

Pending Risk Management Committee approval on January 8, 2019

RECOMMENDATION TO THE EXECUTIVE COMMITTEE

FROM:

Risk Management Committee

RECOMMENDATION:

Approval of revised ancillary commercial forms to make conforming changes in light of revisions to the Commercial Real Estate Purchase Contract.

BACKGROUND:

The Executive Committee has been asked to approve a revised Commercial Real Estate Purchase Contract for release on or about February 1, 2019. Should the revised draft be approved, conforming changes need to be made to two ancillary forms: (1) Commercial Buyer's Inspection Notice and Seller's Response; and (2) Commercial Short Sale Addendum to Purchase Contract.

This revised ancillary forms are on the January 8, 2019 Risk Management Committee agenda for approval.

BUDGET IMPACT:

Arizona REALTORS® will be required to pay zipForm \$50 per page to revise the edited pages on each form and upload the revised forms to the zipForm software product for use by Arizona REALTOR® members. (Note - zipForm has not consistently billed Arizona REALTORS® for expenses of this nature.)

MOTION:

TO APPROVE FOR RELEASE ON OR ABOUT FEBRUARY 1, 2019 THE: (1) ATTACHED REVISED COMMERCIAL BUYER'S INSPECTION NOTICE AND RESPONSE; AND (2) ATTACHED REVISED COMMERCIAL SHORT SALE ADDENDUM TO PURCHASE CONTRACT.

FOR MORE INFORMATION CONTACT:

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COMMERCIAL BUYER'S INSPECTION NOTICE AND SELLER'S RESPONSE (BINSR)

Document updated:
February 2019



The pre-printed portion of this form has been drafted by the Arizona Association of REALTORS®. Any change in the pre-printed language of this form must be made in a prominent manner. No representations are made as to the legal validity, adequacy and/or effects of any provision, including tax consequences thereof. If you desire legal, tax or other professional advice, please consult your attorney, tax advisor or professional consultant.



1. Seller: _____

2. Buyer: _____

3. Property Address: _____

4. Date: _____

DRAFT

BUYER DUE DILIGENCE, **FEASIBILITY**, AND INSPECTIONS COMPLETED (Line numbers removed)

- 5. **Buyer has completed and verified all desired due diligence, feasibility, and inspections such as:**
- 6. (a) economic, environmental, physical and other inspections and investigations;
- 7. (b) inquiries and consultations with government agencies, lenders, insurance agents, architects, and other persons and entities;
- 8. (c) investigations of applicable building, zoning, fire, health, and safety codes;
- 9. (d) inquiries regarding sex offenders and the occurrence of a disease, natural death, suicide, homicide or other crime on the
- 10. Property or in the vicinity
- 11. (e) inspections and investigations pertaining to square footage, wood-destroying organisms or insects, flood hazard,
- 12. survey, sanitation and waste disposal systems, wells, swimming pool barriers, and insurance; and
- 13. (f) inspections and investigations of any other items important to the Buyer.
- 14. **Buyer has verified all information deemed important including:**
- 15. (a) MLS or listing information; and
- 16. (b) all other information obtained regarding the Property.
- 17. **Buyer acknowledges that:**
- 18. (a) All desired Due Diligence Period inspections and investigations must be completed prior to delivering this notice to Seller;
- 19. (b) All Due Diligence Period items disapproved must be provided in this notice;
- 20. (c) Buyer's election is limited to the options specified below;
- 21. (d) Buyer is not entitled to change or modify Buyer's election after this notice is delivered to Seller.
- 22. **Buyer elects as follows:**
- 23. Property Accepted - No corrections requested. Buyer accepts the Property in its present condition and no corrections or
- 24. repairs are requested.
- 25. Property Rejected - Buyer disapproves of the items listed below and elects to immediately cancel the Contract.
- 26. Buyer elects to provide Seller an opportunity to correct the disapproved items listed below.
- 27. **Items disapproved:** _____
- 28. _____
- 29. _____
- 30. _____
- 31. _____
- 32. _____
- 33. **Buyer acknowledges that the Broker(s):**
- 34. (1) make no representations concerning the competency of any inspectors, contractors and/or repair persons and assume no
- 35. responsibility for any deficiencies or errors made; and
- 36. (2) neither the Seller nor Broker(s) are experts at detecting or repairing physical defects in the Property.
- 37. The undersigned agrees to the modified or additional terms and conditions, if any, and acknowledges receipt of a copy hereof.

38. _____ MO/DA/YR ^ BUYER'S SIGNATURE _____ MO/DA/YR ^ BUYER'S SIGNATURE _____ MO/DA/YR

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Commercial Buyer's Inspection Notice and Seller's Response >>

39. Property Address: _____

BUYER'S WAIVER OF INSPECTIONS

40. BUYER ACKNOWLEDGES THAT BUYER WAS ADVISED TO OBTAIN INSPECTIONS OF THE PROPERTY BY QUALIFIED
41. INSPECTOR(S) AND BUYER DECLINED. By acting against the Broker's advice, Buyer accepts responsibility and hereby releases,
42. indemnifies and holds harmless Brokers from any and all liability for all matters that professional inspections could have revealed.

43. _____ MO/DA/YR ^ BUYER'S SIGNATURE _____ MO/DA/YR ^ BUYER'S SIGNATURE _____ MO/DA/YR

SELLER'S RESPONSE

44. **TO BE COMPLETED ONLY IF BUYER PROVIDES SELLER AN OPPORTUNITY TO CORRECT**
45. **ITEMS DISAPPROVED ON PAGE 1. (See Section 4)**

46. If Buyer provides Seller an opportunity to correct items disapproved, Seller shall respond within five (5) days or otherwise specified
47. days after delivery of this notice.

48. **Seller responds as follows:**

- 49. Seller agrees to correct the items disapproved by Buyer pursuant to terms set forth herein.
- 50. Seller is unwilling or unable to correct any of the items disapproved by Buyer.
- 51. Seller's response to Buyer's Notice is as follows:

52. _____

53. _____

54. _____

55. _____

56. _____ MO/DA/YR ^ SELLER'S SIGNATURE _____ MO/DA/YR ^ SELLER'S SIGNATURE _____ MO/DA/YR

BUYER'S ELECTION

57. **TO BE COMPLETED ONLY IF SELLER HAS NOT AGREED**
58. **TO CORRECT ALL ITEMS DISAPPROVED. (See Section 4)**

- 59. Buyer elects to cancel this Contract
- 60. Buyer accepts the Seller's response to Buyer's Notice and agrees to close escrow without correction of those items Seller
- 61. has not agreed in writing to correct.

62. The undersigned agrees to the modified or additional terms and conditions, if any, and acknowledges receipt of a copy hereof.

63. _____ MO/DA/YR ^ BUYER'S SIGNATURE _____ MO/DA/YR ^ BUYER'S SIGNATURE _____ MO/DA/YR

SHORT SALE ADDENDUM TO THE COMMERCIAL PURCHASE CONTRACT



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1. Seller: _____
2. Buyer: _____
3. Property Address: _____
4. Date: _____

5. The following additional terms and conditions are hereby included as part of the Contract between Seller and Buyer for the above referenced Property.

7. **CONTINGENT UPON ACCEPTABLE SHORT SALE AGREEMENT**

8. Buyer and Seller acknowledge that there is more debt owing against the Property than the purchase price. Therefore, this Contract is contingent upon an agreement between the Seller and Seller's creditor(s), acceptable to both, to sell the Property for less than the loan amount(s) ("short sale"). Buyer and Seller acknowledge that it may take weeks or months to obtain creditor(s) approval of a short sale.
- 9.
- 10.
- 11.
12. Nothing shall limit a Seller from accepting subsequent offers from subsequent buyer(s) and submitting the back-up contract(s) to Seller's creditor(s) for consideration. All parties understand and agree that Seller's creditor(s) may elect to allow the Seller to sell the Property only to the holder of the Contract with terms and conditions most acceptable to creditor(s).
- 13.
- 14.

15. **DOCUMENTATION TO CREDITOR(S)**

16. Seller shall submit to creditor(s) a copy of this Contract, including this and other Addenda, and any other documentation required by the creditor(s) for approval of this sale within five (5) days after Contract acceptance. Seller agrees to diligently work to obtain short sale approval and will promptly provide the creditor(s) with all additional documentation required, including an appraisal, at Seller's expense, if required. Seller instructs creditor(s) to provide approval status updates to Broker(s) and Buyer upon request.
- 17.
- 18.
- 19.

20. **TERMS UPON ACCEPTABLE SHORT SALE AGREEMENT**

21. **Agreement Notice:** If Seller and Seller's creditors enter into a short sale agreement, the Seller shall immediately deliver notice to Buyer ("Agreement Notice").
- 22.
23. **Time Periods:** The date of Seller's delivery of the Short Sale Agreement Notice to Buyer shall be deemed the date of ~~Opening of Escrow~~ **Contract Acceptance** for purposes of all applicable Contract time periods.
- 24.
25. **Escrow and Earnest Money:** Buyer shall promptly open Escrow and deposit Earnest Money as described in the Contract upon receipt of Agreement Notice.
- 26.
27. **Loan Costs:** Buyer will be responsible for all Buyers' Loan Costs.
28. ~~Seller Warranties: Buyer hereby waives Seller's warranties as set forth in Lines 260 - 263 of the Contract that all listed items shall be in working condition at the earlier of possession or COE.~~
- 29.
30. ~~However, Seller warrants and shall maintain and repair the Property so that, pursuant to lines 263 - 264 of the Contract, at the earlier of possession or COE, the Property, including all heating, cooling, mechanical, plumbing, and electrical systems (including swimming pool and/or spa, motors, filter systems, cleaning systems, and heaters, if any), and built in appliances and additional existing personal property included in the sale, will be in substantially the same condition as on the date of mutual execution of the Contract.~~
- 31.
- 32.
- 33.
34. **Close of Escrow:** Close of Escrow shall occur thirty (30) days or _____ days after delivery of Agreement Notice.
35. **Creditor Requirements:** Buyer and Seller agree to cooperate with Creditor(s) and sign additional Creditor disclosure(s) or execute additional addendum(a) required by Creditor(s) as a condition of approval of the short sale, provided that Buyer and Seller incur no additional cost or liability.
- 36.
- 37.

38. **BUYER CANCELLATION**

39. Buyer may unilaterally cancel this Contract by notice to Seller at any time before receipt of a short sale Agreement Notice from Seller.

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SELLER	SELLER
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<Initials

Initials>

BUYER	BUYER
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Short Sale Addendum to the Commercial Purchase Contract >>

40. LEGAL AND TAX ADVICE

41. Seller acknowledges that Broker is not qualified to provide financial, legal, or tax advice regarding a short sale transaction.
42. Therefore, the Seller is advised to obtain professional tax advice and consult independent legal counsel immediately
43. regarding the tax implications and advisability of entering into a short sale agreement.

44. (SELLER'S INITIALS REQUIRED) _____ SELLER _____ SELLER

45. UNFULFILLED CONTINGENCY

46. In the event that Seller and Seller's creditor(s) are unable to reach a short sale agreement acceptable to both, at the sales price contained
47. herein, Seller shall promptly notify Buyer of same, and the Contract shall be deemed cancelled due to the unfulfilled short sale contin-
48. gency. If applicable, Buyer shall be entitled to a return of any Earnest Money.

49. OTHER TERMS AND CONDITIONS

50. _____
51. _____
52. _____
53. _____
54. _____
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74. In the event that any provision contained in this Addendum conflicts in whole or in part with any terms contained in the Contract, the
75. provisions of this Addendum shall prevail and the conflicting terms are hereby considered deleted and expressly waived by both Buyer
76. and Seller.

77. ^ BUYER'S SIGNATURE _____ MO/DA/YR ^ BUYER'S SIGNATURE _____ MO/DA/YR

78. ^ SELLER'S SIGNATURE _____ MO/DA/YR ^ SELLER'S SIGNATURE _____ MO/DA/YR

SELLER SELLER

<Initials

Initials>

BUYER BUYER