

## AREA Purchase Contract Changes – July 18, 2017

### Form affected:

- Sale of Buyer's Property Schedule

### Clause 1.8

#### Current clause:

- No current clause – this is a new addition.

#### New clause:

- **1.8** if the buyer gives written notice waiving the Sale of Buyer's Property condition before the seller provides the Seller's Notice to waive all the buyer's conditions under 1.6, then the Condition Day for any other condition will be as agreed in this contract.

#### Why?

- The Sale of Buyer's Property Schedule allows the seller to continue to seek a back-up offer when the contract is subject to the sale of a buyer's property. It allows the seller to accept another contract and give notice to the buyer to waive all conditions within a negotiated time period or the contract will end. This is known as an "escape clause" and, in this form, is for the benefit of the seller.
- Member comments on this form were that the benefit is overly weighted to the seller. The fact is that the sale of property is the most onerous condition and is typically the reason the seller will continue to solicit other offers. Therefore, if a buyer can remove the sale of property condition before the seller has given the notice to remove all conditions, then the seller's right to give notice to remove all buyer's conditions should end. This allows the buyer, who in good faith has removed the sale of property condition, more reasonable time to meet other conditions such as financing and inspection. This led to the insertion of clause 1.8:
  - **1.8** if the buyer gives written notice waiving the Sale of Buyer's Property condition before the seller provides the Seller's Notice to waive all the buyer's conditions under 1.6, then the Condition Day for any other condition will be as agreed in this contract.
- What does this accomplish?
  - Ends the escape clause once the buyer has fulfilled the Sale of Buyer's Property condition;
  - Benefits buyers by providing reasonable time to meet other conditions;

- Removes some rights for the seller; however, once the sale of property condition is removed, the situation is no different for the seller than an offer that is conditional on financing and inspection, where a few days are normally allowed; and
- Balances the rights of the seller and buyer.

#### How does this affect my practice?

- Best practice recommendation is to structure the buyer's offer so that the sale of property condition is to be met by a specific date and all other conditions will follow in chronological order – example:
  - Sale of Property – specific date
  - Financing – 5 Business Days following the date of removal of condition on Sale of Buyer's Property
  - Inspection – 10 Business Days following the date of removal of condition on Sale of Buyer's Property
- If you are removing just the sale of property condition use the Notice (For waiver/satisfaction of conditions) as you usually would.
- Use of “Business Days” allows time to deal with financial institutions for mortgage purposes.
- A buyer who wants a property inspection can have the inspection done early on before selling their property. If the buyer's property does not sell, it will be money out-of-pocket, however, if the inspection is unacceptable, it will be money well spent to have this information before becoming committed to sell their existing property.
- Encourage the buyer to get financing pre-qualification and to discuss bridge financing and any other options with their lender. This will help with timely financing decisions.