

Changes to the RIAR Purchase and Sales Agreement

The Rhode Island Association of REALTORS® Purchase and Sales Agreements will be available late November/early December.

2. DATE OF THIS AGREEMENT

The Date of this Agreement shall be the later of: (a) the date on which Buyer signs and delivers this Agreement to Seller and/or Listing Licensee, or (b) the date on which Seller signs and delivers this Agreement to Buyer and/or Cooperating Licensee in accordance with Section 18. For the purposes of this contract and any reference to days, the day after the Date of this Agreement is the first day.

SECTION 2 Explanation: The effective date of the RIAR Purchase and Sales Agreement will start only after the P & S is both signed and delivered before it becomes effective. If the signing and delivery take place on different days, the day after the delivery will be the first day of the Inspections Contingency.

3. PURCHASE PRICE AND DEPOSITS

Time is of the essence as it applies to Section 3. (check one) Yes No

Buyer agrees to pay Seller a Purchase Price for the Property in the amount of:

_____ Dollars (\$) ("Purchase Price") which shall be paid as follows:

\$ _____ Initial deposit shall be paid and delivered to the Escrow Agent, who is named in Section 4, within _____ hours of the Date of this Agreement.

\$ _____ Additional deposit(s) shall be paid and delivered to the Escrow Agent on or before _____

All deposits shall be paid by personal check, certified check, money order, wire transfer and/or bank check.

\$ _____ Balance due at closing. Final balance shall be paid by certified check, wire transfer and/or bank check.

\$ _____ TOTAL PURCHASE PRICE.

Warning: The parties are advised not to wire funds without telephone or in-person confirmation from the person who appears to have issued the instructions. The parties are advised not to transmit personal financial information except through secured, verified email or personal delivery.

SECTION 3 Explanation: When sales transactions are conducted electronically, the listing broker rarely receives the buyer's deposit prior to delivery of the executed P & S even though the old P & S says that they have received the deposit. The contract is legally binding without a deposit in hand to protect the seller. The Forms Committee updated this section to require the initial deposit to be paid within ____ hours of the effective date of the P & S.

The new form:

- adds an optional "time is of the essence" checkbox to this section to emphasize the need for buyers to pay their deposits on time and to make it easier for the seller to terminate if the buyers do not;
- increases spacing between the lines;
- specifies types of payments to accommodate closing attorneys who prefer not to handle cash – especially when it may come from questionable sources;

4. ESCROW AGENT AND DEPOSIT RELEASE

(a) Buyer and Seller agree that all deposits shall be held in an escrow account by the following Escrow Agent:

(check one) Listing Brokerage Firm named in Section 18 or

Other Escrow Agent (please specify below)

Name: _____

Address: _____

Email: _____

(b) All deposits shall be applied to the Purchase Price, except as otherwise mutually agreed in writing by Buyer and Seller.

(c) The release of all deposits shall be (i) upon execution and delivery of a written release to the Escrow Agent by Buyer and Seller or (ii) as otherwise provided in Commercial Licensing Regulation 230-RICR-30-20-2.

(d) In the event of a dispute between Seller and Buyer as to the release of the deposits, the Escrow Agent shall transfer the deposits to the General Treasurer of Rhode Island within 180 calendar days from the date of the original deposit, in accordance with the above regulation. This regulation applies only to deposits that are held by a real estate broker.

SECTION 4 Explanation: Adds contact information for an escrow agent, who may be a cooperating broker, an attorney or someone else other than the listing broker.

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5. CLOSING DATE AND PLACE

Closing is to be held on _____, _____ at 10:00 A.M. at the office of the Land Evidence Records in the municipality where the Property is located or at such other time and place as may be agreed to by Buyer and Seller. Delivery of deed shall occur at the closing. Buyer and Seller authorize release of the closing disclosures to their respective Broker(s), to fulfill Brokers' obligation in accordance with Rhode Island law and for purposes of tracking statistical data.

SECTION 5 Explanation: Reverses the order of Closing and Escrow sections to make the Agreement flow more logically.

7. MORTGAGE CONTINGENCY

- (a) **Commitment:** This Agreement is subject to Buyer obtaining a written commitment ("Commitment") issued by an institutional mortgage lender or mortgage broker ("Lender") on or before _____ ("Mortgage Contingency Deadline"), under the following terms: an amount not to exceed \$ _____ at an initial rate of interest not to exceed _____% per year, for a term of at least _____ years, with a maximum of _____ points.
- (b) **Buyer's Obligation:** (i) Buyer shall make diligent efforts to apply for a mortgage. Buyer shall make formal application for a mortgage within _____ days of the Date of this Agreement. (ii) If this Agreement is subject to an appraisal that is required by the Buyer's Lender, Buyer shall authorize Lender to order an appraisal within _____ days of the Date of this Agreement. Buyer authorizes Seller and/or Listing Licensee to contact any such Lender(s) to confirm the status of Buyer's application, including denials. **Buyer assumes all obligations in fulfilling any and all conditions of the commitment. If Buyer fails to do so, Buyer shall be in default of this Agreement; Seller shall have the right to the Deposits and other remedies provided in Section 19.**
- (c) **Inability to Obtain Financing:** (i) *Extension:* If Buyer makes diligent efforts to apply for a mortgage as described in Section (a) and Buyer has not received a written commitment by the Mortgage Contingency Deadline, Buyer shall request, on or before the Mortgage Contingency Deadline, and by written notice to Seller and/or Listing Licensee in accordance with Section 18, to extend the time to receive the commitment. If the Seller does not extend the Mortgage Contingency, Buyer shall have the right to the Deposits in accordance with Section 4. (ii) *Denial:* If Buyer applies for a mortgage as described above and receives a written denial for such mortgage, then, upon notification of the denial to Seller and/or Listing Licensee in accordance with Section 18 on or before the Mortgage Contingency Deadline or extensions, this Agreement shall be declared null and void and Buyer shall have the right to the Deposits in accordance with Section 4, unless Buyer waives the Mortgage Contingency in writing.
- (d) **Buyer's Waiver of Contingency:** If, on or before the Mortgage Contingency Deadline, Buyer has not received a written commitment, or fails to request an extension as stated in (c) above, the Mortgage Contingency shall be deemed waived. If Buyer fails to purchase Property on Closing Date, Buyer shall be in default of this Agreement; Seller shall have the right to the Deposits and other remedies provided in Section 19.

Insurance Notice: A mortgage is usually contingent on an insurance binder; therefore, Buyer is highly advised to seek a quote or binder for insurance including, but not limited to, flood, dwelling, and wind, on or before the Mortgage Contingency Deadline. Insurance availability and cost may vary based upon factors, including but not limited to, location, age, condition, and past history of the property.

SECTION 7 Explanation: The Forms Committee reviewed mortgage contingencies from other states to try to make RIAR's more balanced and to address privacy concerns. The new form:

- eliminates the requirement that a buyer must provide a commitment or denial letter to the listing broker or seller to fulfill the Mortgage Contingency. This change would accommodate TILA RESPA Integrated Disclosure ("TRID") confidentiality requirements;
- requires a buyer to make a formal application for a mortgage within _____ days of the Agreement to help speed up the process;
- requires a buyer to authorize a lender to order an appraisal within _____ days of the Date of this Agreement
- eliminates the requirement for the buyer to provide a written copy of the commitment or denial letter to the listing broker. These changes were made to comply with increased financial privacy requirements;
- still authorizes a listing broker to contact the buyer's lender for a status report of the application;
- requires a buyer to make "diligent efforts" to apply for a mortgage. The listing broker and seller continue to have the ability to confirm the status of the buyer's application with the buyer's lender.
- revises the extension language to motivate a buyer to apply diligently for a mortgage. If a buyer does not obtain a commitment or request an extension prior to the Mortgage Contingency Deadline, the Mortgage Contingency would be deemed waived. If the buyer cannot close on time, the buyer would forfeit his or her deposit. This is similar to the Inspections Contingency, which is deemed waived if the buyer does not conduct inspections or finalize any repair agreements with the seller prior to the Inspections Contingency Deadline;

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10. TAXES, ADJUSTMENTS, AND OTHER ASSESSMENTS

- (a) **Taxes:** Real estate taxes and fire district taxes shall be prorated on a calendar year basis, except in those municipalities in which taxes are prorated on a municipal fiscal year basis, with Seller paying for the period prior to the date of delivery of the deed and Buyer paying the balance of taxes due. All other taxes which are a lien upon the Property shall be paid by Seller at the time of the delivery of the deed.
- (b) **Adjustments:** Rents, fuels, water charges, association fees and sewer usage charges shall be apportioned as of the date of the delivery of the deed at the current price as calculated by the Seller's supplier.
- (c) **Assessments:** All assessments, including sewer, which are payable over a period of more than one year and constitute a lien on the Property shall be paid as follows: At closing, Seller shall pay installments due during the municipal years prior to the year in which the deed is delivered; the installments due in that year shall be prorated in the same manner as above provided for taxes, and **(check one)**
- the Seller shall pay the balance of the assessment in full or acknowledge that there is no assessment, **or**
 - the Buyer shall pay the balance of the assessment in full, if any, or assume the balance of the assessment where permitted by law.

SECTION 10 Explanation:

- replaces "towns" with "municipalities" to clarify that both towns and cities are included;
- removes extra initial section;

12. POSSESSION AND CONDITION OF PROPERTY

Seller shall deliver to Buyer at closing full occupancy and possession of the Property, in "broom clean" condition, free and clear of personal possessions (except those that are listed in Section 8 as included with the sale), tenants, and occupants except as agreed below. At closing, Seller shall convey the Property in the same condition in which it is on the Date of this Agreement, except for reasonable use and wear and/or any improvements or repairs required by this Agreement. Buyer shall be entitled to a final walkthrough of the Property prior to the delivery of the deed in order to determine whether the condition of the Property complies with the terms of this section.

EXCEPTIONS: (subject to assumption of leases)

SECTION 12 Explanation: Shortens "Exceptions" box.

13. RECEIPT AND ACKNOWLEDGMENT OF RI DISCLOSURE FORMS

Buyer acknowledges that Buyer has received the following forms (unless exempted by law): **(Initial all that apply)**

- _____ Rhode Island Real Estate Sales Disclosure Form prepared by Seller
- _____ Mandatory Real Estate Relationship Disclosure
- _____ Seller's Lead Disclosure **which is incorporated in this Agreement by reference**
- _____ Pamphlet "Protect Your Family from Lead in Your Home" that includes R.I. section "What You Should Know About the RI Lead Law"

SECTION 13 Explanation: Increases spacing between the lines and lengthens the lines to accommodate additional initials.