

# **Presentation for the 2015 FLTA Annual Convention**

## **Changes to the Florida Realtors/Florida Bar Residential Contract Documents**

**Effective September, 2015**

### **Revised Items - Applicable to both "As Is" and Contract requiring Seller to make repairs.**

1. Extension of Closing Date – 5(a)
2. Financing – 8(a) and (b)
3. Title Insurance and Survey – 9(c) and (d)
4. Force Majeure – 18(g)
5. Seller Financing Rider
6. Appraisal Contingency Rider
7. Homeowner's/Flood Insurance Rider

### **Revision to Contract which requires Seller to make repairs:**

1. Property Inspection and Repair

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Realtor Attorney Committee  
Vice Chair***

## 5. Extension of Closing Date

### *Existing Text*

**5. EXTENSION OF CLOSING DATE:**

- (a) If Closing funds from Buyer's lender(s) are not available at time of Closing due to Truth In Lending Act (TILA) notice requirements, Closing shall be extended for such period necessary to satisfy TILA notice requirements, not to exceed 7 days.

### *Revised Text*

**5. EXTENSION OF CLOSING DATE:**

- (a) If Paragraph 8(b) is checked and Closing funds from Buyer's lender(s) are not available at time of Closing due to Truth in Lending Act (TILA) notice requirements, on Closing Date due to Consumer Financial Protection Bureau Closing Disclosure delivery requirements ("CFPB Requirements"), then Closing Date shall be extended for such period necessary to satisfy TILA notice requirements CFPB Requirements, provided such period shall not exceed 7 10 days.

# 8. Financing

## *Existing Text*

### 8. FINANCING

- (a) Buyer will pay cash or may obtain a loan for the purchase of the Property. There is no financing contingency to Buyer's obligation to close.
- (b) This Contract is contingent upon Buyer obtaining a written loan commitment for a  conventional  FHA  VA or  other \_\_\_\_\_ (describe) loan on the following terms within \_\_\_\_\_ (if left blank, then 30) days after Effective Date ("Loan Commitment Date") ...

## *Revised Text*

### 8. FINANCING

- (a) Buyer will pay cash ~~or may obtain a loan~~ for the purchase of the Property at Closing. There is no financing contingency to Buyer's obligation to close. If Buyer obtains a loan for any part of the Purchase Price of the Property, Buyer acknowledges that any terms and conditions imposed by Buyer's lender(s) or by CFPB Requirements shall not affect or extend the Buyer's obligation to close or otherwise affect any terms or conditions of this Contract.
- (b) This Contract is contingent upon Buyer obtaining a written loan commitment for a  conventional  FHA  VA or  other \_\_\_\_\_ (describe) loan on the following terms within \_\_\_\_\_ (if left blank, then 45 30) days after Effective Date ("Loan Commitment Date") ...

Buyer shall make mortgage loan application for the Financing within \_\_\_\_\_ (if left blank, then 5) days after Effective date and use good faith and diligent effort to obtain a written loan commitment for the Financing ("Loan Commitment") and thereafter to close this Contract. Buyer shall keep Seller and Broker fully informed about the status of mortgage loan application and Loan Commitment and authorizes Buyer's mortgage broker and Buyer's lender to disclose such status and progress to Seller and Broker.

Upon Buyer's receipt of Loan Commitment, Buyer shall provide written notice of same to Seller. If Buyer does not receive Loan Commitment by Loan Commitment Date, then thereafter either party may cancel this Contract **up to the earlier of:**

- (i.) Buyer's delivery of written notice to Seller that Buyer has either received Loan Commitment or elected to waive the financing contingency of this Contract; or
- (ii.) 7 days prior to the Closing Date specified in Paragraph 4, which date, for purposes of this 8(b) (ii), shall not be modified by Paragraph 5(a).

If either party timely cancels this Contract pursuant to this Paragraph 8 and Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and seller from all further obligations under this Contract. If neither party has timely canceled this Contract pursuant to this Paragraph

## 9. Closing Costs; Title Insurance; Survey; ...

### *Revised Text*

#### 9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:

(c) **TITLE EVIDENCE AND INSURANCE:** At least \_\_\_\_\_ (if left blank, then 15, or if Paragraph 8 (a) is checked, then 5) days prior to Closing Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium, title search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set forth below. The title insurance premium charges for the Owner's Policy and any lender's policy will be calculated and allocated in accordance with Florida Law, but may be reported differently on certain federally mandated closing disclosures and other closing documents.

#### **(CHECK ONE):**

(i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges, ~~(but not including and Buyer shall pay the premium for Buyer's lender's policy and~~ charges for closing services related to the Buyer's lender's policy, ~~and~~ endorsements and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other provider(s) as buyer may select); or ...

(d) **SURVEY:** ~~At least 5 days prior to Closing~~ On or before Title Evidence Deadline, Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.

## 18. Force Majeure

### *Revised Text*

**G. FORCE MAJEURE:** Buyer or Seller shall not be required to perform any obligations under this Contract or be liable to each other for damages so long as performance or non-performance of the obligation is delayed, caused or prevented by Force Majeure. "Force Majeure" means: hurricanes, earthquakes, floods, fire, acts of God, unusual transportation delays, wars, insurrections, and acts of terrorism, ~~and any other cause not reasonably within control of Buyer or Seller, and~~ which, by: exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended for the period that the Force Majeure prevents performance under this Contract, provided, however, if such Force Majeure continues to prevent performance under this Contract more than 14 days beyond Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

# Rider C. Seller Financing

## *Revised Text*

### II. SELLER FINANCING

Seller agrees to hold a note secured by **(CHECK ONE)**:  a first or  a second purchase money mortgage, executed by Buyer in the principal amount of \$ \_\_\_\_\_ at \_\_\_\_\_% interest per annum that will be **(CHECK ONE\*)**:

- (a)  fully amortized for a term of \_\_\_\_\_ (if left blank, then 30) years; or
- (b)  an interest-only mortgage loan that complies with the requirements of Dodd-Frank set forth above for a term of \_\_\_\_\_ (if left blank, then 60) months, and requires monthly, quarterly, annual or other periodic interest payments (Permitted for the one property exclusion only); or
- (c)  balloon mortgage that complies with the requirements of Dodd-Frank, set forth above, and initially amortized for a term of \_\_\_\_\_ (if left blank, then 30) years (Permitted for the one property exclusion only); or
- (d)  an adjustable rate mortgage loan for a minimum term of \_\_\_\_\_ (if left blank, then 30) years, with interest rate adjustments as follows:
  - (i) The initial annual interest rate may change after \_\_\_\_\_ (but no less than 5, which shall be the number if left blank) years, and thereafter every \_\_\_\_\_ (if left blank, then 1) year(s). Each date on which the interest rate changes is called a "Change Date."
  - (ii) The interest rate adjustments shall be based on a widely available index identified in (c) (iii), below. As of each Change Date, the new interest rate will be calculated by adding \_\_\_\_\_ percentage points (if left blank, then 1) to the then current index; however, the difference between the interest rate paid during the preceding twelve months and the new interest rate shall be limited to a change in the interest rate of \_\_\_\_\_ percentage points (but no more than 2, which shall be the number if left blank), and the lifetime interest rate change from the initial annual interest rate shall be limited to \_\_\_\_\_ percentage points (but no more than 6, which shall be the number if left blank).
  - (iii) The widely available index to be used to calculate interest rate adjustments shall be the \_\_\_\_\_ (if left blank, then the index shall be the weekly average yield on United States Treasury securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board on the date 45 days before each Change Date.)

**\* PURSUANT TO DODD-FRANK NO OTHER OPTIONS ARE PERMITTED.**

Principal plus interest shall be payable (in the event of an adjustable rate mortgage loan, initially) in equal **(CHECK ONE)**:  monthly  quarterly or  annual payments of \$ \_\_\_\_\_ each, including interest, with the first payment due \_\_\_\_\_ month(s) after Closing. If a balloon mortgage, the final payment will exceed the periodic payments thereon, and the entire unpaid principal balance plus accrued interest shall be due and payable in \_\_\_\_\_ (~~not less than 5, which shall be the number if left blank~~) years if left blank, then 60) months from date of Closing.

If a second mortgage, the amount of the first mortgage shall not exceed the amount set forth in Paragraph 2(c) of the Contract, and a default in the first mortgage shall, at the option of the holder, constitute a default of the second mortgage. ...

## Rider F. Appraisal Contingency:

### *Revised Text*

This Contract is contingent upon Buyer obtaining, at Buyer's expense, a written appraisal from a licensed Florida appraiser, on or before \_\_\_\_\_ (if blank, then at least ten (10) days prior to Closing), stating that the appraised value of the Property is at least \$ \_\_\_\_\_ (if left blank, the Purchase Price), on or before \_\_\_\_\_. If the appraisal states that the appraised value of the Property is less than the above value, Buyer shall deliver a copy of such appraisal to Seller within 3 days after the above date and deliver written notice to Seller, either: a) terminating this Contract in which even the Deposit paid shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract; or b) waiving and removing this contingency and continuing with this Contract without regard to the appraised value of the Property, except as provided in Paragraph 8(b) if it is checked.

If Buyer fails to timely obtain an appraisal, or having timely obtained such appraisal fails to timely deliver notice of Buyer's exercise of the right to terminate granted above, this contingency shall be waived and removed, and Buyer shall continue with this Contract, without waiving any of Buyer's rights in Paragraph 8(b) if it is checked.

## Rider H. Homeowner's/Flood Insurance

### *Revised Text*

- (a) **Homeowner's Insurance:** If Buyer is unable to obtain homeowner's insurance coverage (including windstorm) from a standard carrier or the Citizen's Property Insurance Corporation at a first year annual premium(s) not to exceed \$ \_\_\_\_\_ or \_\_\_\_\_% of the Purchase Price by \_\_\_\_\_, 20 \_\_\_\_\_ (if left blank, then the earlier of 30 days after Effective Date or **10 5** days prior to Closing Date), Buyer may terminate this Contract by delivering written notice to the Seller by the date set forth in this Paragraph, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.
- (b) **Flood Insurance:** In addition to the right of termination provided to Buyer in Paragraph 10(d), if Buyer is unable to obtain a flood insurance coverage through the National Flood Insurance Program or through private flood insurance (as defined in 42 U.S.C. §4012a) at a first year premium not to exceed \$ \_\_\_\_\_ or \_\_\_\_\_% of the purchase price by \_\_\_\_\_, 20 \_\_\_\_\_ (if left blank, then the earlier of 30 days after Effective Date or **10 5** days prior to Closing Date), Buyer may terminate this Contract by delivering written notice to the Seller by the date set forth in this Paragraph, and buyer shall be refunded this Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

## Revision to Contract which requires Seller to make repairs:

# 12. Property Inspection and Repair:

### *Revised Text*

(a) **INSPECTION PERIOD:** ~~By the earlier of 15~~ Buyer shall have \_\_\_\_\_ (if left blank 15) days after Effective Date ~~or 5 days prior to Closing Date~~ (“Inspection Period”) within which, Buyer may, at Buyer’s expense, conduct “General”, “WDO”, and “Permit” inspections described below. If Buyer fails to timely delivery to Seller a written notice or report required by (b), (c), or (d) below, then, except for Seller’s continuing Maintenance Requirement, Buyer shall have waived Seller’s obligation(s) to repair, replace, treat or remedy the matters not inspected and timely reported. If this Contract does not close, Buyer shall repair al damage to Property resulting from Buyer’s inspections, return Property to its pre-inspection condition and provide Seller with paid receipts for all work done on Property upon its completion.