

2018 SUMMARY OF CHANGES & PRACTICE TIPS



THE EFFECTIVE DATE OF THE FORMS IS OCTOBER 1ST, 2018.

The New Forms are:

Escrow Agreement between Buyer, Seller, and Escrow Agent

This form is intended to be used in situations where a third-party escrow agent (not the Broker) will hold the deposit.

PRACTICE TIP The Escrow Agreement is not part of the contract of sale. Buyer, Seller, and Escrow Agent would sign the Escrow Agreement immediately following contract formation.

PRACTICE TIP The agents involved in the transaction should confirm with the Escrow Agent that the earnest money deposit has been received. They should also make a written note to the file to document the inquiry. Additionally, the agents involved in the transaction should get written confirmation that the escrow monies have been deposited into the escrow account.

Buyer Hold Harmless Agreement

This form is intended to be used in situations where Buyer submits an offer on a property sight unseen.

PRACTICE TIP Buyer Broker/Agent is advised to alert Buyer that Buyer should do Buyer's due diligence. Buyer Broker/Agent should inform Buyer that Buyer Broker/Agent is not an inspector, contractor, surveyor and so on. In other words, Buyer Broker/Agent is advised to put Buyer on notice that it's in Buyer's best interest to actually see the property to ensure that it suits Buyer's needs.



Tenant Occupied Addendum

This form is intended to be used in situations where Seller is conveying the property with a tenant in possession.

PRACTICE TIP Buyer should be alerted that Buyer may need to obtain a rental license depending on where the property is located.

Additionally, if the property was constructed prior to 1978, Buyer should be alerted that lead registration is not transferable. Lastly, Buyer should be made aware that bona fide tenants living in foreclosed properties are afforded certain protections under federal and state law.

The following Addenda will be removed from Maryland REALTORS® forms library:

- Hafa Addendum to Exclusive Right to Sell Residential Brokerage Agreement
- Hafa Addendum to Residential Contract of Sale

Note – These forms are being removed from the library because the Hafa Program has ended.

The following revisions were made to the Contracts of Sale:

Residential Contract of Sale

Paragraph 14 – Agriculturally Assessed Property – A minor clarification was made to this provision.

PRACTICE TIP The parties should be alerted that if the property is assessed in the agricultural use category and Buyer does not intend to use the property for agricultural purposes, the Agricultural Land Transfer Tax may become due and could be substantial.

Paragraph 25B – Transfer Charges – The last four lines of Paragraph 25B were made bold.

PRACTICE TIP The parties should be advised that they only need to include the First-Time Maryland Homebuyer Addendum if they are **not** going to split payment of recordation and local transfer taxes.

Paragraph 60 – Electronic Delivery – A minor clarification was made to this provision.

PRACTICE TIP The parties should be advised that they do not need to create a separate agreement to conduct the transaction electronically.

Page 10 – The initial lines for Buyer and Seller were removed.

Unimproved Land Contract

Paragraph 5 – Estate – The phrase “or to be created” was removed from the paragraph because no new ground rents can be established.

Paragraph 18 – Addenda/Disclosures – “Back Up Addendum” was changed to “Back-Up Addendum” and additional lines were added to this provision to be consistent with the number of lines in Paragraph 18 of the Residential Contract of Sale.

Paragraph 60 – Electronic Delivery – A minor clarification was made to this provision.

The following revisions were made to the Addenda to the Contracts of Sale:

Back-Up Contract Addendum

The last sentence was added to clarify that the timeframes referenced in the contract will begin when Seller delivers written notice to Buyer that the Back-Up Contract has become the Primary Contract.

Kickout Addendum

Lines 3, 5, 6 & 7 – were updated to be consistent with the language in Paragraph 60 of both contracts.

Lease Option Agreement

Paragraph 17 – Option Agreement Is Integral Part of Lease

– This paragraph was added pursuant to HB 1257 effective October 1, 2018.

PRACTICE TIP Tenant should be advised that Tenant has protections under Title 8 of the Real Property Article which addresses Landlord/Tenant rights and obligations.

Property Inspections Addendum

Paragraph 6 – Damage to Property – The language was clarified to state that if Buyer, Buyer’s Agent/Broker, or Contractor damages the Property, except for damage caused by Seller’s negligence, Buyer must promptly reimburse Seller.

Property Inspections Notice

Paragraph 3C – “OR” was changed to “AND/OR.”

Paragraph 3D – The language “Seller agrees to credit Buyer ___ Dollars (\$ ___) towards Buyer’s closing costs at settlement” was changed to “Seller agrees to credit Buyer ___ Dollars (\$ ___). See attached Seller Contribution Addendum.”

Seller Acknowledgement

The title of this form was changed from “Seller Acknowledgement” to “Agency Change Acknowledgement.”

The following revisions were made to the Real Estate Brokerage Forms:

Exclusive Buyer/Tenant Representation Agreement

Paragraph 3 – Buyer Authorization – “Lessor” was changed to “landlord” and “lessee” was changed to “tenant.”

Receipt of Copy – The word “Tenant” was added.

Signature lines – The word “Tenant” was added.



Exclusive Right to Lease Residential Brokerage Agreement

Paragraph 17 – Smoke Alarm Notice – A provision discussing changes to the smoke alarm requirements was added.

PRACTICE TIP Listing Broker/Agent should alert Owner that the smoke alarm requirements have changed. If Owner has questions about whether Owner’s Property is compliant, Listing Broker/Agent should direct Owner to contact the local fire marshal. If Owner or an expert, such as a home inspector, tells Listing Broker/Agents that the Property is not compliant, Listing Broker/Agent must disclose this information to prospective tenants.

Paragraph 18 – Carbon Monoxide Notice – A provision discussing changes to the carbon monoxide law was added.

PRACTICE TIP Listing Broker/Agent should alert Owner that as of April 1, 2018, carbon monoxide alarms must be installed on each level of a rental unit and outside the sleeping area and that they may be combined with a smoke alarm.

Exclusive Right to Sell Residential Brokerage Agreement

Paragraph 17 – Deposits Held by Escrow Agent – A provision was added alerting Seller that Escrow Agents other than licensed real estate brokers are not subject to the same requirements that Maryland licensed real estate brokers are under the Maryland Real Estate Brokers Act.

PRACTICE TIP Seller should be alerted that if Seller wants an escrow agent other than a licensed Maryland real estate broker to hold the escrow money, Seller should consider executing an escrow agreement.

Paragraph 18 – Smoke Alarm Notice – A provision discussing changes to the smoke alarm requirements was added.

PRACTICE TIP Listing Broker/Agent should alert Seller that the smoke alarm requirements have changed. If Seller has questions about whether Seller's property is compliant, Listing Broker/Agent should direct Seller to contact the local fire marshal. If Seller or an expert, such as a home inspector, tells Listing Broker/Agent that the property is not compliant and Seller will not update the alarms as required by law, Listing Broker/Agent must disclose this information to prospective buyers.

Paragraph 20 – Notice Regarding Disclosure of Deferred Water and Sewer Charges – This provision was modified to require Seller to disclose whether the property is or

is not served by public water or wastewater facilities for which deferred water and sewer charges have been established by a recorded covenant or deed.

PRACTICE TIP If the Property is served by public water or wastewater facilities for which deferred water and sewer charges have been established by a recorded covenant or deed, Listing Broker/Agent should advise Seller to include the Notice and Disclosure of Deferred Water and Sewer Charges in the Contract of Sale.

Exclusive Right to Sell Unimproved Land Brokerage Agreement

Paragraph 14 – Deposits Held by Escrow Agent – A provision was added alerting Seller that Escrow Agents other than licensed Maryland real estate brokers are not subject to the same requirements that Maryland licensed real estate brokers are under the Maryland Real Estate Brokers Act.

PRACTICE TIP Seller should be alerted that if Seller wants an escrow agent other than a licensed Maryland real estate broker to hold the escrow money, Seller should consider executing an escrow agreement.

Paragraph 15 – Notice Regarding Disclosure of Deferred Water and Sewer Charges – This provision was modified to require Seller to disclose whether the property is or is not served by public water or wastewater facilities for which deferred water and sewer charges have been established by a recorded covenant or deed.

If the Property is served by public water or wastewater facilities for which deferred water and sewer charges have been established by a recorded covenant or deed, Listing Broker/Agent should advise Seller to include the Notice and Disclosure of Deferred Water and Sewer Charges in the Contract of Sale.

continued on page 18



continued from page 16

The following revisions were made to the **Consumer Notice to Buyers of Residential Real Estate in Maryland and Addenda to the Real Estate Brokerage Forms**:

Consumer Notice to Buyers of Residential Real Estate in Maryland

Three new provisions were added to the Notice. These provisions address wire fraud through email, deposits held by escrow agents other than the broker, and changes to Maryland's smoke alarm law.

PRACTICE TIP **Wire Fraud Through Email** – Buyer should be alerted that if Buyer receives an email regarding wiring instructions, Buyer should verify the information with Buyer's Agent **via a telephone call or in person.**

PRACTICE TIP **Deposits Held by Escrow Agents Other than the Broker** – Buyer should be alerted that if Buyer wants an escrow agent other than a licensed Maryland real estate broker to hold the escrow money, Buyer should consider executing an escrow agreement.

PRACTICE TIP **Changes to Maryland's Smoke Alarm Law** – Buyer should be advised to inquire about whether a property Buyer is interested in is compliant with Maryland's smoke alarm law. Buyer Brokers/Agents should also alert Buyer that, as of January 1, 2018, no alarm—battery powered or hardwired—may be older than 10 years from the date of manufacture.

Inclusions/Exclusions Addendum to Exclusive Right to Sell Residential Brokerage Agreement

Heading – The heading was made bold to highlight the fact that this Addendum is not intended to be used with Maryland REALTORS® Residential Contract of Sale.

PRACTICE TIP Agents and brokers are alerted that Maryland REALTORS® Residential Contract of Sale includes an inclusions/exclusions provision, **Paragraph 13.**

Notice: The Maryland Real Estate Commission revised the Maryland Residential Property Disclosure and Disclaimer Statement. The revision is dated 7/31/2018 and may be downloaded from the Maryland Real Estate Commission website at: <https://www.dlir.state.md.us/license/mrec/mrecaff.shtml>. 