

MN REALTORS® FORMS REVISIONS EFFECTIVE AUGUST 1, 2018



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The Minnesota REALTORS® received over 50 suggested changes to the MN REALTORS® Forms in Fiscal Year 2018. The Forms Committee held four meetings and considered over 30 of the suggested changes received. There were numerous subcommittee meetings held to focus on more complex issues and make recommendations to the full Committee including the Commercial Forms Sub-Committee, Special Assessments Sub-Committee and the Contract for Deed Sub-Committee. With much discussion and debate, the Committee generated numerous changes to the forms that will be released on August 1, 2018. A special thank you is due to the Chair, Tony Maurer, who led all Committee meetings, and to all members who volunteered on the Committee and Sub-Committees this year.

RESIDENTIAL FORMS

Purchase Agreements

Residential, New Construction, and Vacant Land: The following modifications were made to the residential Purchase Agreements:

- **Loan Assistance Programs:** Modified the Financing section to eliminate the specific reference to MHFA financing as requested by MHFA and added general language as to whether the buyer will be applying for loan assistance programs.
- **Seller's Contributions to Buyer Costs:** Eliminated the option to pay costs as a percentage of the mortgage amount.

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The Revised Forms will be available on Instanet on August 1, 2018

- **Off-Market:**
 - Eliminated the language in the purchase agreement pertaining to the selection for the seller's right to continue to offer the property for sale until the contingency is removed.
 - Also eliminated the language pertaining to the seller's authorization for the broker to withdraw the property from the market, unless instructed otherwise.
- **Real Estate Taxes:** Rearranged the options for payment of real estate taxes for ease of understanding.
- **Additional Addenda:** Added the *Addendum to Purchase Agreement: Buyer's Move-In Agreement* and *Seller's Rent Back* forms to the list of Addenda at the end of the *Purchase Agreement*.
- **Seller's Agreement to Sell:** Modified language above the seller's signature lines regarding the seller's agreement to sell the property to make it consistent with the buyer's agreement to purchase.
- **Formatting/Typos**

Purchase Agreement: Vacant Land:

- **Inspection Contingency:** In addition to the *Purchase Agreement* changes above, the Committee removed the

Inspection Contingency language from this form as this is not commonly used in the sale of vacant land.

Addenda to **Purchase Agreement**

Addendum to Purchase Agreement: Contract for Deed Financing:

- **Substantive Changes:** Substantive changes were made to make the Addendum more closely aligned with the Minnesota Uniform Conveyancing Blank Contract for Deed.

Addendum to Purchase Agreement: Counteroffer Addendum:

- **Calculation of Closing Costs:** Modified the language pertaining to the seller paying buyer's closing cost to be calculated as either a dollar amount or a percentage of the sale price.
- **Terms of Purchase:** Modified the language pertaining to the percentage of cash and the percentage of mortgage financing of the sale price to reflect the changes made to the *Purchase Agreement* in 2017.

Addendum to Purchase Agreement/ Lease Agreement: Lead-based Paint:

- **Consolidation:** Modified to eliminate initial lines and consolidate language.

Addendum to Purchase Agreement: Short Sale Contingency:

- **Off-Market:** Eliminated the language pertaining to the seller's right to continue to offer the property for sale until the contingency is removed.

**Addendum to Purchase Agreement:
Subsurface Sewage Treatment System
and Well Inspection Contingency:**

- **Calendar Days:** Changed the contingency time-period to be calculated by “calendar days” instead of “business days” to be consistent with the Inspection Contingency and deleted the definition of “business days” in this Addendum.
- **Other:** Added “Other” lines to allow for parties to negotiate septic system inspection issues and/or well water quality tests to their desired specifications.

Addendum/Amendment to Purchase Agreement: Buyer’s Move-In Agreement:

- **Addendum or Amendment:** Modified the form throughout to allow it to be used either as an Addendum or an Amendment to the *Purchase Agreement*.
- **Casualty Insurance:** Modified the seller’s obligations pertaining to casualty insurance on the property. Specifically, the Committee eliminated the seller’s obligation to purchase casualty insurance, but the form continues to state the seller must maintain casualty insurance.
- **Attached Addendum:** Eliminated reference to an attached addendum for further terms.
- **Terms & Conditions/Property Taxes:** Deleted the language on lines 71-73 pertaining to terms and conditions of the *Purchase Agreement* remaining the same and seller paying real estate taxes due as the Committee felt this language was unnecessary.

Addendum/Amendment to Purchase Agreement: Seller’s Rent Back Agreement:

- **Addendum or Amendment:** Modified the form throughout to allow it to be used either as an Addendum or an Amendment to the *Purchase Agreement*.
- **Terms & Conditions/Property Taxes:** Deleted the language on lines 58-60 pertaining to terms and conditions of the *Purchase Agreement* remaining the same and seller paying real estate taxes due as the Committee felt this language was unnecessary.

Representation Contracts

Listing Contract: Exclusive Right to Sell:

- **Termination of Contract:** Added language clarifying that the listing contract terminates upon the successful closing of the property specified in the listing contract or expiration or cancellation of the contract whichever occurs first.
- **Off-Market:** Added language indicating the seller allows broker to withdraw the property from the market upon final acceptance of a purchase agreement.
- **Cooperating Compensation:** Added language to disclose to seller client whether cooperating compensation would be paid to cooperating brokers and the amount. Eliminated language referencing cooperating compensation for the amount specified in the MLS.
- **Closing Services:** Modified the closing services section adding check boxes for the seller’s closing services options and

one set of initial lines.

- **Previous Agency Relationships:** Eliminated reference to broker or licensee “assisting” the client in this section and throughout the form since this is a representation contract.
- **Termination of Fiduciary Duties:** Language was added clarifying that the broker’s fiduciary duties, except the fiduciary duty of confidentiality, end upon the successful closing or expiration or cancellation of the contract, whichever occurs first.

Listing Contract: Exclusive Right to Lease:

- The same changes that were made to the *Listing Contract: Exclusive Right to Sell* were also made to this form except the Closing Services change.

Buyer Representation Contracts:

- **Termination of Contract:** Added language clarifying that the buyer representation contract terminates upon the successful closing of a property or expiration or cancellation of the contract whichever occurs first.
- **Closing Services:** Modified the closing services section adding check boxes for the buyer’s closing services options and one set of initial lines.
- **Termination of Fiduciary Duties:** Language was added clarifying that the broker’s fiduciary duties, except the fiduciary duty of confidentiality, end upon the successful closing or expiration or cancellation of the contract, whichever occurs first.
- **Previous Agency Relationships:** Eliminated reference to broker or licensee “assisting” the client in this

section and throughout the form since this is a representation contract.

Tenant Representation Contract:

- The same changes that were made to the *Buyer Representation Contract* were also made to this form except the Closing Services change.

Facilitator Services Agreements

Facilitator Services Agreement: Seller:

- **Termination of Contract:** Added language clarifying that the listing contract terminates upon the successful closing of the property specified in the listing contract or expiration or cancellation of the contract whichever occurs first.
- **Off-Market:** Added language indicating the seller allows broker to withdraw the property from the market upon final acceptance of a purchase agreement.
- **Cooperating Compensation:** Added language to disclose to seller whether cooperating compensation would be paid to cooperating brokers and the amount. Eliminated current language referencing cooperating compensation for the amount specified in the MLS.
- **Closing Services:** Modified the closing services section adding check boxes for the seller’s closing services options and one set of initial lines.
- **Previous Agency Relationships:** Eliminated reference to broker or licensee “representing” the client in this section and throughout the form since this is not a representation contract.

Facilitator Services Agreement: Buyer:

- **Termination of Contract:** Added language clarifying that the listing contract terminates upon the successful closing of a property or expiration or cancellation of the contract whichever occurs first.
- **Closing Services:** Modified the closing services section adding check boxes for the buyer's closing services options and one set of initial lines.
- **Previous Agency Relationships:** Eliminated reference to broker or licensee "representing" the client in this section and throughout the form since this is not a representation contract.

Facilitator Services Agreement:

Owner Leasing:

- The same changes that were made to the *Facilitator Services Agreement: Seller* were also made to this form except the Closing Services change.

Facilitator Services Agreement: Tenant:

- The same changes that were made to the *Facilitator Services Agreement: Buyer* were also made to this form except the Closing Services change.

Disclosures

**Disclosure Statement: Arbitration
Disclosure and Residential Real Property
Arbitration Agreement:**

- **Conciliation Court:** Incorporated the Risk Management and Executive Committees' decision to modify the Arbitration Agreement allowing claims under \$15,000 to be resolved in conciliation court rather than arbitrating

those claims. All claims for \$15,000 or less will be handled in conciliation court and claims over \$15,000 can be arbitrated as specified in the Arbitration Agreement.

Disclosure Statement:

Seller's Property Disclosure:

- **Vapor Intrusion:** Added a question in the Environmental section regarding "vapor intrusion" per request by the Minnesota Pollution Control Agency.
- **Format:** Corrected some formatting.

Other Residential Forms

One-Time Showing Contract: Lease:

- **Previous Agency Relationships:** Eliminated reference to broker or licensee "representing or assisting" the client in this section and throughout the form since this is not a representation contract or facilitator services agreement.

One-Time Showing Contract: Purchase:

- **Closing Services:** Modified the closing services section adding check boxes for the seller's closing services options and one set of initial lines.
- **Previous Agency Relationships:** Eliminated reference to broker or licensee "representing or assisting" the client in this section and throughout the form since this is not a representation contract or facilitator services agreement.

COMMERCIAL FORMS

Purchase Agreements

Commercial Purchase Agreement:

- Formatting/Typos

Purchase Agreement: Land (Non-residential):

- **Seller's Agreement to Sell:** Modified language above the seller's signature lines regarding the seller's agreement to sell the property to make it consistent with the buyer's agreement to purchase.
- Formatting/Typos

Addenda to Commercial Purchase Agreement

Addendum to Commercial Purchase Agreement: Contract for Deed:

- Incorporated the same changes made to the residential form but added additional language to the Addendum allowing a check option whether the payment terms may or may not be prepaid and added check boxes to the Additional Terms and Conditions section.

Representation Contracts

Commercial Listing and Buyer/Tenant Representation Contracts:

- Incorporated the same changes made to the residential forms.
- Modified terms to apply plain language standards.

Other Commercial Forms

Commercial One Time Showing Contract:

- Incorporated the same changes made to the residential form.
- Modified terms to apply plain language standards.

NEW FORMS

WIRE FRAUD DISCLOSURE:

The Committee adopted a new form to warn consumers about wire fraud. This new form will be a separate form; however, we will attach it to the end of the electronic file for the purchase agreements, representation contracts and facilitator services agreements.

AMENDMENT TO LISTING CONTRACT:

The Committee adopted a blank amendment for use with the listing contracts.

NOTE: If you have had Instanet do any custom forms for your brokerage, you will need to contact Instanet directly if you would like Instanet to incorporate any of the MN REALTORS® forms changes into your custom forms. There is a cost, per page, for Instanet to do this work. ***Instanet cannot begin customizations until the forms go live on August 1st.***

FORMS USE POLICY



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It is all too common that the Minnesota REALTORS® (“Association”) receives notice that someone has modified the template language of our copyrighted forms (“Forms”) and left the Minnesota REALTORS® logo and copyright on the Form, or that the Association receives word that there is unauthorized distribution and use of the Forms. In an effort to continue protecting the copyright and value of the Minnesota REALTORS® Forms for its members, the Board of Directors has adopted a new enforcement mechanism for the Forms Use Policy (“Policy”). Now, if a member violates the Policy, an ethics complaint may be filed through the Professional Standards process, naming a violation of Article IX of the bylaws, where it states that adherence to the Policy is a membership duty. This change will allow the Association to streamline the process for enforcement of the Policy, benefitting our membership as a whole.

The Policy can be found on the Forms page on my.mnrealtor.com. The Policy generally allows for the use of the Forms in real estate transactions and/or education within a real estate brokerage. It prohibits members from selling, reproducing, or distributing the Forms outside of those circumstances. It also prohibits the alteration of template Forms language without removing the Minnesota REALTORS® logo and copyright, so that members will have notice as to whether they are dealing with our Forms or an altered version that looks similar. Please refer to the full Policy for details.

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While any member of the public or the Association may file an ethics complaint naming this bylaws violation, staff of the Association will also have the ability to alert the Risk Management Committee Chair and let the Chair decide whether to act as a complainant in a case.

Q I would like to add some of my own language to the Minnesota REALTORS® listing contract, so that I have it in the template language for all of my listings. Can I do that?

A Yes, however the Association currently allows members to modify the template language ONLY IF you remove the Minnesota REALTORS® logo and copyright language. In this circumstance, you are creating your own brokerage-specific form, and you should consult with your legal counsel for any legal advice, as the Association cannot review or approve brokerage-specific forms. The only alterations that members may make to the Forms without removing the copyright are to add the brokerage logo to the upper left corner of the form and/or add a footer at the bottom of the Forms to place non-contractual disclosures. No other information, marks, or symbols may be added without removing the Minnesota REALTORS® logo and copyright language.

Q A REALTOR® who's licensed only in Florida called me up and asked if he could have a copy of our Minnesota REALTORS® Purchase

Agreement for a Minnesota for sale by owner transaction in which he is the buyer. I want to help him out, and hopefully create a referral relationship with him. Can I do this?

A No, Minnesota REALTORS® is not able to distribute blank copies of our forms unless it is for their use in a real estate transaction or for educational purposes within their real estate brokerage practice. Members may not provide the Forms to non-members for the purpose of use in a transaction without a Minnesota REALTOR®. This protects the value of our forms and the value of using a Minnesota REALTOR® in Minnesota real estate transactions.

Q I'm representing a buyer who wants to make an offer on a for sale by owner property. Can I give the seller a blank *Disclosure Statement: Seller's Property Disclosure Statement* to fill out?

A Yes. Minnesota REALTORS® is able to distribute a blank Form to a person if it's directly related to a real estate transaction in which the Minnesota REALTOR® is involved.

Q I'm representing a seller and an unrepresented buyer wants to make an offer on my client's property, but doesn't want me to represent her because she is weary of the dual agency situation it would create. Can I give her a

blank Purchase Agreement to fill out to make an offer on the property?

A Yes. Minnesota REALTORS® are able to distribute a blank Form to a person if it's directly related to a real estate transaction in which the Minnesota REALTOR® is involved.

Q My CE provider asked if she could have a copy of the Minnesota REALTORS® Sale of Buyer's Property Contingency so that she can better understand it and teach it to licensees (many of whom are REALTORS®). Can I do this? She also offered to pay me for it. Is that okay?

A No. However, the education provider may enter into a licensing agreement with the Minnesota REALTORS® to utilize the Forms in the providers education courses. The Association supports use of the Forms to advance the members' knowledge about the Forms. However, our individual agreement to enter into a licensing agreement with education providers will allow the Association to protect our copyright and limit the Forms' use. In no case should an individual member distribute the Forms to an unauthorized individual.


Q I utilize an online cloud tool to store blank forms, including the Minnesota REALTORS® Forms, and fill them. Is this okay?

A Uploading the Association's blank, copyrighted Form to a cloud service may be okay, but it will depend on the service's Terms of Use. For example, many of the free document storage programs on the internet do not keep uploaded documents private and will allow public access and display. If this is the case, use of that tool would not be allowable for the storage of Minnesota REALTORS® Forms.

Q I'd like to publish an example of a Minnesota REALTORS® Forms on my website so prospective clients can see how our transactions will work and familiarize themselves with the Forms in advance. This will also show them what value I have to give, as far as having good transactional forms to use with them. Can I do this?

A No. You may not upload our Forms to your website for display or make them publicly available in any way. They are strictly for use in transactions involving REALTORS® and for educational purposes within a member brokerage. Any other use would require a licensing agreement.

login to

 **my.mnrealtor.com**

**to view the
Forms Use Policy**