E: Sales Contract Standard E has been revised to add the following items as expenses to be borne by the Seller: (a) utility estoppel fees; (b) outstanding utility balances due; and (c) outstanding balances or fines due to any Association. For transactions in which the Seller is subject to withholding under FIRPTA, amended Contract Standard E also requires the Seller to pay “charges associated with preparing the IRS Form 8288 and 8288A and/or 8288B ... and reasonable fees to Buyer’s attorney or Closing Agent for escrow, disbursement and/or remittance to withheld funds”. In addition, the Seller is responsible for preparing the instrument(s) for the “assignment of insurance and service contracts which Buyer elects to assume at closing”.

ADDED – Buyer’s Timely Application for Association Approval AND Limitation on Seller’s Ability to Terminate Contract if Required Association Approval of Buyer is Not Obtained, Sales Contract, Standard J: For transactions in which Association membership approval of the Buyer is required, the Buyer remains obligated to make formal application to such Association within ten (10) days after the Effective Date; however, Contract Standard J has been amended to expressly provide that, if Association approval is not obtained by the Closing Date, “Buyer’s right to terminate [the Contract] under .. Standard J is conditioned upon Buyer timely submitting the application to the Association”. This means that it is crucial that the Buyer make formal application for approval to the Association by no later than ten (10) days after Effective Date.

ADDED – Limitation on Seller’s Ability to Terminate Contract if Required Association Approval of Buyer is Not Obtained, Sales Contract, Standard J: In circumstances in which required Association membership approval of the Buyer is not obtained by the Closing Date, Contract Standard J has been amended to expressly provide that the Seller’s ability to terminate the Sales Contract is “conditioned upon there not being any violations of the applicable Association’s governing documents or any past due balances due to the Association(s)”.

CLARIFIED -- SMS (Text Message) Communications Do NOT Constitute Proper Notice, Sales Contract, Standard Q: Sales Contract Standard Q has been amended to expressly provide that communications by SMS (Text Message) do NOT constitute notice

for purposes of delivery of notices, disclosures and acknowledgements under the Sales Contract.

ADDED – List of “Checkboxes” to Identify Attached Addenda, Sales Contract, Immediately After “Other Terms and Conditions” Section: The Sales Contract has been revised to add an extensive series of “checkboxes” to identify the specific NABOR Addenda which are attached to and made a part of the relevant offer (or counteroffer). Specifically, this newly added section of the Sales Contract states that the addendum associated with the particular checked “checkbox” is incorporated into the Sales Contract, provided that the particular addendum is also actually attached to the Sales Contract.

SALES CONTRACT – RELATED FORMS

CLARIFIED -- Addendum To Sales Contract – Back-Up Contract: This Addendum has been amended by adding the following advisory statement near the top of the document: “IN THE EVENT A SELLER DESIRES TO ACCEPT MULTIPLE BACK UP CONTRACTS, THE PARTIES SHOULD SEEK LEGAL COUNSEL.”

AMENDED – Addendum to Sales Contract – Post-Closing Occupancy: The NABOR Post-Closing Occupancy Addendum has been amended by adding the following optional sentence at the end of the document: “If box is checked , BUYER shall, upon 24 hours’ notice be given access to the Property for purposes of inspection and storage of personal property after Closing.”

CLARIFIED -- Addendum To Sales Contract – Seller’s Right to Make Back-Up Contract Primary Contract: This Addendum has been amended by adding an advisory statement that the Seller’s rights under such Addendum are expressly “subject to the rules governing the Naples Area Board of Realtors’ Multiple Listing Service (“MLS”).

CLARIFIED -- Inspection Notice – Buyer’s Election and Seller’s Response: The NABOR Inspection Notice form has been amended by adding the following advisory statement near the top of the document: “NOT TO BE USED WITH THE AS-IS SALES CONTRACT”.

ELIMINATED/REPLACED – Flood Insurance Disclosure: The previously-available NABOR form entitled “Flood Insurance Disclosure” has been replaced with a NEW (and broader) NABOR form entitled “Insurance Disclosure”.

NEW FORM – Condominium and Cooperative Safety Disclosure: This NEW optional NABOR form, which is intended to be signed by purchasers of condominium/cooperative units, advises the Buyer of recent consumer protection and

safely legislation enacted by the 2022 Session of the Florida Legislature following the “Surfside/Champlain Towers” condominium collapse tragedy in Dade County. Specifically, the new statute, among other things, requires periodic inspections of the structural integrity of condominium/cooperative buildings which are three (3) or more stories tall. This new NABOR form also advises purchasers of such properties that the newly-enacted statute “may have a financial impact on assessments collected or to be collected in the future from unit owners as well as on the ongoing costs of ownership in these affected buildings”. Importantly, this new NABOR form specifically advises that **“Buyers considering the purchase of a Condominium or Cooperative in a building affected by these new regulations are encouraged to discuss these matters and any other questions with the Condominium or Cooperative association and the Buyer’s legal, financial and other professional advisors prior to entering into a sales contract”.**

NABOR LISTING CONTRACT FORMS

ADDED – Litigation / Prevailing Party Attorney Fees Clause: The provisions of each of the NABOR Listing Contracts have been revised to expressly provide that “[i]n connection with any litigation concerning this Listing Contract, venue shall be in the county where the Property is located, and the prevailing party shall be entitled to recover reasonable attorney fees and court costs, including on any appeals, from the non-prevailing party.”

As stated above, this article does not address every change in every NABOR form. Please read and re-familiarize yourself with the revised forms before using them. Also, do not mix old forms with new forms as section numbers and time periods have, in some instances, been revised. We hope that you will agree that, with these additions and revisions, NABOR’s sales, listing and related forms remain the best in the business.