

Florida Realtors/Florida Bar (FR/BAR) Residential Contract Documents Revised Effective September 2014

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The residential FR/BAR Contract documents have been in continuous use since 1973 and currently consist of the Residential Contract for Sale and Purchase, the "As Is" Residential Contract for Sale and Purchase, and the Comprehensive Rider, which is comprised of Riders A - BB. These forms, which are widely considered to be the gold standard of statewide residential real estate contracts, are promulgated by the Florida Realtor-Attorney Joint Committee¹, a state-wide committee of Attorneys and Realtors appointed by their respective organizations. Consistent with the Joint Committee's stated purpose, its members' author and periodically update the FR/BAR Contract documents, which are then approved by Florida Realtors and The Florida Bar for use in residential real

estate transactions. Additionally, the Joint Committee is charged with working to foster better relations between the two professions.

The FR/BAR Contracts and Riders are typically revised every two to three years, and the last comprehensive change was approved and became effective in July 2013. The 2014 revisions were completed mid-cycle because there were some statutory changes and contract clarifications which the committee felt should be addressed. This article provides an overview of the recent modifications that are included in the current edition of the FR/BAR Contract documents, which have been approved and issued for use effective September 2014.

The revisions include minor changes to the main body

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of the contracts, specifically, Paragraph 9 concerning allocation of payment for municipal lien searches, Paragraph 10 (d) relating to flood insurance disclosure, and revisions to Riders C., Seller Financing; E., FHA/VA Financing; and H., Homeowners'/Flood Insurance. The most comprehensive changes were made to Rider C., Seller Financing, as discussed below.

Municipal Lien Search(es)

In 2013, the contracts were revised in an attempt to deal with which party to the transaction was to pay for municipal lien searches, if any were ordered. Unfortunately, the various counties and locales in Florida have notably different customs and practices in determining whether municipal lien searches are required to be ordered, as well as who pays for this service. It became apparent to the committee that the placement of the words "municipal lien search" in Paragraph 9(c) in 2013 was creating some confusion and potentially mandating that such searches be done even in areas where it was not a customary practice. Therefore, in 2014, the committee in an effort to address these differences, revised the contracts to delete the requirement to include a municipal lien search as part of the title services in 9(c) and moved the words "municipal lien search" to 9(a) and (b), which allocates the expense of the search, if obtained in the transaction, to the seller or buyer, as applicable, based upon who pays for the owner's title insurance policy under 9(c)(i) and (ii) or the specific designation of seller under 9(c)(iii), Miami-Dade/Broward provision.

Flood Insurance

Paragraph 10(d) previously provided that the buyer could terminate the contract if the buyer could not obtain flood insurance through the National Flood Insurance Program. The 2014 revised Contract adds private flood insurance as defined in 42 U.S.C. Section 4012a, so that a buyer would also need to be ineligible for this option to terminate the contract on that basis. Rider H., Homeowner's /Flood Insurance, was modified in the same manner to conform with the revision to the body of the contract.

FHA Financing

Although the substance has not changed, Rider E., Federal Housing Administration (FHA)/U.S. Department of Veterans Affairs (VA), was revised to delete the pre-printed default of "Purchase Price" for the appraised value as set out in paragraph 3, and now requires that the buyer fill in the blank with "purchase price" or other dollar amount of buyer's choice. The other blanks on the form no longer have a dollar amount as a default because this is the requirement of the FHA.

Seller Financing - The Dodd-Frank Act

Rider C., Seller Financing (Purchase Money Mortgage; Security Agreement to Seller), was extensively revised to address the Dodd-Frank Act, which went into

effect on January 10, 2014, and significantly impacted residential mortgage lending, including seller financing (purchase money financing) of residential properties for the owner-occupant.²

Rider C. has changed from one to two pages. The 2014 revision provides, first, a summary of the Dodd-Frank Act (the "Act"), together with a condensed outline or road map detailing certain provisions in the Act to enable parties to navigate through either of the two primary exclusions for seller financing and avoid a seller being treated as a "loan originator." Secondly, the 2014 revision has expanded the various terms, provisions, and alternatives of the seller financing portion of the Rider which the parties can negotiate and complete. What is set forth in the Rider relating to the Act is only a summary of the Act, and the 2014 Rider includes a conspicuous warning for the parties to seek the advice of legal counsel with respect to the effect of the Act and other applicable federal and state regulations prior to entering into the contractual provisions contemplated by the seller financing rider.

Conclusion

RPPTL members can review redlines of the current edition of the contracts versus the prior editions and additional commentary by visiting the Residential Real Estate & Industry Liaison (RREIL) Committee webpage within the RPPTL Website. ■■

Endnotes

1 The Joint Committee consists of 11 Realtors and 11 Attorneys appointed by the Florida Realtors Inc., formerly the Florida Association of Realtors (FR), and by the Board of Governors of The Florida Bar. To distinguish the FR/BAR Contract from the contract issued solely by the FR, the following phrase is printed across the top: "THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR."

2 There is an article in the Fall 2014 Edition of *ActionLine*, written by Arlene C. Udick, which provides a more detailed analysis of the effect of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") on Residential Owner-Occupant Purchase Money Mortgage Financing. "The Dodd-Frank Act and the Residential Owner-Occupant Purchase Money Mortgage in Favor of Seller Financiers Or I'm here from the Government and I'm here to help you."

