

**Pending Approval by the Risk Management Committee on May 18, 2023**  
**RECOMMENDATION TO THE EXECUTIVE COMMITTEE**

**FROM:**

Risk Management Committee

**RECOMMENDATION:**

Approval of the revised Buyer Contingency Addendum (BCA)

**BACKGROUND:**

Last year, it was observed that the BCA contained an automatic cancellation if a buyer's property did not close escrow by the close of escrow date identified in the BCA. If this occurred, the buyer was not provided with an option to waive the contingency so that the buyer could continue to purchase the property. However, in other instances contained in the BCA, the buyer could opt to waive the contingency. For consistency purposes, the BCA was revised to allow the buyer the option to waive the contingency.

The form was modified by adding Sections (1-3).

Additional changes were made to clarify and enhance the user experience with the form by rearranging the information into an easier, more readable format which consists of adding instructions and section numbers.

On May 18, 2023, the RMC voted to approve the revised Buyer Contingency Addendum for release on or about July 1, 2023.

**BUDGET IMPACT:**

None

**MOTION:**

**TO APPROVE FOR RELEASE ON OR ABOUT JULY 1, 2023, THE ATTACHED REVISED BUYER CONTINENCY ADDENDUM.**

**FOR MORE INFORMATION CONTACT:**

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# BUYER CONTINGENCY ADDENDUM

**DRAFT**

Document updated:  
October **July 2018**23



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- 1. Seller: \_\_\_\_\_
- 2. Buyer: \_\_\_\_\_
- 3. Premises Address: \_\_\_\_\_
- 4. Date: \_\_\_\_\_

- 5. The following additional terms and conditions are hereby included as a part of the Contract between Seller and Buyer for the above referenced
- 6. Premises if marked by an "X" and initialed by Seller and Buyer. The terms and conditions of the Contract are included herein by reference.

**7. INSTRUCTIONS:**

- 8. If Buyer has accepted an offer to purchase Buyer's Property, mark the box on line 10 and complete only Sections 1 and 3.
- 9. If Buyer has not accepted an offer to purchase Buyer's Property, mark the box on line 18 and complete only Sections 2 and 3.

**10. Section 1.  CONTINGENT UPON CLOSING OF BUYER'S PROPERTY**

11. Buyer has accepted an offer to purchase Buyer's real property ("Accepted Offer") located at: \_\_\_\_\_ ("Buyer's Property")

12. \_\_\_\_\_

13. The Accepted Offer documents described in Section 3 are attached hereto.

14. **BUYER'S CONTINGENCY:** If the pending sale of Buyer's Property does not close escrow by \_\_\_\_\_, Buyer has three (3) days  
MO/DA/YR  
15. to waive this contingency by written notice to Seller in the manner required by the Contingency Waiver Provision, or this Contract  
16. shall be deemed cancelled and the Earnest Money shall be released to Buyer.

17. If lines 10 - 16 apply: **BUYER'S AND SELLER'S INITIALS REQUIRED** \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ /  
BUYER BUYER SELLER SELLER

**18. Section 2.  CONTINGENT UPON ACCEPTED OFFER FOR BUYER'S PROPERTY**

19. This Contract is contingent upon Buyer accepting an offer to purchase Buyer's real property ("Accepted Offer") located at:

20. \_\_\_\_\_

21. ("Buyer's Property") no later than \_\_\_\_\_ MO/DA/YR. If Buyer does not accept an offer on Buyer's Property by the date set  
22. forth on line 21, Buyer has three (3) days to waive this Buyer Contingency by written notice in the manner required by the Contingency  
23. Waiver Provision and Contract Time Periods shall commence, or this Contract shall be deemed cancelled and the Earnest Money shall  
24. be released to Buyer.

25. **ACCEPTED OFFER FOR BUYER'S PROPERTY:** If Buyer accepts an offer on Buyer's Property by the date set forth on line 21,  
26. Buyer shall deliver the Accepted Offer documents described in Section 3 to Seller for Seller's review within three (3)  
27. days or \_\_\_\_\_ days of execution of the Accepted Offer.

28. Seller may, within three (3) days of receipt of the Accepted Offer documents, cancel this Contract and the Earnest Money shall be  
29. released to Buyer.

30. If Buyer accepts an offer on Buyer's Property, and fails to deliver the Accepted Offer documents to Seller within the time frame set forth  
31. on line 26-27, Seller may issue a cure notice to Buyer as required by Section 7a of this Contract and, in the event of Buyer's breach,  
32. Seller shall be entitled to the Earnest Money pursuant to Section 7b of this Contract.

33. **BUYER'S CONTINGENCY:** If Seller does not cancel this Contract within three (3) days of receipt of the Accepted Offer documents, this  
34. Contract shall become contingent upon the closing of the pending sale of Buyer's Property by \_\_\_\_\_ MO/DA/YR.

35. If the pending sale of Buyer's Property does not close escrow by this date, Buyer has three (3) days to waive this contingency by  
36. written notice in the manner required by the Contingency Waiver Provision, or this Contract shall be deemed cancelled and the  
37. Earnest Money shall be released to Buyer.

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**Buyer Contingency Addendum**

38. **SELLER'S ACCEPTANCE OF BACK-UP CONTRACT:** If Seller accepts a subsequent offer (Back-up Contract) to purchase the  
39. Premises before Buyer has delivered to Seller the Accepted Offer documents, Seller may deliver written notice to Buyer informing Buyer  
40. of the Back-up contract. Upon receipt of Seller's notice, Buyer shall have three (3) days or \_\_\_\_\_ days to **waive this Buyer Contingency by**  
41. **written notice in the manner required by the Contingency Waiver Provision and Contract Time Periods shall commence, or** this Contract  
42. shall be deemed cancelled and the Earnest Money shall be released to Buyer.

43. If lines 18 - 42 apply: **BUYER'S AND SELLER'S INITIALS REQUIRED** \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ /  
BUYER BUYER SELLER SELLER

44. **Section 3. ADDITIONAL TERMS AND CONDITIONS**

45. The following terms apply to either Section agreed to above.

46. **ACCEPTED OFFER DOCUMENTS:** Within the time specified in the applicable Section above, Buyer shall deliver the Accepted Offer  
47. documents to Seller, including a copy of all purchase contract documents evidencing the **Accepted Offer for the sale of Buyer's Property**, and:

- 48. a. \_\_\_\_\_ b. \_\_\_\_\_
- 49. c. \_\_\_\_\_ d. \_\_\_\_\_
- 50. e. \_\_\_\_\_ f. \_\_\_\_\_

51. **CANCELLATION OF ACCEPTED OFFER FOR BUYER'S PROPERTY:** If Buyer's Accepted Offer cancels for any reason, Buyer shall  
52. deliver notice to Seller within three (3) days of Buyer's receipt of cancellation and provide evidence of cancellation. Notice to Seller shall  
53. state Buyer's election to either:

- 54. 1. Immediately cancel this Contract and all Earnest Money shall be released to Buyer; **or**
- 55. 2. Proceed with this Contract by **waiving** this Buyer Contingency **pursuant to the Contingency Waiver Provision.**

56. **CONTINGENCY WAIVER PROVISION:** If **at any time** Buyer elects to waive Buyer's Contingency and proceed with this Contract, **Buyer must provide:**  
57. (i) written documentation from Buyer's lender that Buyer can close escrow by the COE Date without the sale and closing of Buyer's Property; or  
58. (ii) if this is an all cash sale, evidence of Buyer's financial ability to close escrow by the COE Date without the sale and closing of Buyer's Property.  
59. If Buyer elects to waive the Buyer's Contingency and proceed with this Contract, Seller and Buyer agree that all other contingencies  
60. in the Contract shall remain.

61. **CONTRACT TIME PERIODS:** The date of Contract acceptance for purposes of all applicable Contract time periods, excluding opening  
62. of escrow and deposit of Earnest Money, shall be deemed to be:

- 63.  The date that the signed Contract (and any incorporated counter offer) is delivered to and received by the appropriate Broker as  
64. indicated in Section 8i of this Contract; ~~or~~
- 65.  (i) Three (3) days after Seller's receipt of Buyer's Accepted Offer documents, provided that Seller does not cancel this Contract  
66. prior to expiration of the three (3) day period as permitted in **pursuant to Section 2 lines 28-29. OR (ii) the date that Buyer waives this Buyer**  
67. **Contingency pursuant to Section 2 lines 22-23 or 40-41.**

68. **FAILURE TO DELIVER NOTICE:** If Buyer fails to timely deliver any Notice required by this Addendum, Seller may issue a cure notice  
69. to Buyer as required by Section 7a of this Contract and, in the event of Buyer's breach, Seller shall be entitled to the Earnest Money  
70. pursuant to Section 7b of this Contract.

71. **STATUS UPDATE:** Upon written request, Buyer shall provide Seller with a written update regarding the status of the **Accepted Offer**  
72. **for the sale of Buyer's Property.**

73. The undersigned agrees to the modified or additional terms and conditions contained herein and acknowledges a copy hereof.

74. ^ BUYER'S SIGNATURE \_\_\_\_\_ MO/DA/YR ^ BUYER'S SIGNATURE \_\_\_\_\_ MO/DA/YR  
**DRAFT** **DRAFT**

75. ^ SELLER'S SIGNATURE \_\_\_\_\_ MO/DA/YR ^ SELLER'S SIGNATURE \_\_\_\_\_ MO/DA/YR

**For Broker Use Only:**  
Brokerage File/Log No. \_\_\_\_\_ Manager's Initials \_\_\_\_\_ Broker's Initials \_\_\_\_\_ Date \_\_\_\_\_  
MO/DA/YR