

2010 Statewide Forms Review & Practice Tips

As you know, each year the Statewide Forms Committee conducts a review to determine whether the forms available from MAR continue to meet the needs of our members and are in compliance with recently enacted state or federal law. Here are the new forms and changes to existing forms, as approved by the Committee. If you have any questions or would like additional information, please call the MAR Legal Department at 800-638-6425.

Revised Forms

MAR Residential Contract of Sale

- **Paragraph 7(b) - Payment Terms** – The second line in Paragraph 7(b) "Additional Deposit" was deleted. In its place, blank lines were inserted.
 - **Practice Tip** – This change allows flexibility in determining how any additional deposit will be handled. For example, the parties may negotiate that the additional deposit is due within a certain time after the occurrence of a specific event like receipt of third party approval.
- **Paragraph 16 - Lead-based Paint** – Paragraph A (discussing the federal disclosure) and Paragraph B (discussing the Maryland Lead Poisoning Prevention Program) were condensed to about half of a page. Buyer simply initials that she has read and understands both Paragraphs. See below for additional clarification.
 - **Practice Tip** – In assisting the buyer with drafting the offer, the buyer's agent should explain to the buyer the seller's disclosure obligations with respect to the federal lead-based paint disclosure law. The buyer's agent should also explain to the buyer the registration requirements under the Maryland Lead Poisoning Prevention Program.
- **Paragraph 51 - Property Tax Notice - 60 Day Appeal** – Paragraph 51 is required as of 10/1 under Chapter 380, Acts of 2010. The new language reads as follows:

If any real property is transferred after January 1 and before the beginning of the next taxable year to a new owner, the new owner may submit a written appeal as to a value or classification on or before 60 days after the date of the transfer.

Federal Lead-Based Paint Disclosure – The revised federal lead-based paint disclosure requires the seller to initial either that the property was constructed prior to 1978 or that the seller does not know when the property was constructed.

- **Practice Tip** – At the time the listing is taken, the listing agent should explain the seller's obligations with respect to the Federal Lead-Based Paint Disclosure requirements. If applicable, the seller is to complete the disclosure and acknowledge that the seller understands her obligations under the law. The listing agent should then provide the completed disclosure to prospective buyers before they submit their offer.

"As Is" Addendum – The revised Addendum includes language that requires the Seller to have utilities in service at the time of any inspections.

- **Practice Tip** – Before the seller accepts an offer contingent upon an inspection or if the seller is contemplating accepting an offer that includes the MAR As Is Addendum, for example, the listing agent should explain to the seller that both addenda require that the seller have the utilities in service at the time of the inspection.

Property Inspections Addendum – The revised Addendum includes language that requires the Seller to have utilities in service at the time of inspections.

Short Sale Addendum – Paragraph 8 d was removed based on changes made to Paragraph 7(b) of the Contract of Sale.

Third Party Approval Addendum – The revised Addendum makes clear that the Third Party Approval Addendum should not be used if the parties are using the MAR Short Sale Addendum.

- **Practice Tip** – If the transaction is a short sale and the parties are using the MAR Short Sale Addendum, the Third Party Approval Addendum should not be used.

New Forms

Maryland Lead-Based Paint Disclosure – There is a new Maryland Lead-Based Paint Disclosure. The same language that was in Paragraph 16B of the MAR Contract is now included in the new disclosure.

- **Practice Tip** – At the time the listing is taken, the listing agent should review the Maryland Lead Poisoning Prevention Program registration requirements with the seller. If applicable, the Maryland disclosure should be completed by the seller so that it can be made available to prospective buyers before they submit their offer.

Unimproved Land Listing Agreement – This listing agreement was modeled after the MAR Exclusive Right to Sell Listing Agreement. Provisions regarding property condition such as the lead-based paint provision were deleted.

- **Practice Tip** – As with the Listing Agreement, each broker needs to fill in many blanks with provisions that reflect individual broker office policies. For antitrust reasons, MAR cannot dictate these policies and each broker must establish them independently. For example, termination and compensation fields must be completed. Brokers from different companies must not discuss these policies, as doing so may lead to antitrust law violations.

HABA Addendum to MAR Contract of Sale – This Addendum states that the parties agree that the transaction was negotiated at arms length. Additionally, the buyer agrees not to sell the property within 90 days of the close of the sale.

- **Practice Tip** – This addendum is for use where the seller's lender has agreed to participate in the Home Affordable Foreclosure Alternatives ("HABA") program. HABA is part of the Home Affordable Modification Program and provides financial incentives to servicers and borrowers who utilize a short sale or deed-in-lieu to avoid foreclosure on an eligible loan under HAMP. Note that lenders may require the parties to use their addenda which would include this language.

HABA Addendum to MAR Listing Agreement – This Addendum is to be used in transactions where the seller's loan servicer has agreed or will agree at any time during the listing period to participate in the HABA program. It permits the seller to cancel the contract if the property transfers to the lender. It also permits the lender to include additional terms and conditions. Of course any new conditions proposed by the bank would have to be agreed to by the parties.

- **Practice Tip** – This addendum is for use where the seller's lender has agreed to participate in the Home Affordable Foreclosure Alternatives ("HABA") program. HABA is part of the Home Affordable Modification Program and provides financial incentives to servicers and borrowers who utilize a short sale or deed-in-lieu to avoid foreclosure on an eligible loan under HAMP. Note that lenders may require the parties to use their addenda which would include this language.

Technical Changes to Existing Forms

Technical changes (formatting, style, etc.) were made to the following forms:

- **Water Quality Addendum**
- **Exclusive Buyer Representation Agreement**
- **Resale of Condominium Unit Acknowledgement**
- **Unilateral Notice of Termination of Contract of Sale/Mutual Release of Deposit Agreement**
- **MAR Listing Agreement**
- **Maryland Homeowners Association Act Disclosures to Buyer And Transmittal of Documents**