

CONSIDERATIONS FOR CONTRACTS NEGOTIATED AND ENTERED INTO PRIOR TO OCTOBER 3, 2015

The new revised FR BAR Contract form which addresses the CFPB Requirements that apply to all loan applications made on or after October 3, 2015 (the "2015 Revised Form"), will not be released for use until Monday, September 28, 2015. The current FR BAR form requires Buyer to make application within five days after the Effective Date, so theoretically, a Contract having an Effective Date on or before Sunday September 28, 2015 would allow Buyer five days to make application prior to Saturday, October 3, 2015; however, it is also quite possible that the Buyer may need to make an amended application or even a second application with another lender after 10/3/15, in which event the Buyer's lender will have to comply with the CFPB Requirements.

Thus, in transitioning from the current FR BAR form to the new CFPB Requirements and the 2015 Revised Form, the following points must be considered. ***These considerations should only be used as guidelines and implemented only after receiving legal advice and counsel to address the needs, goals and objectives of the parties to a specific transaction:***

1. If the "Effective Date" of the Contract is on or prior to September 28, 2015, then the current FR BAR Contract form can be used, but as a precaution, you may wish to modify Paragraph 8.(b) to specifically require the Buyer to make application for mortgage loan financing on or before October 2, 2015.

2. If the "Effective Date" of the Contract is after September 28, 2015, but prior to October 3, 2015, or if your client or customer makes an offer or commences negotiations which you believe may not result in a fully executed Contract on or before Sunday, September 28, 2015, then:

a. The current FR BAR form may be used, but it may be advisable to do one or more of the following:

(1) Modify Paragraph 8. (b) to specifically require the Buyer to make application for mortgage loan financing on or before October 2, 2015. OR

(2) Add an addendum to the current form that essentially adopts the CFPB changes IF the Buyer's loan application is deemed to fall under the new CFPB Requirements. A form of such an addendum is attached. (If Riders **F. APPRAISAL CONTINGENCY** or **H. HOMEOWNER'S/FLOOD INSURANCE** will also be used, then the current form of such Riders should also be amended to require that the contingencies stated in those Riders to be completed at least 10 days prior to closing, or the 2015 Revised Forms of these riders should be used.)

b. The 2015 revised Form may be used.

3. Commencing October 3, 2015, only the 2015 Revised Form should be used.

ADDENDUM TO RESIDENTIAL CONTRACT FOR SALE AND PURCHASE BY AND BETWEEN
_____, as Sellers
and _____, as Buyers
concerning the Property described as _____
_____ (the "Contract").

Buyer's Initials _____ **Seller's Initials** _____

If Paragraph 8.(b) is checked and Buyer's mortgage loan application for the Financing is deemed to have been made on or after October 3, 2015, then the provisions of the Contract below are deemed amended as follows:

5. EXTENSION OF CLOSING DATE:

(a) If Paragraph 8. (b) is checked and Closing funds from Buyer's lender are not available on Closing Date due to Consumer Financial Protection Bureau Closing Disclosure delivery requirements ("CFPB Requirements"), then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such period shall not exceed 10 days.

8. FINANCING:

(a) Buyer will pay cash for the purchase of the Property at Closing. There is no financing contingency to Buyer's obligation to close. If Buyer obtains a loan for any part of the Purchase Price of the Property, Buyer acknowledges that any terms and conditions imposed by Buyer's lender(s) or by CFPB Requirements shall not affect or extend the Buyer's obligation to close or otherwise affect any terms or conditions of this Contract.

(b) This Contract is contingent upon Buyer obtaining a written loan commitment for a conventional FHA VA loan on the following terms within _____ (if blank, then 45) days after Effective Date ("Loan Commitment Date") for: (**CHECK ONE**): fixed, adjustable, fixed or adjustable rate loan in the principal amount of \$ _____ or _____ % of the Purchase Price, at an initial interest rate not to exceed _____ % (if blank, then prevailing rate based upon Buyer's creditworthiness), and for a term of _____ years ("Financing").

Buyer shall make mortgage loan application for the Financing within _____ (if left blank, then 5) days after Effective Date and use good faith and diligent effort to obtain a written loan commitment for the Financing ("Loan Commitment") and thereafter to close this Contract. Buyer shall keep Seller and Broker fully informed about the status of mortgage loan application and Loan Commitment and authorizes Buyer's mortgage broker and Buyer's lender to disclose such status and progress to Seller and Broker.

Upon Buyer's receipt of Loan Commitment, Buyer shall provide written notice of same to Seller. If Buyer does not receive Loan Commitment by Loan Commitment Date, then thereafter either party may cancel this Contract up to the earlier of:

(i.) Buyer's delivery of written notice to Seller that Buyer has either received Loan Commitment or elected to waive the financing contingency of this Contract; or

(ii.) 7 days prior to the Closing Date specified in Paragraph 4, which date, for purposes of this 8.(b) (ii), shall not be modified by Paragraph 5(a).

If either party timely cancels this Contract pursuant to this Paragraph 8 and Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. If neither party has timely canceled this Contract pursuant to this Paragraph 8, then this financing contingency shall be deemed waived by Buyer.

If Buyer delivers written notice of receipt of Loan Commitment to Seller and this Contract does not thereafter close, the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's default; (2) Property related conditions of the Loan Commitment have not been met (except when such conditions are waived by other provisions of this Contract); (3) appraisal of the Property obtained by Buyer's lender is insufficient to meet terms of the Loan Commitment; or (4) the loan is not funded due to financial failure of Buyer's lender, in which event(s) the Deposit shall be returned to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

- (c) Assumption of existing mortgage (see rider for terms).
- (d) Purchase money note and mortgage to Seller (see riders; addenda; or special clauses for terms).

* **9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL**
 * **ASSESSMENTS:**

* (c) **TITLE EVIDENCE AND INSURANCE:** At least _____ (if left blank, then 15, or if Paragraph 8 (a) is checked, then 5) days prior to Closing Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium, title search, municipal lien search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set forth below. The title insurance premium charges for the Owner's Policy and any lender's policy will be calculated and allocated in accordance with Florida law, but may be reported differently on certain federally mandated closing disclosures and other closing documents.

(CHECK ONE):

(i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges and Buyer shall pay the premium for Buyer's lender's policy and charges for closing services related to the lender's policy, endorsements and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other provider(s) as Buyer may select; or

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(d) **SURVEY:** On or before Title Evidence Deadline, Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.

12. PROPERTY INSPECTION AND REPAIR:

(a) **INSPECTION PERIOD:** Buyer shall have _____ (if left blank 15) days after Effective Date ("Inspection Period") within which, Buyer may, at Buyer's expense, conduct "General", "WDO", and "Permit" Inspections described below. If Buyer fails to timely deliver to Seller a written notice or report required by (b), (c), or (d) below, then, except for Seller's continuing Maintenance Requirement, Buyer shall have waived Seller's obligation(s) to repair, replace, treat or remedy the matters not inspected and timely reported. If this Contract does not close, Buyer shall repair all damage to Property resulting from Buyer's

inspections, return Property to its pre-inspection condition and provide Seller with paid receipts for all work done on Property upon its completion.

18. STANDARDS.

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G. FORCE MAJEURE: Buyer or Seller shall not be required to perform any obligation under this Contract or be liable to each other for damages so long as performance or non-performance of the obligation is delayed, caused or prevented by Force Majeure. "Force Majeure" means: hurricanes, earthquakes, floods, fire, acts of God, unusual transportation delays, wars, insurrections, and acts of terrorism, which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended for the period that the Force Majeure prevents performance under this Contract, provided, however, if such Force Majeure continues to prevent performance under this Contract more than 14 days beyond Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.
