

Highlights of Significant 2017 Revisions to the Florida Realtors/Florida Bar Residential Contract for Sale and Purchase

Revisions likely to impact your practice are highlighted below. Those revisions that are primarily housekeeping are not included in the summary in detail as they are self-explanatory. All changes are reflected in the redlines available online at floridarealtors.org.

Form details: The revised forms will reflect a 4/17 revision date and will be marked as Florida Realtors/FloridaBar-5 and ASIS-5. These forms will replace the current 4x versions.

5(b) Extension of Closing due to Force Majeure

Timeframe for Closing extension due to extreme weather has been lengthened but is now described in Standard G. Force Majeure. (Scroll down this document to Standard G for explanation of the extension.)

8(b) Financing: New concepts added, terms changed and language deleted.

New terms and default timeframe

Because some lenders are no longer issuing loan commitments per se, the term commitment has been deleted from the contract. Loan Approval has replaced the previously used term Loan Commitment. Loan Approval Period has replaced the previously used term Loan Commitment Date. Default date for Loan Approval Period is changed from 45 days back to 30 days. The default timeframe was reduced because TRID regulations has not prevented most lenders from giving Loan Approval within the shortened time.

8(b)(i) Loan Approval

Loan Approval does not need to be in writing. (Previously the contract required the commitment to be written.) An approval which requires Buyer to sell a property is not considered Loan Approval for purposes of this contract.

Diligent effort

The diligent effort Buyer must put forth when seeking Loan Approval is now defined in part. Definition includes: Buyer timely providing documents, information, payment of fees and charges per lender requirements. This should make the Buyers' contractual obligations more obvious. Buyer's failure to use diligent effort constitutes a default.

8(b)(ii) Buyer's consent for sharing information

Buyer authorizes Closing Agent to disclose to Seller and Brokers both preliminary and fully executed Closing Disclosures and settlement statements. This will not ensure that these forms will be provided to you as an agent involved in a transaction in the event a lender gives a Closing Agent contrary instructions, but it will likely assist help you get the forms otherwise.

8(b)(iii) If Loan Approval is obtained:

Buyer is to provide written notice to Seller promptly upon obtaining Loan Approval. Promptly means to do without delay and with reasonable speed.

8(b)(iv) If Loan Approval not obtained:

Buyer may provide written notice to Seller by expiration of Loan Approval Period, if Buyer is unable to obtain the loan. This notice may be given earlier than expiration of Loan Approval Period if Buyer has used diligent effort but is unable to obtain the loan contracted for. As such, Buyer is not required to continue to apply to multiple lenders once it becomes clear earlier than expiration of Loan Approval Period that it is not possible for Buyer to secure the loan contracted for.

Contents of written notice that Loan Approval not obtained

In Buyer's notice that Loan Approval was not obtained, Buyer may either: (a) terminate the contract or (b) waive obtaining Loan Approval. If Buyer waives obtaining Loan Approval, Buyer remains obligated to proceed pursuant to the terms of the contract.

Why Buyer may waive obtaining Loan Approval

Buyer may decide to waive Loan Approval if Buyer (1) does not need the financing contracted for to close the contract or (2) believes that Loan Approval is forthcoming although it was not obtained timely. Should Buyer waive Loan Approval, the provisions set forth in Paragraph 8(b)(vii) will continue to apply. (This is because only Loan Approval is waived, not the financing contingency.)

8(b)(v) Failure to provide written notice described in 8(b)(iii) or (iv):

The contract will go forward as if Buyer did obtain Loan Approval if a written notice described above is not provided by expiration of Loan Approval Period to Seller. This puts the deposit at risk if Buyer does not thereafter close, unless: (1) Seller terminates the contract by giving Buyer written notice no later than 3 days after expiration of Loan Approval Period; or (2) failure to close is due to matters set forth in 8(b) (vii).

(This is a significant change from the previous financing provision. In general, prior to this revision both parties had the right to terminate the contract up to 7 days prior to Closing, if Buyer failed to obtain Loan Approval under the previous contract, regardless whether there was written notice given by the Buyer.)

Why Seller may desire to terminate the pending contract within the 3 days after expiration of Loan Approval Period, if Buyer fails to provide the written notice

Seller may want to terminate if Seller (1) has another serious potential buyer, a better offer, or a backup offer or (2) does not want to wait until Closing to return the property to active status in the multiple listing service, or (3) isn't interested in claiming an insignificant or small deposit.

8(b)(vii) Return of Buyer's deposit

Because failing financial institutions are no longer foreseen, this was removed from the list of items that would result in a Buyer receiving their deposit back, if their loan did not close.

9(c)- Title Evidence and Insurance

Clarity added to contractual term municipal lien search, which appears in Paragraphs 9a), 9(b) and 9(c) (iii). If conducted, a municipal lien search may include uncovering municipal and county ordinance violations which upon further action could result in liens on real property, reviewing whether there are unpaid municipal or county service charges for assessments for water, sewer, waste, gas, electric fees and discovering municipal special assessment liens recorded in an Improvement Lien book but not recorded in county public records. These are all matters provided for in Chapter 159 and Chapter 170 Florida Statutes.

(This term does not include building permit searches which reveal open, expired permits or unpermitted structures, as these are not matters that impact title. Instead, in locales where building permits searches are performed, the contract contemplates that they be conducted within the Inspection Period, and not by Title Evidence Deadline, which typically occurs later in the process.)

Paragraph 10 Disclosures

10(b) Permits Disclosure

Where Seller discloses to Buyer that there are improvements on the property that are missing permits, Seller is now obligated to provide Buyer with plans and information Seller has in Seller's possession regarding the improvements. Seller may have these documents and information if a previous owner provided them to Seller, or where the Seller is the one that made the improvements.

10(i) FIRPTA

Housekeeping change- two words deleted from the title of subparagraph

10(j)- Seller Disclosure

A Seller who has been notified by a governmental entity that there is a currently uncorrected building, environmental or safety code violations on the property is obligated to disclose same to Buyer in writing. The written component of the disclosure is new, not the disclosure requirement itself.

Paragraph 12 (d) Permits (changes to be made in Residential Contract only, (i) already in As Is and (ii) doesn't apply to As Is)

(i) Permit Inspection.

If in Seller's possession, Seller is to provide plans, information, and documents to Buyer of property improvements missing closed permits. (This obligation stems from Buyer discovering missing closed permits during the Inspection Period while the new, similar obligation described in Paragraph 10(b) is one that arises when it is the Seller who discloses to the Buyer that there is a missing permit.) It is logical that this information will be helpful to the Buyer in contemplating the purchase.

(d)(ii) Close out permits

Seller will now close all needed permits identified by Buyer during Inspection Period, if costs do not exceed negotiated cap. (This was implied but not previously stated.)

Standard G. Force Majeure

New time frames apply when transaction involves Force Majeure.

Closing may be extended up to 7 days once insurance becomes available and closing services are restored following the Force Majeure. Previously the contract provided for an extension up to 3 days.

In the event Force Majeure delays performance of the contract, the parties are now bound to the contract up to 30 days after Closing Date. Previously, the timeframe to extend performance under the contract after a Force Majeure was a negotiable term with a default of 14 days after Closing Date.

Standard I. – Closing Location; Documents and Procedure

Closing location and process updated and new subparagraph added

(i) Location

Contract now specifies that Closing can take place outside of the county where the Property is located if agreed to by parties.

Also, now there is a reference to conducting closings by overnight courier. This addresses out of town buyers who are required by their lender to sign documents on the Closing Date and thereafter send documents to the Closing Agent by overnight courier.

Subparagraph (iii) FIN CIN

Now Buyer has an obligation to provide Closing Agent with information necessary to complete IRS Form 8300. This is due to Financial Crimes Enforcement Network (FIN CEN) requirements that currently apply to certain title insurance underwriters for specific high end in Dade, Broward and Palm Beach county transactions.

Standard K. Prorations

Words rearranged to clarify concept that when prorating taxes, all possible exemptions and discounts will be applied. Previously this applied if using current year's taxes.

Standard T. Loan commitment

Deleted Standard

Removed definition of Loan Commitment, which was derived from a statutory definition of this term because the term "commitment" has been deleted from Paragraph 8(b).

Standard V. FIRPTA

Removed some redundant language directing the parties to seek specialized advice. Removed reference to the \$300,000.00 exemption because specialized advice should be sought if an exemption is claimed. Eliminated Buyer's discretionary right to accept Seller's proof of non-foreign status. Proof of non-foreign status, instead should comply with certification outlined in the contract assuming Buyer is not aware that the certification is false.