

**Analysis of Changes to Multi-Board Residential Real Estate Contract 5.0 that will appear in
Multi-Board Residential Real Estate Contract 6.0**

Paragraphs removed (reference to paragraph numbers as they appear in 5.0):

- Escrow Closing (#18)
- Interim Financing (#36)
- Loan Status Disclosure (unnumbered, after signature page)

Paragraphs Unchanged in Substance (reference to paragraph numbers as they appear in 5.0):

- Attorney Review (#9)
- Homeowner Insurance – (#12)
- Survey – (#17)
- Damage to Real Estate or Condemnation Prior to Closing (#19)
- Real Estate Tax Escrow (#20)
- Condition of Real Estate and Inspection (#22)
- Municipal Ordinance, Transfer Tax and Governmental Compliance (#23)
- Business Days/Hours (#24)
- Notice (#27)
- Performance (#28)
- Choice of Law/Good Faith – (#29)
- Sale of Buyer’s Real Estate (Optional #31)
- Cancellation of Prior Real Estate Contract (Optional #32)
- Credit at Closing (Optional #33)
- Interest-Bearing Account (#34)
- VA or FHA Financing (Optional #35)
- Wood Destroying Infestation (#38)
- Post-Closing Possession (#39)
- Confirmation of Dual Agency (Optional #41)
- Specified Party Approval (Optional #42)
- Miscellaneous Provisions (Optional #43)

Paragraphs added (new paragraph numbering in 6.0):

- Home Warranty (optional #34)
- Transaction Not Contingent on Financing (Optional #43, including
 - Subparagraph a – Transaction with No Mortgage (“All Cash”)
 - Subparagraph b – Transaction, Mortgage Allowed

Paragraphs with Significant Modification

- Purchase Price – (new #3 in 6.0)
- Earnest Money – (new #4 in 6.0)
- Prorations – (new #8 in 6.0)
- Mortgage Contingency – (#11 in 5.0)
- Condominium – (#14 in 5.0)
- Seller Representation – (#21 in 5.0)
- Facsimile or Digital Signatures (#25 in 5.0 and 6.0)
- Direction to Escrowee (#26 in 5.0 and 6.0)
- Short Sale Addendum

Formatting changes are minimal, but in several instances (in particular Paragraph 9 “Statutory Disclosures” additional lines were used in order to have the choices and check boxes align better. At the bottom of each page where initials and the address of the property are to be inserted, there is added the legend “SPACE for digital signatures”. Throughout the Contract, paragraph number references have changed due to the realignment of certain paragraphs, the deletion of certain paragraphs and the addition of new paragraphs. In the description of the changes, reference to new paragraph numbers may be omitted, but the user is cautioned to review all paragraph numbers.

Changes by paragraph to Standard provisions:

- A. The **Parties** paragraph contains the word “Name(s) appearing on lines 2 and 3 after the words “Buyer” and “Seller”, respectively, and in front of the parenthetical reference “(Please Print)”.
- B. On line 4, the reference to the Optional Paragraph number for the Confirmation of Dual Agency is now 31.
- C. The **Real Estate** paragraph had added after the words “deeded space” on line 13 “PIN: _____” for the insertion of the permanent index number for the deeded parking space.
- D. The **Purchase Price** (formerly paragraph #4) has been changed and is now number 3; former paragraph 3 (“Fixtures and Personal Property”) has been relocated and assigned paragraph number 5. In the second sentence of the Purchase Price paragraph, the words “state and federal” were removed in the reference to Good Funds, so that the balance of the sentence now reads: “...’Good Funds’ as defined by law.” The committee also deleted the reference to payment of the balance due by “wire transfer of funds, or by certified, cashier’s, mortgage lender’s or title company’s check (provided that the title company’s check is guaranteed by a licensed title company)” as unnecessary because of the generic reference to “Good Funds” and the fact that all title companies now make available Closing Protection letters to insure the funds handled at closing. The other change to former paragraph 4 is that provisions regarding earnest money were removed and placed in a new stand-alone paragraph 4.
- E. New Paragraph 4 is entitled “**Earnest Money**” and there are changes to the text of that paragraph, the content of which formerly was located in the Purchase Price paragraph. The Earnest Money paragraph still provides for “initial earnest money” and “additional earnest money” and blanks for the amounts of each and also blanks for the dates of “tender”, a term that does not appear in the 5.0 Contract. The major change in the paragraph was the addition of a third option for the “Escrowee”; the choices “Seller’s Broker” and “Buyer’s Broker” are still available, but “As otherwise agreed by the Parties” allows for title companies, professional escrow companies or lawyers to be selected. The committee did not want licensed real estate professionals making a specific identified selection of an Escrowee other than either Broker, for fear of such selection amounting to the unauthorized practice of law, but instead allowed the Parties and their legal counsel an opportunity to select an appropriate Escrowee in instances where business models of the brokers did not include the willingness to hold earnest money deposits. Also, the committee felt it was unnecessary to determine the method of payment of earnest money, that cash was almost never used, and promissory notes were used very infrequently.
- F. Paragraph 5 is now entitled “**Fixtures and Personal Property At No Additional Cost**”. The addition of “At No Additional Cost” in the heading was intended to persuade mortgage lenders to refrain

from seeking the removal of items of personal property from the Contract or seeking an Addendum specifying that the fixtures and personal property had no additional value. In the second sentence of the text of that paragraph (prior to the recitation of the items included) the words "...at no additional cost to Buyer..." appear again. The words "[Check or enumerate applicable items]" remains in the text, but no longer appears on a separate line, in an attempt to save space in the form. In the list of items to be checked, the item "TV Antenna System" has been removed as outdated, and in its place appears "Backup Generator System". The committee considered suggestions for home entertainment systems and hardware for wall-mounted television or other appliances, but ultimately chose not to include those suggested items. Once again, in the section "Other items included..." there is added "...at no additional cost" and an extra line was inserted in order to allow for the insertion of more items. In various places stylistic changes were made in optional reference to plurals. Finally, reference to "Home Warranty" no longer provides for a box in front of "shall" or "shall not be included at a Premium not to exceed \$_____". Instead the committee inserted: "If Home Warranty will be provided, please complete Optional Paragraph 34". In the Optional Paragraph, again the reference is made that the Warranty is at no cost to Buyer (rather than "will be included", because it could be purchased by a third party and not by Seller) at a specific cost, with the "not to exceed" language removed as ambiguous. The Optional Paragraph also requires "evidence of a fully pre-paid policy shall be delivered at Closing."

- G. The **Closing** paragraph is now number 6, but the text is identical to former paragraph 5.
- H. The **Possession** paragraph is now number 7, and the only change to the text of former paragraph 6 is the reference to the paragraph number of the Optional "Post Closing Possession" paragraph from 38 to 40.
- I. The **Statutory Disclosures** paragraph is now number 9. The formatting has been changed to allow for ease of use. There is one disclosure per line, and the next to the boxes is the parenthetical direction "[check one]" in italics. The change in format makes the form easier to read and to complete. The only change in the language is in the first disclosure, with the deletion of the word "Report" with reference to the disclosure to be made under the Illinois Residential Real Property Disclosure Act. The committee considered that the "Disclosure" consisted of the Report and the pertinent portion of the Act, so that the inclusion of the word "Report" might be misconstrued as a suggestion that the portions of the Act traditionally provided no longer were required. If the words "Report and pertinent portions of the Act" were included, the text would have continued into a second line, thereby interfering with the formatting scheme that appears on the final draft. So, considering "Less is more", the committee considered the "Disclosure" to mean both the Report and the pertinent portions of the Act. Also, the word "Pamphlet" was deleted from the reference to the disclosure of the "IEMA Radon Testing Guidelines for Real Estate Transactions".
- J. Paragraph 10, the **Prorations** paragraph, which formerly appeared at paragraph 8, after considerable debate, has been left unchanged except for a reference to the survival of requirements of the paragraph after closing.
- K. The **Attorney Review** paragraph now appears at paragraph 11. No changes were made to the text, except for the reference to the default subparagraph (c) for the giving of notice.
- L. The **Professional Inspections and Inspection Notices** paragraph now appears at paragraph 12. The only changes made to the text are at the last sentence in subparagraph (c): "Said Notice shall not

include any portion of the inspection reports unless requested by Seller” and in the paragraph reference number in subparagraph d). The committee wanted to avoid the situation where a Buyer who would have the absolute unquestioned right to cancel a transaction on account of the results of the professional inspection could require Seller to amend the Residential Real Property Disclosure on account of the content of an inspection report. Because the content need not be disclosed to Seller, there appeared to be no need for delivery of any portion of the inspection report.

M. The **Mortgage Contingency** paragraph now appears at paragraph 8. Significant amendments were made to this paragraph.

1. The heading of the paragraph contains the following additional language: “If This Transaction Is Not Contingent Upon Financing, Optional Paragraph 43 (Either a (a or b)) Must Be Used And Provisions Of This Paragraph 8 Are Not Applicable”. The committee intended by this reference to create a means to avoid the misuse of the Mortgage Contingency paragraph in transactions where financing is not required. Additional comments will follow when the subject of Optional Paragraph 36 is addressed.
2. Buyer must cause an appraisal of the Real Estate to be ordered by Buyer’s Lender within ten (10) Business Days after the Date of Acceptance in addition to the pre-existing requirement to make application for financing within five (5) business days after the Date of Acceptance and failure to do either shall amount to an event of default.
3. The concept of “firm written commitment for financing (except for matters of title and survey and matters totally within Buyer’s control” and a date for the issuance of same have been deleted from this paragraph. It was never clear what matters were “totally within Buyer’s control”. In addition, it is extremely rare to have issued a “firm written commitment” for financing. The committee considered the fact that the documents that issue from mortgage lenders are typically a “pre-approval” or “prequalification” letter and a “Clear to Close” letter. But the committee wanted to create a contingency that would arise during the transaction at approximately the same time as the “written commitment” issued in the past, to allow assurances to Seller that the transaction was proceeding on pace. In lieu of the issuance of a “firm written commitment” the committee chose as a contingency the requirement that Buyer produce evidence that the loan application has been submitted for underwriting approval by a date certain. If the date is left blank, the Contract contains a default provision of thirty days after the Date of Acceptance. If such evidence is not made available by Buyer, either Party has the option to declare the transaction null and void. Notice of such declaration may be made by either Party not later than two business days after the said date or thirty-day time period has passed (the committee wanted to allow time for resolution of issues that might arise in this context, but considered three business days to be an unnecessarily long period of time.
4. A “second contingency” period has been added to this paragraph. If Buyer could not provide written evidence that the loan was “Clear to Close” by a date certain (if no date or time period was specified, the Contract contains a default provision of forty-five days after the Date of Acceptance. If such evidence is not made available by Buyer, either Party has the option to declare the transaction null and void. Notice of such declaration may be made by either Party not later than two business days after the said date or the forty-five-day time

period has passed (the committee wanted to allow time for resolution of issues that might arise in this context, but considered three business days to be an unnecessarily long period of time.

5. The Contract recites that “A Party causing a delay in the loan approval process shall not have the right to terminate under each of the preceding paragraphs” [that is, either of the two contingency provisions above].
 6. The text of the paragraph has been revised to allow for either Party to exercise the right to terminate, but also that either party may waive such right.
 7. The Seller’s option to seek financing for Buyer within thirty (30) days after Buyer’s Notice of Inability to Obtain Financing, formerly appearing in the last two sentences of this paragraph, has been deleted as unnecessary and disfavored. It was observed by the attorney members of the committee that the Seller’s Option was the provision in the Contract most commonly excised by attorneys pursuant to the authority in the Attorney Review paragraph.
- N. The **Homeowner Insurance** paragraph now appears at paragraph 13 without change in the text from former paragraph 12.
- O. The **Flood Insurance** paragraph now appears at paragraph 14 with one change. In the first sentence, the following has been deleted: “Unless previously disclosed in the Illinois Residential Real Property Disclosure Report...” After much consideration, the committee decided that the cost of the flood insurance, and not the fact that the Seller may have disclosed that the Real Estate was located in a Special Flood Hazard Area, should be the determining factor. The reference to the former “deadline date described in Paragraph 11” (referring to the Mortgage Contingency Date in the 5.0 Contract) as a benchmark for the time for Buyer to opt out of the Contract was replaced with “...the date specified in Paragraph 8 (a)...” referring to the first of the two contingency periods in the Mortgage Financing paragraph.
- P. The **Condominium/Common Interest Associations** paragraph now appears in paragraph 15.
- A.) The first change was made to save space – a parenthetical “shorthand” reference to “the Declaration of Condominium/Covenants Conditions and Restrictions” now appears as (“Declaration/CCR’s”) throughout the paragraph.
 - B.) Next, there was moved from the Prorations paragraph a concept that now appears as a required disclosure at subparagraph (c): “Seller shall notify Buyer of any proposed special assessment or increase in any regular assessment between the Date of Acceptance and Closing. Parties shall have three (3) business days to reach agreement relative to the payment thereof. Absent such agreement either Party may declare this Contract null and void.”
 - C.) The burden of seeking disclosure of information provided (currently) at section 22.1 of the Condominium Property Act was changed so that Buyer no longer needs to affirmatively request it. Instead, Seller now has the duty to apply for it and to provide “...no later than the time period provided by law.” The committee did not use the section number nor specify a certain time period, to allow for the Contract to remain applicable and viable notwithstanding possible future changes to Illinois statute regarding section numbers and

time limitations. Parties are presumed to know the law and can obtain legal advice when they do not. The remainder of the paragraph remains intact, albeit realigned.

- Q. **The Deed** paragraph now appears at paragraph 16. The only change is the deletion of the word “general” referring to the type of Warranty Deed required. The committee acknowledged the increasing use of Special Warranty deeds and how same benefit Sellers while remaining insurable by title insurance companies.
- R. The **Title** paragraph now appears at paragraph 18. The only change is the substitution of the word “presumptive” for the word “conclusive” when referring to the commitment for title insurance and its status as evidence of good and merchantable title. This change was occasioned by the unfortunate dictum in the case of [United Community Bank v. Prairie State Bank & Trust](#), 2012 IL App (4th) 110973 (July 11, 2012) that referred to the unfettered right of title insurers to ignore intervening liens in the chain of title. The committee considered the possibility that the language regarding “conclusive evidence” could be construed as allowing Buyer to waive the covenant of good and merchantable title and therefore have no basis to enforce a claim against the Owner’s Policy of Title Insurance.
- S. The **Survey** paragraph now appears at paragraph 19 without change in the text of former paragraph 17. (The former paragraph 18, entitled “Escrow Closing”, has been deleted.)
- T. The **Damage to Real Estate or Condemnation Prior to Closing** paragraph now appears at paragraph 20 otherwise unchanged.
- U. The **Real Estate Tax Escrow** paragraph remains at paragraph 20 unchanged.
- V. The **Seller Representations** paragraph now appears at paragraph 23, amended as follows:
- 1.) The sentence “Seller’s representations contained in this paragraph shall survive the Closing” has been relocated and placed at the beginning of the paragraph, for emphasis. It had been the last sentence in the paragraph, after the specific representations regarding Special Assessments and Special Service Areas.
 - 2.) The word “...any...” has been inserted in the introductory paragraph, modifying written notice, and “...association or...” has been added to “...governmental...” and the word “...entity...” has replaced the word “...body...” The text now describes “...any association or governmental entity...” as the originators of the applicable notices of the listed matters.
 - 3.) In the description of permits for improvements at subparagraph (g), the words “...initial and final...” now modify the word “...permits...”
 - 4.) In an attempt to have meaningful disclose emanate from this paragraph, the committee added a place for the initials of Parties in the beginning of the two subparagraphs that seek further representation concerning special assessments, Special Assessment Areas and Special Service Areas.
 - 5.) While the content of the representations in those subparagraphs described in the previous subparagraph herein were not amended, the bold print language describing the option of the Buyer to declare the Contract null and void if the representations were unacceptable to Buyer was modified. Gone are any time limitations for Buyer to provide notice of election to terminate, as well as any reference to timing in relation to the time limitations in the Mortgage Contingency paragraph. Instead the text provides that representations are deemed remade at closing. If prior to Closing Seller becomes aware of matters requiring modification of the representations made in this paragraph, Seller is required to “promptly’

notify Buyer. If the matters specified in the Seller's notice are not resolved prior to Closing, Buyer may terminate the transaction.

- W. The **Condition of Real Estate and Inspection** paragraph now appears at paragraph 22 but otherwise is unchanged.
- X. The **Municipal Ordinance, Transfer Tax and Governmental Compliance** paragraph now appears at paragraph 17 but otherwise is unchanged.
- Y. The **Business Days/Hours** paragraph remains at paragraph 24 intact. Each time the committee meets to revise the contract form there is a request to amend "...Chicago time..." to "...Central time..." Each time it is rejected. The term "...Chicago time..." incorporates by reference changes from Standard time to Daylight Savings time and avoids confusion for those users who may reside or work in that portion of the state of Indiana in the Central Time Zone that does not adopt the use of Daylight Savings time.
- Z. The **Facsimile or Digital Signatures** paragraph now at paragraph 25 has been amended by the addition of a description of methods of delivery of the Contract with a signature deemed to be an original signature, including a scan of a facsimile signature. The language also references the use of a mutually acceptable electronic security procedure for the production and delivery of a "digitally signed copy". These additions do not impact the Notice provisions of paragraph 27 of the Contract.
- AA. The **Direction to Escrowee** paragraph at paragraph 26 was modified significantly, primarily to reflect a method of distribution of earnest money held in escrow available to those Escrowees subject to Illinois Real Estate License Law. The paragraph was also changed to reflect the growing trend of changes to the business models of real estate brokerages to eliminate the practice of holding any funds in escrow, including earnest money. The language in the 5.0 Contract was considered confusing to the extent that it provided, on the one hand, for distribution of earnest money "...upon entry of an order by a court of competent jurisdiction..." but later that there "...should be no distribution of earnest money unless Escrowee has been provided written direction from Seller and Buyer." In order to resolve the ambiguity, the Contract retains from the 5.0 form the ability of the Parties to direct the Escrowee in writing to disburse, as well as the following methods of resolution of the issue of holding earnest money or other deposits in escrow if no joint written direction is made:
 - 1.) Distribution after notice of intent to disburse is provided to Parties in accordance with the provisions of the recent amendment to License Law, and no objection having been given to Escrowee regarding Escrowee's proposed disbursement prior to the 14-day time period allowed by License Law; or
 - 2.) Escrowee may file suit for Interpleader, as was allowed in the 5.0 contract form. The Interpleader option remains substantially the same as was available in 5.0, with minor changes to the indemnification provisions and a reimbursement requirement if the escrowed funds are insufficient to compensate Escrowee for costs and attorney's fees for the Interpleader action.
- BB. The **Notice** paragraph remains at paragraph 27 unchanged except for reference to "kick-out" notices now contained in paragraph 32 c) 2).
- CC. The **Performance** paragraph remains at paragraph 28 unchanged.
- DD. The **Choice of Law/Good Faith** paragraph remains at paragraph 29 unchanged, except that it is now entitled "Choice of Law And Good Faith".

EE. The Other Provisions paragraph remains at paragraph 30 with the addition after the word “...following...” the word “...additional...” referring to the attachments to be described in the space provided. The committee wanted to discourage users from reciting in the space provided a list of the Optional Paragraphs selected, but rather to recite when an attachment (e.g., a Short Sale Addendum or an Installment Agreement for Deed) was to be added to the contract.

Changes by paragraph to Optional provisions:

FF. The **Sale of Buyer’s Real Estate** paragraph now appears at paragraph 32, essentially unchanged but for the global reference to “Buyer’s real estate” and the removal of the term “said real estate”, as well as corrected reference to paragraph 32 throughout.

GG. The **Cancellation of Prior Real Estate Contract** paragraph now appears at paragraph 33 but is essentially unchanged.

HH. The **Closing Cost Credit** paragraph now appears at paragraph 35 but is essentially unchanged, except for the addition of “...or Closing Disclosure...” after the reference to the HUD-1.

II. The **Interest Bearing Account** paragraph formerly at paragraph 34 has been relocated to paragraph 43. The committee at first decided to delete the paragraph but was persuaded to allow it to remain for use essentially by NSBAR.

JJ. New paragraph 34 is entitled **Home Warranty**. That paragraph was removed from the Fixtures and Personal Property section and relocated as an Optional “stand-alone” Paragraph. The provision in 5.0 was ambiguous, with check boxes for whether a warranty “shall” or “shall not” be included, but no determination as to responsibility. It was also ambiguous because it expressed the type of coverage “...at a Premium not to exceed \$____.” Read strictly, a description of a Premium not to exceed \$500, for example, could include a program with a Premium of \$395.00. Because of lack of uniformity in the industry, the program coverages must be described in terms of the cost of the program as opposed to some other identifier (e.g., HWA has a “Platinum” program). To add certainty to the provision regarding responsibility for payment for coverage, the text of this paragraph provides that “Seller shall provide at no expense to Buyer...” To provide greater definition as to the extent of the coverage, the paragraph no longer contains “...not to exceed...” with reference to the cost of the Premium; the actual cost is required, but the actual cost should be available to and known to the user. Finally, to eliminate problems associated with delivery of the warranty program, the contract requires “Evidence of a fully pre-paid policy shall be delivered at Closing.”

KK. The **VA or FHA Financing** paragraph now appears at paragraph 35 essentially unchanged.

LL. The **Interim Financing** paragraph formerly at paragraph 36 has been deleted from the contract form. The committee determined that the form was rarely used and that the Parties could elect through counsel to add such a provision when desired.

MM. New paragraph 38 is entitled **Well Or Sanitary System Inspections**. Other than the revised title to the paragraph, the paragraph contains the same language that appeared in the 5.0 form at paragraph 37.

NN. New paragraph 39 is the **Wood Destroying Infestation** paragraph that contains the same language that appeared in the 5.0 form at paragraph 38.

- OO. New paragraph 40 is the **Post-Closing Possession** paragraph that contains the same language that appeared in the 5.0 form at paragraph 39.
- PP. New paragraph 41 is the **“AS-IS” Condition** paragraph formerly found in the 5.0 contract form at paragraph 40. The language in the paragraph was unchanged from the 5.0 form with the exception of the addition of the following “Buyer’s notice SHALL NOT include a copy of the inspection report, and Buyer shall not be obligated to send the inspection report to Seller absent Seller’s written request for same.” The committee considered this provision would accomplish fundamental fairness - delivery of the report is unnecessary in these instances and sellers could remain free from duty to amend disclosure statements without specific knowledge of defects that the report might disclose.
- QQ. New paragraph 31 is the **Confirmation of Dual Agency** paragraph that contains the same language that appeared in the 5.0 form at paragraph 41.
- RR. The **Specified Party Approval** paragraph remains unchanged at paragraph 42. Although there was discussion about removing this paragraph, it was allowed to remain in place.
- SS. New paragraph 44 is the **Miscellaneous Provisions** paragraph that contains the same language that appeared in the 5.0 form at paragraph 43 (although the parenthetical direction to “check boxes” now appears in bold italics).
- TT. Two new paragraphs appear at paragraph 36 dealing with “Cash Transactions”

This paragraph begins with a heading describing transactions not contingent upon financing. This paragraph was deemed necessary because of the misuse of the Mortgage Contingency paragraph but also acknowledges that there are differences between true “all-cash” transactions where no mortgage is required (subparagraph (a)) and transactions where a buyer might be able to pay for the Real Estate with cash but preferred to use mortgage financing to avoid depleting liquid funds, for tax reasons or other reasons (subparagraph (b)).

The paragraph contains optional subparagraphs (a) and (b). Each subparagraph contains:

- A requirement that “Good Funds” are paid at Closing;
- A representation that Buyer can do so;
- An agreement that Seller may verify Buyer’s funds need to close;
- An acknowledgement by Buyer that so long as seller has complied with Seller’s contractual obligations, any act or omission outside of Seller’s control (e.g., Buyer’s mortgage lender, investment adviser, banker, etc.) that prevents Buyer from satisfying the balance due at Closing may be a breach of contract by Buyer.

Subparagraph (b) contains the same language as in subparagraph (a), with the following additional provisions:

“Notwithstanding such representation, Seller agrees to reasonably and promptly cooperate with Buyer so that Buyer may apply for and obtain a mortgage loan or loans including but not limited to providing access to the Real Estate to satisfy Buyer’s obligation to pay the balance due (plus or minus prorations) to close this transaction. Such cooperation shall include the performance in a timely manner all of Seller’s pre-closing obligations under this Contract. This Contract shall NOT be contingent upon Buyer obtaining a commitment for financing.”

Subparagraph (a), the true “all cash” provision, allows for the title company closing fee to be split between Parties, as was the case in 5.0. Subparagraph (b) provides that the title company closing fee, which is essentially an agency escrow lender’s closing fee, to be paid solely by Buyer.

Although this paragraph was intended to provide gradations between two types of “cash buyers”, it was not intended to be misused by a buyer who requires some amount of mortgage financing but who feels strongly that mortgage financing will be readily attainable. The committee felt strongly that such a buyer remains a buyer “contingent on financing” for whom the standard Mortgage Contingency paragraph was designed to serve. The whole point of devising optional non-contingent paragraphs was to avoid the situation where a “contingent buyer” attempted to disguise herself or himself as a “cash buyer”. Earlier proposals to require minimum earnest money deposits (either in amounts of money or percentages of the total purchase price) and liquidated damages clauses for non-contingent transactions were rejected as cumbersome and unworkable. The final draft was determined by the committee to constitute the best solution to the perceived problem.

Short Sale Addendum

The **Short Sale Addendum** was amended to provide for the deletion of former paragraph 5 and the renumbering of the paragraphs accordingly. Former paragraph 5 provided:

“Right to Continue to Offer Property For Sale: Buyer acknowledges and agrees that, prior to obtaining all necessary short sale payoffs and consents from third parties, Seller may continue to offer the Property for sale and, in the event Seller receives a bona fide offer to purchase the Property from another prospective purchaser with terms more favorable to Seller than those contained in the Contract, Seller shall first offer to Buyer the right to purchase the Property on the new terms and conditions. In the event Buyer does not agree to same within three (3) Business Days after the effective date of Seller’s notice, Seller shall have the right to terminate the Contract, in which case all earnest money shall be refunded to Buyer.”

The committee felt strongly that this provision was unfair to Buyer and unworkable. It often is subject to deletion from the Contract by Buyer’s counsel pursuant to the Attorney Review provision. Seller’s counsels rarely object, because of the lack of economic impact on Seller, for whom little or no compensation is available.

The **Loan Status Disclosure** has officially been deleted. In 5.0 it was not considered part of the contract, but due primarily to confusion in the minds of those employed by mortgage lenders it was occasionally considered part of the contract. It fell out of favor primarily because loan officers typically drafted their own comparable letters on their letterhead.

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