

Real Estate Contracts 2016

Dulles Assoc. of Realtors

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Basic Contract Law

Creation of a Contract

Basic types of Contracts:

- Express
 - Written or oral contracts in which the parties have reached specific agreement
- Implied

Agreements obtained verbally or by actions. May be enforceable under certain circumstances.
- Parol Evidence Rule
 - Evidence of written agreements generally take precedence over verbal agreements.

Statute of Frauds:

- Contracts for the Sale of Real Property must be in writing to be enforceable
- Signature/Initials to contract to evidence assent to its terms and conditions

Basic Contract Law

Essential Contract Elements

Parties:

- Requires parties to be competent
- Over 18 years of age
- Not otherwise adjudicated unfit or incompetent
- Note: Estates, LLCs, Trusts, Partnerships, Powers of Attorney
- Ensure that the parties are authorized to act
- Big issue with lender servicing companies

Basic Contract Law

Essential Contract Elements

Offer and Acceptance:

- Contract must evidence a “meeting of the minds”
- Must show agreement to all material terms of the contract

Basic Contract Law

Essential Contract Elements

Consideration:

- Must contain evidence of consideration---usually monetary

Basic Contract Law

Essential Contract Elements

Description:

- Must have agreement as to the object of the contract
- Especially important in real estate that the property in question is clearly stated
 - Vacant lots included? Personal Property? Vested Rights?

Basic Contract Law

Essential Contract Elements

Potential Defenses to contract:

- Illegal purpose or object
- Duress (force or threat of force)
- Undue Influence (drugs/alcohol/dependency/trust)
- Mistake, Misrepresentation or Fraud

Basic Contract Law

Essential Contract Elements

Contracts meeting the essential elements

- Valid Contracts
- Contracts not meeting essential elements may be void or unenforceable
- Contracts may be voidable
 - Contingencies

Themes for the 2015 & 2016 revisions

Move from a checklist/educational document to more contract base

more streamlined contract with less addenda

mold contract to standard practices

- IMPORTANT TO CHECK VERSIONS

Goodbye to the regional contract

Jurisdictional Addendum merged into contract (paragraph 2 deleted)

Why Change?

- * Jurisdictional Cooperation Not Working
- * Reduce Length of Contract
- * Reduce Confusion
- * Reduce Liability

January 2016 Changes to Regional Sales Contract

REMOVE “BUYER BROKER”

- **NEW TERM: “COOPERATING BROKER”**
- **INCLUDES INDEPENDENT CONTRACTORS AS WELL AS BUYER BROKERS**
- **CHANGE MADE THROUGHOUT THE CONTRACT AND RELATED DOCUMENTS**

Supplemental Changes to Regional Contract July 2015

Fuel Tanks

- Paragraph 13, P. 8 of 16
- Addresses Fuel Tanks in the PERSONAL PROPERTY AND FIXTURES section of the contract (formerly ADJUSTMENTS ---paragraph 26)
 - Must state whether the Fuel Tanks are OWNED or LEASED
 - Clarifies that Fuel remaining at settlement (consummation) becomes property of PURCHASER (unless otherwise agreed).

Supplemental Changes to Regional Contract July 2015

Alternative Financing

- Paragraph 15 (page 8 of 16)
- Defines “Alternative Financing” as:
 - Any change to the financing terms provided in the PRICE AND SPECIFIED FINANCING (Paragraph 2, page 1), including
 - Down Payment Amount
 - Amount Financed
 - Loan program or type

Supplemental Changes to Regional Contract July 2015

ALTERNATIVE FINANCING

BUYER WILL LOSE PROTECTION OF FINANCING
CONTINGENCY **UNLESS**

- PARTIES EXECUTE A NEW FINANCING ADDENDUM

Supplemental Changes to Regional Contract July 2015

Alternative Financing

- Paragraph 15, page 8
- MAY SUBSTITUTE ALTERNATIVE LENDER FOR THE SPECIFIED FINANCING IF:
 - NO ADDITIONAL EXPENSE TO SELLER
 - SETTLEMENT DATE IS NOT DELAYED
 - IF BUYER FAILS TO SETTLE, DEFAULT PROVISIONS OF THE CONTRACT WILL APPLY UNLESS SELLER IS IN DEFAULT

Supplemental Changes to Regional Contract July 2015

TITLE

Paragraph 21, page 9

CLARIFIES THAT, IN EVENT TITLE IS NOT GOOD AND MARKETABLE AT SETTLEMENT, BUYER MAY “PURSUE ALL AVAILABLE LEGAL AND EQUITABLE REMEDIES”

Supplemental Changes to Regional Contract 2016

TIME IS OF THE ESSENCE

Paragraph 36, page 14

REACTION TO CFPB REGULATIONS

Clarifies: if contract is contingent on Financing

- If Consummation is delayed by lender's regulatory obligations
- Buyer is not in default
- HOWEVER, SELLER has the right to declare the contract void.

“Offer date” AND “CONTRACT DATE”

REMOVE “CONTRACT DATE”

2009 Version

This SALES CONTRACT ("Contract") is made on _____
 ("Contract Date") between _____ ("Purchaser") and
 _____ ("Seller") who, among other
 things, hereby confirm and acknowledge by their initials and signatures
 herein that by prior disclosure in this real estate transaction

26. DEFINITION.

E. "Date of Ratification" means the **date of final acceptance** in writing by Purchaser and Seller, of all the terms of this Contract (not the date of expiration or removal of any contingencies).

“DELIVERY” OF ACCEPTANCE

2015 Version

This sales contract ("Contract") is offered on _____ ("Date
 of Offer") between _____; ("Purchaser") and
 _____ ("Seller")
 who, among other things, hereby confirm and acknowledge by
 their initials and signatures herein that by prior disclosure in this
 real estate transaction _____

32. DEFINITIONS.

A. "Date of Ratification" means the date of **Delivery** of the **final acceptance** in writing by Purchaser and Seller of all the terms of this Contract to Purchaser and Seller (not the date of the expiration or removal of any contingencies).

Price and Financing (¶12)

OPTION FOR % OF SALES PRICE

2009 Version

Paragraph 2

2. PRICE AND SPECIFIED FINANCING

A. Down Payment

\$ _____

B. Financing 1. First Trust (if applicable)

\$ _____

2. Second Trust (if applicable)

\$ _____

3. Seller Held Trust

\$ _____

Addendum attached (if applicable)

TOTAL FINANCING

\$ _____

SALES PRICE

\$ _____

2015 Version

Paragraph 2

2. PRICE AND SPECIFIED FINANCING Any % are Percentages of Sales Price

A. Down Payment

\$ _____ or % _____

B. Financing 1. First Trust (if applicable)

\$ _____ or % _____

2. Second Trust (if applicable)

\$ _____ or % _____

3. Seller Held Trust

\$ _____ or % _____

Addendum attached (if applicable)

TOTAL FINANCING

\$ _____ or % _____

SALES PRICE

\$ _____

Specified and alternate financing ¶¶ 2 & 15

Note: ¶12 is titled PRICE AND **SPECIFIED** FINANCING (2009 version was titled Price and Financing)

15. Alternate Financing Purchaser may substitute alternative financing and/or an alternative lender **for Specified Financing** provided: (a) Purchaser is qualified for alternative financing; (b) there is no additional expense to Seller; (c) Settlement Date is not delayed; and (d) if purchaser fails to settle, except due to any default by Seller, then the provisions of the DEFAULT paragraph shall apply.

Note: according to the Forms Committee: Purchaser may substitute within Specified Financing; however, an addendum would be required to switch to a DIFFERENT type of financing (e.g. conv. To fha). Language is same as ¶12 in 2009 version.

Earnest money deposit ¶3

3. Deposit Purchaser's deposit ("Deposit") in the amount of _____ shall be held by _____ ("Escrow Agent"). Purchaser ☐ **has delivered** OR ☐ **will deliver** the Deposit by _____ days after Date of Ratification.

Makes clear when performance expected

Conforms to 2008 statutory change requiring broker to disclose lack of deposit

Conforms to common practice

Delivery ¶6 (FORMERLY ¶1 Va. Juris. Add.)

Attempt to simplify delivery paragraph

Removes "courtesy copy" provisions

Lines for Seller and for Purchaser to list any and all acceptable means of delivery

Note: agent contact info may be placed in those sections as contact

Property ass'n and condo delivery ¶¶ 8 & 9 (formerly ¶¶ 7 & 8 Va. Juris. Add.)

Per statute: seller determines method of delivery

Language changed to reflect that seller may deliver disclosure packet in a form of their choosing

Purchaser lists their "preferred" delivery method

Change to conform the contract to the statute

Access to property ¶ 11

(¶ 8 in 2009 contract)

11. ACCESS TO PROPERTY Seller will provide Broker, Purchaser, inspectors representing Purchaser, and representatives of lending institutions for Appraisal Purposes **reasonable access** to the Property to comply with this Contract. In addition, Purchaser and/or Purchaser's representative will have the **right to make walk-through inspection(s)** within **7 days** prior to Settlement and/or occupancy, unless otherwise agreed to by Purchaser and Seller.

- Permits Multiple Inspections if necessary
- Increases the time for Walk Through inspections from 5 to 7 if needed
- Some interpreted prior contract to permit only 1 inspection---even if needed to check on repairs

Wood Destroying insects ¶ 19

(formerly ¶ 14 in 2009 version)

Changed title from TERMITE INSPECTION to WOOD-DESTROYING INSECT INSPECTION

- Reflects common practice
- Reflects lender requirements

Title ¶ 21

(formerly ¶ 14)

MAJOR CHANGE

If Title is not good and marketable on the settlement date, PURCHASER has the option to (a) **declare the contract void** in writing or (b) mutually **agree to extend** Settlement Date under terms acceptable to both parties.

2009 contract gave Seller 30 days to correct a title defect

PRACTICE TIP: LISTING AGENT SHOULD ENSURE THAT PURCHASER USES A REPUTABLE LOCAL TITLE AGENT AND THAT TITLE IS ORDERED WITHIN 10 DAYS OF RATIFICATION OF THE CONTRACT

TITLE INSURANCE ¶ 30 G (OTHER DISCLOSURES)

(NEW PROVISION)

Discloses the availability of owner's title insurance

Availability of "Standard" and "Enhanced" policies

Policies are optional

Directs that Lenders Quote insurance at Enhanced Rates

Added to comply with regulations from CFPB

ADJUSTMENTS ¶26

Unless agreed to in writing, any heating or cooking **fuels remaining** in supply tank(s) **at Settlement** will become the **property of the Purchaser**.

- Removes "unless leased" language----created confusion
- **Practice tip: seller should always disclose leased tank. Advise seller to cancel any scheduled refills prior to settlement (unless tank needed). Make sure tank has sufficient fuel for walk-through.**

Release of sales contract and deposit K-1116

Added G: release among the parties does not release obligations to the broker

RELEASE OF SALES CONTRACT AND DEPOSIT

This release of sales contract and deposit ("Release") as of _____ between _____ ("Purchaser") and _____ ("Seller") through _____ ("Listing Company") and _____ ("Selling Company") provides as follows:

- By a sales contract ratified on _____ ("Contract"), Purchaser agreed to purchase and Seller agreed to sell the Property:
- Seller and Purchaser wish to terminate entirely all of their respective rights and obligations under Contract. Now, therefore, the parties to this Release agree as follows:
 - Seller and Purchaser mutually terminate entirely all of their respective rights and obligations arising under Contract.
 - Seller and Purchaser mutually release and fully discharge each other from all demands, damages, actions, or liability of any kind and nature whatsoever, for the account of, based on, or growing out of the negotiation, execution, performance, termination and release of Contract, both as to all matters and things now known or unknown, and as to all matters and things which may hereafter be discovered.
 - The entire Deposit made by Purchaser and held in escrow under Contract shall be disbursed as follows:

\$ _____ to Purchaser, \$ _____ to Seller, \$ _____ to Listing Company, and \$ _____ to Selling Company.
 - The costs incurred for the title examination, appraisal and survey will be the responsibility of ☐ Purchaser OR ☐ Seller unless stated otherwise in this Release.
 - The Release shall be construed, interpreted and governed according to the law of Virginia, and it shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors, and assigns of the parties.
 - This Release constitutes the entire understanding among the parties and may not be modified or changed except by written instrument executed by the participating parties, and all parties understand its contents and agree to rely for the consideration herein described and without any other representation, understanding, or agreement of any kind whatsoever.
 - This Release does not affect any liability Seller or Purchaser may have for the payment of brokerage fees or commissions to their respective broker, which is governed by separate brokerage agreements.

(THIS IS A LEGALLY BINDING CONTRACT; IF NOT UNDERSTOOD, SEEK COMPETENT LEGAL ADVICE BEFORE SIGNING)

<p>SELLER:</p> <p>Date _____ Signature _____</p> <p>Date _____ Signature _____</p> <p>Date _____ Signature _____</p>	<p>PURCHASER:</p> <p>Date _____ Signature _____</p> <p>Date _____ Signature _____</p> <p>Date _____ Signature _____</p>
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NVAR - K1116 - rev. 01/15

Practice tip: should be used in conjunction with the Release of Sales Contract and Deposit Form

NOTICE VOIDING CONTRACT

This Notice Voiding Contract is given on _____ in accordance with the sales contract ("Contract") ratified on _____ between _____ ("Purchaser") and _____ ("Seller") for the purchase and sale of the Property: _____

The undersigned party ("Notifying Party") hereby gives this written Notice Voiding Contract [select one]: ☐ Seller OR ☐ Purchaser ("Notified Party") as follows:

Notifying Party hereby declares the Contract void as permitted pursuant to paragraph _____ of the Contract OR paragraph _____ of _____ Addendum.

Important information regarding this Notice:

- To be effective, Notifying Party must Deliver this Notice to Notified Party or their authorized agent pursuant to the DELIVERY paragraph of the Contract.
- This Notice is not a substitute for a release, nor does it authorize the disbursement of any earnest money deposit regarding the Contract. In order for both parties to be released from any and all responsibility or liability under this Contract, a separate release must be executed. A release or other written authorization must be executed by both parties to disburse Deposit under the Contract.
- Seller and Purchaser will comply with the terms of the VOID CONTRACT paragraph of the Contract.
- Notifying Party's termination hereunder is not a waiver of any right or remedy under the Contract. This termination is not an election or limitation of Notifying Party's right to rely on any other right or remedy provided by the Contract and/or applicable law.

This Notice Voiding Contract is given by the undersigned [select one]: ☐ Seller OR ☐ Purchaser

NOTIFYING PARTY:

Date _____ Signature _____	Date _____ Signature _____
Date _____ Signature _____	Date _____ Signature _____

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WALK-THROUGH INSPECTION

In accordance with the Contract ratified on _____, a walk-through inspection of the Property: _____ was made on _____ (Date).

The following existing items were inspected to determine if they are in substantially the same physical condition as of the date specified in the PROPERTY MAINTENANCE AND CONDITION paragraph of the Contract, except as otherwise agreed. The following list is not intended to be exhaustive. Purchaser may wish to inspect items not listed below. The following existing items were inspected and found to be as noted below:

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fha & va financing

CONVENTIONAL FINANCING ADDENDUM

This Addendum is made on _____, to a sales contract offer ("Contract") dated _____
 between _____ ("Purchaser")
 and _____ ("Seller") for
 the purchase and sale of the Property: _____

1. **DEED(S) OF TRUST** Purchaser shall pay upfront and/or monthly mortgage insurance premiums as required by lender guidelines.

2. **FINANCING CONTINGENCY**

- A. This Contract is contingent until 9 p.m. _____ Days after Date of Ratification ("Financing Deadline") upon Purchaser obtaining and delivering to Seller a written commitment or commitments, as the case may be, for the financing described in the **PRICE AND SPECIFIED FINANCING** paragraph of this Contract. Purchaser agrees to make written application for such financing (including the payment of any required fees) within 7 days of the Date of Ratification and to diligently pursue obtaining a commitment for such financing.
- B. If this contingency has not been satisfied by the Financing Deadline, this contingency will continue up to and including Settlement Date, unless Seller or Seller's option Delivers Notice to Purchaser that this Contract will become void. If Seller Delivers such Notice, this Contract will become void at 9 p.m. on the third Day following delivery of Seller's Notice unless, prior to that date and time, Purchaser Delivers to Seller the written commitment or a Notice removing this contingency and evidence of the availability of funds necessary to settle without such financing.
- C. This Contract will become void if, prior to the end of this contingency, Purchaser receives a written rejection from the lender or lenders to whom Purchaser has applied pursuant to Paragraph 2.A. for the Specified Financing and delivers a copy of the written rejection to Seller on or before Settlement Date.
- D. Purchaser will be in Default whether or not the Financing Contingency has been removed if Settlement does not occur by Settlement Date for any reason other than Default by Seller.

3. **APPRAISAL CONTINGENCY** This Contract ☐ is contingent **OR** ☐ is not contingent upon an Appraisal pursuant to this paragraph. Purchaser shall have until 9:00 p.m. _____ Days (minimum of 21 days recommended) following the Date of Ratification to obtain an Appraisal ("Appraisal Deadline"). In the event that neither box is checked, this Contract is contingent upon an Appraisal pursuant to this paragraph and the Appraisal Deadline is the Financing Deadline set forth above. Purchaser shall provide Notice to Seller by the Appraisal Deadline, as follows:

- A. The Appraisal is equal to or greater than the Sales Price. This contingency has been satisfied and the Seller and parties shall proceed to Settlement; **OR**
- B. The Appraisal is equal to or greater than the Sales Price. However, Purchaser elects not to proceed with consummation of this Contract because the Property does not satisfy the lender(s) requirements, the Appraisal does not allow for the Specified Financing or the Property is inadequate collateral. Such Notice must be accompanied by a written denial of the financing showing written evidence of the lender(s)'s decision concerning the Property. Purchaser must provide such written evidence concurrently with Purchaser's Notice of election not to proceed; **OR**