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Thursday, 01/17/08 10:08 PM

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## Changes to CBR Standard Contracts

by *James Zitesman, Attorney*

Changes to two of CBR's standard forms have been approved. The new forms will be available in the CBR Member Service Center and in the online forms program by June 1, 2007.

### Request to Remedy

For clarification, the Buyer's Request to Remedy form has been eliminated and replaced by three separate forms: Buyer's Request to Remedy, Seller's Response to Buyer's Request; and Buyer's Waiver of Request to Remedy.

### Residential Purchase Contract

The 2007 revision of the Residential Real Estate Purchase Contract reflects member feedback received over the past couple years since the last revision. Whenever possible, we have tried not to disturb the existing numbering. The changes are:

**Paragraph 1.3** will now include the words, "Buyer shall use good faith and reasonable efforts to obtain the loan commitment." The intent behind 1.3 has always been to acknowledge that even when a buyer may be pre-approved and everything looks good, there are times when a loan commitment cannot be issued. The idea was that if the buyer tries to get a loan and just can't get financing, the contract will terminate and the buyer would get the earnest money returned. There are others who may have looked at 1.3 and thought it was an open door to terminate the contract by simply not trying to get a loan. Hopefully, these additional words will help guide buyers to understand what is expected.

**Paragraph 1.4** will now be a pre-printed Attorney Approval Clause:

The buyer or seller may terminate this contract if the party's attorney disapproves this contract, by providing written notice of said disapproval, along with changes proposed by their attorney to remedy the disapproval, within \_\_\_ calendar days after acceptance hereof, (this provision is not applicable if number of days is not inserted). If the other party accepts the proposed changes in writing within 2 days after delivery thereof, this contract shall continue in full force and effect, as amended by the changes. The party requesting the changes may waive their request in writing prior to the expiration of the 2-day period.

Note the requirement of the attorney to provide solutions to the issue causing the disapproval. In this way, the attorney can make a positive impact on the transaction and not be limited to simply approving or killing a deal.

**Paragraph 1.5** will now be the Additional Terms and Conditions.

**Paragraph 2.1** has been reorganized and will be:

**2.1 The real estate taxes for the premises, for the current year, may change as a result of the transfer of the premises or as a result of a change in the tax rate and valuation. Buyer and Seller understand that real estate valuations may be subject to retroactive change by the governmental authority.**

Seller shall pay or credit at closing:

- (a) all delinquent taxes, including penalty and interest;
- (b) all assessments which are a lien on the premises as of the date of the contract;

- (c) all agricultural use tax recoupments for years prior to the year of closing;
- (d) all other unpaid real estate taxes and community development charges imposed pursuant to Chapter 349 of the Ohio Revised Code which are a lien for years prior to closing, and;
- (e) a portion of such taxes and community development charges for the year of closing shall be prorated through the date of closing, based on a 365 day year. If taxes are undetermined for the year of closing, the proration shall be based on the most recent available tax rate and valuation, giving effect to applicable exemptions, recently voted millage, change in valuation, etc., whether or not certified.

These adjustments shall be final, except for the following: (none if nothing inserted)\_\_\_\_\_.

In addition to the changed formatting, the current 2.3 was added to 2.1 and the current 2.4 became 2.3.

The next paragraph to be updated is 7.1 dealing with title insurance. In recognition of the additional coverage provided in the ALTA (American Land Title Association) Homeowner's Policy of Title Insurance, sometimes referred to as ALTA 98, 2003 revision, this has been designated as the default policy to be provided by the seller. The language is as follows:

**7.1** The Seller shall furnish and pay for an ALTA Homeowner's Commitment and Policy of Title Insurance (latest revision), in the amount of the purchase price, with a copy of the subdivision or condominium plat. In the event that an ALTA Homeowner's Policy is not applicable for issuance on the premises, the Seller shall furnish and pay for an ALTA Owner's Commitment and Policy of Title Insurance (latest revision), with a copy of the subdivision or condominium plat.

For those instances where the Residential Real Estate Purchase Contract is used and the ALTA Homeowner's Policy is not applicable, the Owner's Policy is specified. The use of ALTA 98, 92, or 2006 as designations for the policies was problematic, as everything seems to keep changing from ALTA. In fact, the website ALTA.org only refers to the Homeowner's Policy as revised in 2003 and does not reference the 1998 origins. The idea is to build the flexibility in this Contract to permit changes by ALTA without requiring each change to be specifically reflected in the Contract itself or thereby nullifying that provision in the Contract.

**Paragraph 9.1** received some reformatting by setting (a) and (b) along the left margin instead of being imbedded within the paragraph.

A walk-through provision has been added to Paragraph 13.1. "Buyer shall have the right to conduct a walk-through inspection of the property within \_ (not applicable if the number of hours is not inserted) hours before the transaction closing. However, this shall impose no additional obligations to the Seller provided the property is in the same condition as it was on the date of this contract, or as otherwise agreed."

Please bear in mind that between the date I write this article and the time the *In Contract* is published there will be minor tweaks to formatting. We should all thank the hard work of the CBR Standard Forms Committee and its co-chairs, Susan Mullenix and Bonnie Nyikes, as well as the Real Property Law Committee at the Columbus Bar Association.

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