

FORMS REVISIONS COMING AUGUST 1ST



Susan L. Dioury, JD
Senior Vice President,
Risk Management
Legal Counsel
sdioury@mnrealtor.com



Anne V. Kealing, JD
Associate Legal Counsel
akealing@mnrealtor.com

The Minnesota REALTORS® Forms Committee held four meetings of the full committee, two Commercial Forms Sub-Committee meetings, and had several meetings of three task forces that were created in Fiscal Year 2017: the Special Assessments Task Force, the Technology Task Force, and the Purchase Agreement/Contingency Task Force. The result was many changes to the forms that will be released on August 1, 2017. A special thank you is due to the Chair, C.J. Deike, who lead all of the meetings, and to all members who volunteered on the Committee this year.

Here are the major changes to forms that will be released August 1st this year:

RESIDENTIAL FORMS



Page Numbering

The Committee voted to remove all cumulative page numbering from the Purchase Agreements and its addenda. Thus, pages will be numbered for each document separately, starting with page 1 for each Purchase Agreement and addendum. Instead, the new Purchase Agreements will have an addenda checklist at the end to indicate which addenda will be a part of the agreement.

Radon Disclosure for Vacant Land

The radon disclosure language found in the *Disclosure Statement: Seller's Property Disclosure Statement* and *Disclosure Statement: Seller's Disclosure Alternatives* was added to the *Disclosure Statement: Vacant Land* after line 286. This change was made to better conform to the statutory radon disclosure requirements. The statute states that disclosures are required for any property intended to be occupied as a single-family residence, and vacant land may be intended for that use, even if no building has commenced. See [Minn. Stat. § 144.496](#).

Broker Compensation Initials

The "Broker Compensation" section of the *Facilitator Services Agreement: Buyer* (lines 49, 52, 55, and 59) and *Facilitator Services Agreement: Seller* (lines 121, 124, 127, and 129) were made to conform with the same section in the *Listing Contract: Exclusive Right to Sell* formatting. This avoids the necessity to obtain initials next to each concept in the section, when the Committee intended all concepts in the section to be part of the agreement between REALTOR® and client.

Recording Showings

Language was added to the *Facilitator Services Agreement: Seller*, *Facilitator Services Agreement: Owner Leasing*, *One Time Showing Contract (Lease)*, *One Time Showing Contract (Purchase)*, *Listing Contract: Exclusive Right to Sell*, and *Listing Contract: Exclusive Right to Lease* to address the emerging issue of

sellers recording or streaming showings of their properties, to gain an upper hand in negotiations, to get honest feedback on their properties, or for other reasons. As interception of oral communications without the consent of at least one of the parties to the conversation is prohibited by [Minn. Stat. § 626A.02](#), the Committee felt it was important to bring this to the seller's attention. The following was added to the above-listed forms: "RECORDING ON THE PROPERTY: [Seller/Owner] understands that MN Statute 626A.02 specifically prohibits the interception of oral communications without the consent of at least one of the two parties to the communication. [Seller/Owner] should seek appropriate legal advice regarding compliance with this statute if [Seller/Owner] intends to utilize technology that may intercept oral communications between persons other than [Seller/Owner]."

Overhaul of All Residential Purchase Agreements

New Purchase Agreements were adopted, incorporating the financing-related and inspection contingencies. Most of the language in the new Purchase Agreements is the same as that found in the old contingency addenda, with some changes to make the new Purchase Agreements understandable and easy to use. New headings were also added to make the Purchase Agreements easier to use. The Committee eliminated the individual financing addenda and the inspection addendum, and all old versions of the Purchase Agreements (including Vacant

Land and New Construction) in favor of this new concept. The Committee determined that including these contingencies that are part of most transactions eliminated the need for keeping track of as many addenda and made the many terms of the deal readily available in one document, while adding just a few pages to the total page count. Those pursuing a cash purchase or one without an inspection contingency may opt out of those sections.

The eliminated Forms (as a result of incorporation into Purchase Agreements) are:

- *Addendum to Purchase Agreement: Conventional or Privately Insured Conventional Mortgage Financing*
- *Addendum to Purchase Agreement: DVA Guaranteed Mortgage Financing*
- *Addendum to Purchase Agreement: FHA Insured Mortgage Financing*
- *Addendum to Purchase Agreement: Inspection Contingency*
- *Addendum to Purchase Agreement: Seller's Contributions to Buyer's Costs*

All Purchase Agreements

Closing Related Changes — The following was added to line 55*: “by the closing date specified in this Purchase Agreement” after “property does not close.” This addition addressed an issue raised by the modification of the Sale of Buyer’s Property Contingency language in the Purchase Agreements that was added in 2016. This issue was that sellers were arguing that if the closing for the buyer’s property was delayed at all, and the buyer’s property did not close on the exact date specified on line 54*, the seller could cancel. The Committee intended that so long as the buyer’s property closed prior to the Purchase Agreement, the Purchase Agreement would proceed.

Lines 85* and 87* were modified from “payable in the year 20____” to “due and payable in the year of closing.” This change was made to accommodate closings scheduled for the last part of the year, but get delayed into the new year. The new language will not require an amendment to the Purchase Agreement to change the year of closing and make the prorations accurate.

Earnest Money — Starting on line 7*, the Earnest Money section was modified to “shall be delivered to listing broker, or, if checked, to [] (“Earnest Money Holder”) no later than two (2) Business Days after Final Acceptance Date of this Purchase Agreement. Buyer and Seller agree that earnest money shall be deposited in the trust account of Earnest Money Holder as specified above within three (3) Business Days of receipt...” These changes were made to address situations in which

the parties agree to have the earnest money held by another, as is allowed by [Minn. Stat. § 82.75](#), so long as there is a written agreement between the parties. (Note: for the *Purchase Agreement: New Construction*, the second option on line 12 was changed as stated above and “unless otherwise agreed to in writing, but to be returned to the Buyer if Purchase Agreement is not accepted by Builder” was also deleted.)

The “Release of Earnest Money” section of the Purchase Agreement (Lines 180* - 186*) was modified to remove all references to the listing broker and replace them with “Earnest Money Holder,” as another person or entity may be holding the earnest money.

Purchase Agreement

Emerging Vapor Intrusion Issue — Modify “radon mitigation system” to “Environmental Remediation System (e.g., radon, vapor intrusion)” on line 22 in the section referring to improvements, fixtures and appurtenances on the property. This was done to address the new concerns about vapor intrusion and systems being installed to prevent them from entering properties.

Purchase Agreement: New Construction

Special Well Construction Area — The Committee added after line 281 the following: “To the best of Builder’s knowledge, the Property IS IS NOT in a Special Well Construction Area.” This change was made because typically a seller’s disclosure form is not used with

new construction; thus, other required disclosures are incorporated into the *Purchase Agreement: New Construction*. This disclosure is required by [Minn. Stat. 103I.236](#) only for Washington County, but the Committee determined it was beneficial to have the question to avoid failure to make the disclosure when it is required.

Listing Contracts (and Facilitator Services Agreements)

Access to Property Modifications — The Committee adopted the following language in place of the previous “Access to Property” section in the Listing Contract, on lines 87-97**:

“Access to the Property: To facilitate the showing and sale of the Property, Seller** authorizes Broker to:

- (a) access the Property;
- (b) authorize other brokers and their salesperson, inspectors, appraiser, contractors, and other industry professionals to access the Property at reasonable times and upon reasonable notice; and
- (c) duplicate keys to facilitate convenient and efficient showings of the Property.

Authorizing access means giving the Broker permission to allow the above-referenced persons to enter the Property, with or without a licensed salesperson present, disclosing to the other person any security codes necessary to enter the Property, and lending a key to the other person to enter the Property, directly or through a lockbox. Seller agrees to commit no act

which might tend to obstruct Broker's performance here. If the Property is occupied by someone other than Seller, Seller shall comply with Minnesota law and any applicable lease provisions of an existing lease and provide tenant with proper notice in advance of any Property showing. Seller understands that prospective buyers and others authorized to access the Property may record the Property by photograph, video, or other medium while accessing the Property."

This language helps clarify the previous version of this section and helps clarify that unless the seller indicates to the listing agent otherwise, that buyers and others entering the property will be allowed to take photos, video or otherwise record the property. This language limits the listing agent's liability for the actions of prospective buyers and others accessing the property, and gives the seller a chance to understand the privacy implications of this type of access and discuss other options with the listing agent, if desired.

Securing Valuables Duty of Seller/Owner — The Committee deleted "during Property showings or open houses" on line 80** of the Listing Contracts and *Facilitator Services Agreement: Seller* and *Facilitator Services Agreement: Owner Leasing*. The Committee wanted to broaden the statement that seller must secure valuable personal property from just showings and open houses to anytime the property is access during the listing (e.g., inspections, etc.).

Addendum to Listing Contract — The title was modified so that this may be used for both the *Listing Contract: Exclusive Right to*

Sell and Listing Contract: Exclusive Right to Lease.

Disclosure Statement: Well

The Committee added a link to the Minnesota Department of Health at the end of line 16. This change was made to assist sellers in determining the location and status of any well(s) on the property.

COMMERCIAL FORMS



Commercial Listing Contract: Exclusive

MLS Data Feed options — The Committee decided to include the MLS DATA FEED OPTIONS language from the *Residential Listing Contract: Exclusive Right to Sell* (lines 22-69) after starting after line 19 of the *Commercial Listing Contract: Exclusive*. This change was made based on the Forms Committee's decision to eliminate the separate form and incorporate the MLS Data Feed Options into the Residential Listing Contracts, and the desire for Commercial licensees to have those options presented to their clients as well.

Protective List-Based Compensation Protection

— After line 118 of the Commercial Listing Contract: Exclusive, the Committee added: "IF YOU RELIST WITH ANOTHER BROKER WITHIN THE OVERRIDE PERIOD AND THEN SELL AND/OR LEASE YOUR PROPERTY TO ANYONE WHOSE NAME APPEARS ON THIS LIST, YOU COULD BE LIABLE FOR FULL COMMISSIONS TO BOTH BROKERS. IF THIS NOTICE IS NOT FULLY UNDERSTOOD, SEEK COMPETENT ADVICE." This was added to be in compliance with [Minn. Stat. § 82.66](#), as Commercial licensees may collect a commission based on a protective list, even if the seller signs a new listing contract with a new licensee, so long as this language is included in the listing contract.

Recording Showings — As with many of the Residential forms, the Committee determined that the following section was helpful to Commercial clients and added it here too: "RECORDING ON THE PROPERTY: Seller and/or Lessor understands the MN Statute 626A.01 specifically prohibits the interception of oral communications without the consent of at least one of the two parties to the communication. Seller and/or Lessor should seek appropriate legal advice regarding compliance with this statute if Seller and/or Lessor intends to utilize technology that may intercept oral communications between person other than Seller and/or Lessor."

Access to Property — The Committee added access to property language that is similar to those sections in the Residential forms. However, the Commercial Subcommittee to the Forms Committee felt that it should be modified to allow the seller and REALTOR® to determine what specific

types of access will be allowed, given that a variety of circumstances can exist in the Commercial setting and sellers might have more specific needs regarding access. The following was added:

"Access to the Property: To facilitate the showing and sale of the Property, Seller and/or Lessor authorizes Broker to:

- access the Property;
- authorize other brokers and their salespersons, inspectors, appraisers, contractors, and other industry professionals to access the Property at reasonable times and upon reasonable notice; and
- duplicate keys to facilitate convenient and efficient showings of the Property.

Authorizing access means giving Broker permission to:

- (1) authorize the above-referenced persons to enter the Property, with or without a licensed salesperson present;
- (2) disclose any security codes necessary to enter the Property; and
- (3) lend a key to enter the Property, directly or through a lockbox.

Seller and/or Lessor agrees to commit no act which might tend to obstruct Broker's performance. If the Property is occupied by someone other than Seller and/or Lessor, Seller and/or Lessor shall comply with Minnesota law and applicable lease provisions of an existing lease and provide tenant with any required notice in advance of any Property showing.

Seller and/or Lessor understands that prospective buyers/tenants and others authorized to access the Property may record the Property by photograph,

video, or other medium while accessing the Property.”

Commercial Purchase Agreements

Earnest Money — On line 10 and line 97 of the *Commercial Purchase Agreement*, “Name of Title Company” was changed to “Trustee” to allow the parties to choose someone other than the title company or listing broker to hold the Earnest Money. The same changes were made to the *Commercial Purchase Agreement: Vacant Land (Non-Residential)*.

The Committee made lines 5-10 of the *Purchase Agreement: Land (Non-Residential)* the same as lines 5-12 of the *Commercial Purchase Agreement* to increase uniformity in formatting between the two commercial purchase agreements.

Real Estate Taxes — The Committee made lines 101-110 of the *Purchase Agreement: Land (Non-Residential)* the same as lines 53-56 of the *Commercial Purchase Agreement*. This change was made to increase the uniformity in formatting between the two commercial purchase agreements, and because the Commercial Subcommittee felt it was unnecessary to have the ability to have the same elections for prorations of real estate taxes that are available in the Residential Purchase Agreements.

Special Well Construction Areas — The Committee added the following after line 223 of the *Commercial Purchase Agreement* and line 256 of the *Purchase Agreement: Land (Non-Residential)*: “To the best of Seller’s knowledge, the Property

IS IS NOT in a Special Well Construction Area.” Like with the Residential *Purchase Agreement: New Construction* change, this change was made because typically a seller’s disclosure form is not used in Commercial transactions; however, this disclosure is required for all real property transferred in Washington County by [Minn. Stat. 1031.236](#). The Committee determined it was beneficial to have the question to avoid failure to make the disclosure when it is required.

Page Numbering on All Commercial Purchase Agreements and Addenda

The Committee voted to remove all cumulative page numbering on the Purchase Agreements and its addenda. Thus, pages will be numbered for each document separately, starting with page 1 for each Purchase Agreement and addenda. The Commercial Subcommittee strongly felt that in the Commercial setting, with so much negotiation and so many other unique circumstances leading to unique addenda, that cumulative page numbering is more confusing than it is helpful.

* Page numbers listed are for Purchase Agreement only, even though changes may have been made to Purchase Agreement: Vacant Land (Residential) and Purchase Agreement: New Construction.

** Page numbers listed are for the Listing Contract: Exclusive Right to Sell, even though the same changes have been made to the Listing Contract: Exclusive Right to Lease. Note that in the Listing Contract: Exclusive Right to Lease, all references to “Seller” are instead “Owner.”