

Explanation of the Real Estate Contract 7.0

The Multi-Board Residential Real Estate Contract 7.0 is the most widely used contract in Northern Illinois. I had the pleasure of representing the DuPage County Bar Association on the drafting committee which consisted of representatives of all the major boards of Realtors and bar associations in Will, Cook, DuPage, Kane, McHenry and Lake County. This explanation is not intended for attorneys, but is rather intended for Realtors, Buyers and Sellers. I suggest that you have a copy of the contract for reference as you read this explanation. The paragraph numbers in this explanation are the same that appear in the Contract.

Throughout this contract you will read “Business Days” and “Date of Acceptance”. The Date of Acceptance is found on page 13 above the Seller’s signature and is the start date for all of the time frames. Business Days is defined in paragraph 24 as Monday through Friday except Federal Holidays.

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1. The Parties

Here is where we identify the Buyer and the Seller. Frequently Buyers will see the Seller identified as “OOR” which means “owner of record.” Many agents refuse to disclose the actual owner of the property. It is best if the names of the parties are inserted.

2. The Real Estate

This paragraph identifies the property involved in the transaction. It makes the term “real estate” a defined term and every time hereafter where a reference is made to “real estate” that term means the property, all improvements, including the fixtures and personal property. Many times people look at the term “real estate” and think it only applies to the lot, but in this contract “real estate” means the lot, any structures on the lot, any fixtures and personal property included in the purchase price. If the property is a condominium the contract identifies parking spaces and storage areas.

3. Fixtures and Personal Property at No Added Value

This contains a list of personal property items included in the price. Personal property is defined as that which can be removed from the structure without altering the structure. As you can see, it refers to appliances and other features of the property. There is a representation that, to the best of Seller’s knowledge, all of these items are in operating condition. Line 29 is an opportunity for parties to insert other items included. The most frequent items we see at that line are, for example, above ground pools, pool tables and things of that nature. Line 30 is an opportunity for the Seller to put in items that are not included. Frequently light fixtures, chandeliers, etc. are exchanged or excluded and this is where that should be disclosed. Lines 31 and 32 make reference to all of these items

being in operating condition at possession and at line 32 for excluding items that may not be in operating condition but are included in the purchase price of the property. For example, water softeners are frequently not used but they are not disconnected and might not be in operating condition. All of the items are included at NO additional cost for the benefit of the lenders and appraisers. If so checked, wall mounted brackets are included but not the TV.

4. Purchase Price and Payment

Defines what the price will be and requires compliance with Illinois "Good Funds" laws. The "Good Funds" law specifies when the escrow agent at closing will accept a certified check or when funds need to be wired. Personal checks or cash are not accepted.

- a) Included in this paragraph is the provision for a credit at closing which affects the Purchase Price. This is subject to lender approval.
- b) Earnest Money - Defines who will hold the Earnest Money and when the amount is due.
- c) Provides that the balance of the Purchase Price is paid at closing.

5. Closing

The closing date is the date when the transfer of title will occur. Illinois is a table funding state. That means that at the time of the closing the Buyer comes in with the funds necessary to complete the purchase and the Seller brings in the necessary documents to convey ownership such as the deed and other documents. The funds are exchanged and the deed is then recorded. This is distinguished from an escrow closing state where the parties make deposits to the title insurance company or escrow company and a distribution of funds occurs some time thereafter. The closing occurs at a location agreed by the attorneys or at the title company closest to the property.

6. Possession

Possession is typically delivered at the time of closing. Paragraph 35 referenced in the paragraph is a post-closing possession agreement and will be dealt with at paragraph 35.

7. Financing

Only one of these subparagraphs apply.

- a) This is the most frequently used selection. If the Buyer wants this purchase to be contingent upon securing a loan this will be used. The date by which a Buyer is to secure the loan is the Loan Contingency Date and is defined as 45 days after the Date of Acceptance or 5 Business Days prior to Closing, whichever is earlier. If the loan has not been approved by the

Loan Contingency Date, upon proper notice, the contract may be canceled and the Earnest Money returned to the Buyer. If the Buyer fails to make the loan application within 10 Business Days of the Date of Acceptance, the Seller may cancel the contract.

b) This is used when the Buyer has the cash to purchase the property. The Seller may request proof of funds from the Buyer. Use of 7(b) should be used when a loan is not necessary to purchase the property.

c) This is used when the Buyer has the cash to purchase but wants to secure a mortgage so the buyer does not need to sell stock, etc. This paragraph requires the Seller to allow access to the appraiser. The Seller can also request proof of funds since whether the Buyer obtains the mortgage or not, the Buyer is still obligated to purchase. Keep in mind that a low appraisal will not affect the Buyer's obligation to purchase.

8. Statutory Disclosures

Under Illinois law Buyers are entitled to several disclosures and this paragraph describes whether those disclosures have been received or not. The buyer should review these disclosures carefully.

9. Prorations

Various items are prorated at the time of closing such as taxes and association dues. Paragraph 9 describes those items and also describes the basis upon which those prorations will occur. Real estate taxes in Illinois are paid in arrears. For example, the real estate taxes for calendar year 2016 are paid on June 1st and September 1st of 2017 (in Cook County on March 1st and in the Fall). Because we do not know what the actual real estate taxes will be for the previous year until that bill is published, many times we include an additional percentage to account for the increase in taxes. That is why in paragraph 9 at line 122 there is a reference to the real estate taxes being prorated based upon a percentage of the full year tax bill. The typical percentage that is used in the western suburbs is 105%. What that means is that we are expecting that the real estate taxes will increase by 5% from the previous known full tax bill. In cases when the property has been reassessed that percentage may vary from 100% to 120%. Many times when the parties are unable to ascertain the true amount of the taxes, they will enter into a reproration agreement which will require the parties to recalculate the prorations that should have been received at closing once the actual bill is received. Generally speaking, reproration agreements are not encouraged in residential transactions.

10. Attorney Review

The attorney review provisions allow either parties' attorneys to approve the contract, disapprove the contract, propose modifications or propose changes within five (5) business days of acceptance. It is important to understand the distinction between a modification in 10(c) and a suggested change in 10(d). A modification potentially is a

counter-offer and when a party makes a counter-offer, you are basically back to negotiating all of the terms of the contract, including the price and the closing date that may have been previously agreed upon. Suggestions per paragraph 10(d) do not modify the contract. At line 145 you can see that if notices are not specified it is deemed to be a modification. If the modifications are not agreed upon after ten (10) business days, then either party may terminate this contract. In subparagraph 10(d), the proposed changes are simply suggestions, and if the suggestions are not agreed upon, then the contract continues in full force and effect.

11. Waiver of Professional Inspections

This would notify the Seller that the Buyer does not wish to perform an inspection. This paragraph may be used when the real estate is a “tear down” or when extensive remodeling is planned. Our office recommends an inspection.

12. Professional Inspections and Inspection Notices

This allows the Buyer, after the contract is signed, to do an inspection. Please note that the inspection needs to be done by a licensed inspector or certified inspection service (not your uncle, the contractor). Also note that the age of a component is not an automatic deficiency. The inspection needs to be completed within five (5) business days after the date of acceptance and the list of deficiencies Buyer would like to ask Seller to address needs to be delivered to the Seller or the Seller’s attorney. If after ten (10) business days an agreement cannot be reached, either party may declare the contract null and void. Subparagraph (c) of the contract permits the Buyer to declare the contract null and void if the results of the inspection are unsatisfactory to the Buyer. This Declaration must be done within five (5) business days after the date of acceptance.

13. Homeowner Insurance

This is a provision that permits the Buyer to cancel the contract if it is determined that the property has a high insurance rate because of prior claims made by previous owners. This must be done within ten (10) business days after the date of acceptance.

14. Flood Insurance

This permits the Buyer to terminate the contract if it is determined that the property is in a flood plain. The notice to declare the contract null and void is to be given within ten (10) business days of the date of acceptance or the date specified in paragraph 8(a), whichever is later.

15. Condominium/Common Interest Associations

This paragraph provides that if the property is a condominium or subject to any common interest association, that title will be conveyed subject to those conditions. The Seller

will pay for all of the regular assessments and any assessments levied prior to the closing. It allows the Buyer to obtain a disclosure from the Association regarding the budget and reserves. Subparagraph (e) permits the Buyer to terminate the contract within five (5) business days of receipt if it is disclosed that the property is in violation of any existing rules or regulations regarding the condominium.

16. The Deed

This paragraph describes the nature of the deed the Seller will provide to the Buyer at closing. This is really for lawyers. There are several ways to hold property - Tenants by the Entirety, Joint Tenancy, Tenancy in Common. Discuss these options with your attorney.

17. Municipal Ordinance, Transfer Tax and Governmental Compliance

The caption of this paragraph is almost longer than the paragraph. It simply requires the parties to comply with any terms imposed by the municipality in which the property is located. For example, some municipalities have pre-closing inspection requirements and/or transfer stamps. This is the paragraph that requires all of the parties to comply with those municipal ordinances.

18. Title

This is a requirement of the Seller to secure a title insurance policy for the Buyer in the amount of the purchase price from a title insurance company licensed to operate in the State of Illinois. It is that paragraph that essentially requires the Seller to be able to convey clear title to the Buyer, free of any encumbrances, encroachments, etc.

19. Plat of Survey

It is usual and customary in northern Illinois to obtain a survey of the property. The survey will show the boundary lines and all of the improvements. The survey needs to be dated not more than six (6) months prior to the date of closing and must conform to the Illinois minimum standards for a boundary survey. The survey is to be a staked survey.

20. Damage to Real Estate or Condemnation Prior to Closing

This permits a Buyer to terminate the contract if the property is destroyed, damaged or taken by condemnation.

21. Condition of Real Estate and Inspection

This requires the Seller to leave the real estate in "broom clean condition" which means that it is to be swept and all refuse removed. It also permits the Buyer to make the walk-through inspection prior to the closing to verify that the property is in the same condition

as it was on the date the contract was signed, reasonable wear and tear excluded.

22. Seller Representations

This is a provision of the contract which I suspect most Sellers and Realtors never read, but which is one of the major provisions in the contract that could get a Seller in trouble after the closing. In paragraph 22 the Seller makes certain representations and if those representations are not true and it is discovered after the closing that the Seller knew this, the Seller could be held responsible. The one we see most often incurred is subparagraph (h) any improvements to the Real Estate for which the required permits were not obtained. Many times homeowners are adding decks or making other improvements without obtaining permits. That could be a problem for the Seller after the closing. We also note that there are four representations at lines 297 to 303 that the property is or is not subject to a pending or unconfirmed special assessment or located within a special service area that the property is fully assessed and not eligible for a tax exemption. As a Buyer's attorney, I recommend that the "is not" box be checked to make sure that if the properties are in a special service area or there is a special assessment, the Seller is responsible to disclose those to the Buyer.

23. Real Estate Tax Escrow

This paragraph applies if a property has been improved but the value of that improvement is not reflected on the tax bill. The typical example is a room addition where the property has been increased in value and in size but that increase has not been reflected on the real estate tax bill. The other example of this is new construction where a vacant lot or smaller home was torn down and new home was built which has not been fully assessed. This paragraph requires an escrow of 3% of the purchase price and here is where the parties agree to repropertate the taxes when the actual tax bill is obtained.

24. Business Days/Hours

In the contract there is a reference to "business days/hours." Business days are defined as Monday through Friday, excluding Saturday, Sunday and Federal holidays. "Business hours" are defined as 8:00 A.M. to 6:00 P.M. Chicago time. Business days/hours are frequently referred to for the service of notices, etc. in the contract.

25. Electronic or Digital Signatures

This simply allows people to direct the execution of the contract and amendments by digital or electronic signatures.

26. Direction to Escrowee

This is a paragraph that really is intended to try to, believe it or not, shorten the contract. Whenever we refer to the term "null and void" throughout the contract, what we really

meant to say was “null and void and earnest money refunded to Buyer upon the written direction of the parties to the Escrowee or upon entry of an order of court of competent jurisdiction.” When drafting this contract, we did not want to put language in every time so we simply put it in at paragraph 26 and incorporated it by reference throughout the contract. This paragraph also defines the method for refunding the Earnest Money.

27. Notice

This is the general notice provision of the contract. It excludes notices under paragraph 30 which I will describe as paragraph 30, but notices other than pursuant to that paragraph are by personal delivery, by certified or regular mail, by fax, by email or by commercial overnight delivery, such as FedEx or UPS. This is a paragraph that is largely directed to the attorneys so they know how to provide notice to the other parties. If contact information is not provided as required in the contract notice may be sent to that parties' Designated Agent.

28. Performance

This paragraph provides that if a lawsuit is filed with respect to this contract, the prevailing party in that litigation may be entitled to collect reasonable attorney's fees.

29. Confirmation of Dual Agency

This is used when the agent is acting as an agent for both the Seller and Buyer. Dual Agency disclosure forms are signed to permit this and notice of dual agency must be given to you by your Realtor.

30. Sale of Buyer's Real Estate

This is probably the most confusing paragraph in the contract. This is the paragraph where the obligation of the Buyer to purchase is contingent upon the Buyer's ability to sell the Buyer's home. Subparagraph (b) are the two contingencies. (b)(1) is the contingency to secure a contract for the sale of the Buyer's home on or before a specified date. (b)(2) is to secure the closing the Buyer's home on or before a specified date and typically the same date as contained in this contract at paragraph 5, The Closing Date. In paragraph (c), the Seller has the right to continue to offer the property for sale and if a subsequent offer is received, the Seller can notify the first Buyer that an offer has been received and allow the first Buyer to either terminate the contract or to waive this contingency. This is typically referred to as a “kick-out” clause. The Realtors reading this should note that the notice of kick-out is served on the Buyer and not the Buyer's attorney and the Buyer's real estate agent. Courtesy copies can be sent, but that notice is not effective unless served on the Buyer. There are three specific ways to serve this notice: by personal delivery; by certified mail; and by commercial overnight delivery.

31. Cancellation of Prior Real Estate Contract

This provision is used whenever there is an existing contract on the property that needs to be cancelled. A typical example of this is when a Seller believes that Buyer is going to terminate the contract because of inspection issues, etc. or has received a second offer with better conditions and terms and wishes to accept that second offer but needs to cancel the first contract. This is also used when a Buyer does not believe the existing contract to purchase the home will be completed for whatever reason and wishes to make an offer on another piece of property but it is subject to the cancellation of the first contract since the Buyer does not want to be put into a position of acquiring two pieces of property.

32. Home Warranty

This is to be used when the Buyer will receive a home warranty on the personal property. The warranty is paid for by the Seller.

33. Well or Sanitary System Inspections

If the property being purchased is either on a well and/or septic system, this paragraph would apply. It requires the Seller to obtain a well water test indicating that the bacteria and nitrate levels are within applicable limits and that the well and septic system are in working order. It provides for circumstances in which those might not be the case and if the parties cannot agree on a remedy for any of the defects in the well or septic system, the contract may be terminated.

34. Wood Destroying Infestation

This is a termite inspection or carpenter ant inspection provision. The Seller is obligated to deliver to Buyer a written report of an inspection performed by a licensed inspector indicating the lack of any visible evidence of active infestation by termites or other wood destroying insects. This inspection is required in all VA loans and cannot be paid by the Veteran.

35. Possession After Closing

This paragraph applies if possession is not going to be delivered at closing. It indicates how many days after closing possession will be delivered, and that the Seller will be responsible for all utilities up to that date of possession. It provides for the Seller to deposit a possession escrow of either 2% of the purchase price or the sum agreed upon and provides the payment of a per diem rent.

36. "As Is" Condition

Whenever a property is purchased in a foreclosure or short sale, the property is typically

purchased in an "as is" condition. Under this clause the Buyer is entitled to perform an inspection and if the inspection reveals conditions unacceptable to the Buyer, the Buyer can declare the contract null and void. If the Buyer fails to make that inspection or fails to notify the Seller within five (5) business days that the property is not in an acceptable condition, this provision is waived and the contract remains in full force and effect.

37. Specified Party Approval

This paragraph was inserted to allow a specific party to approve the real estate within five (5) days after the date of acceptance. The typical application of this is if one of the spouses sees a home and wants to make an offer subject to the other spouse's approval.

38. Attachments

This would be used if the Seller or Buyer has a rider to attach such as bank owned property, specifications or lists of additional property.

39. Miscellaneous Provisions

This is a reference for any other provisions that might be made part of this contract. This was inserted because this contract is frequently used for other than residential real estate. If any of these miscellaneous provisions are indicated as applicable, I would strongly suggest that the parties seek legal counsel as quickly as possible to discuss these provisions.

Page 13 - The date of offer at line 518 is the date when the Buyers sign the contract. This date is not of any particular significance. It is simply the date when an offer is submitted. Buyers should understand that when they sign this document, they are making an offer to purchase the property and if that offer is accepted, this then becomes the contract between the parties. There is no subsequent document. The date of acceptance which is printed in bold is a significant date. This is the date upon which all of the contingencies and obligations of the parties are begun. The date of acceptance is the date from which the five (5) day attorney approval provision is calculated and the five (5) days from the date of acceptance for the home inspection, etc. This is the beginning date of the contract and it is the most significant date to be inserted into this contract. It is also important for both the Buyer and Seller to sign the contract, print their names and give the necessary information required since these are the provisions whereby notices will be sent, etc. Beneath that is an area for information only. It shows the brokers involved and the attorneys involved. It also reflects what mortgage company, if any, is going to be used and if there is a homeowner's association if the property is a condominium or otherwise subject to any type of monthly dues or fees. Since this is for information only, whether or not that information is provided does not affect the validity of the contract. Also please note that each page needs to be initialed by both the Buyer and the Seller and the address specified on the contract.

After you have read this rather lengthy treatise on this contract and you still have questions, please do not hesitate to contact our office and we will be happy to explain the "madness to our method" in drafting this contract.