

## 2016 AREA Purchase Contract Revisions

### Backgrounder: Condominium Documents Condition

#### Form(s):

- Residential Resale Condominium Property Purchase Contract
- Country Residential Purchase Contract – Condominium Property Schedule

The 2016 contract contains a condition that allows for an agreed extension of the condominium documents condition when the seller fails to provide the documents by the agreed date.

#### Why is this needed?

Former versions of the purchase contract allowed the buyer to obtain condominium documents when the seller failed to provide them; however, it did not allow for extra time for this to be done. In practice, a REALTOR® will stagger the dates in the clause as in the following example:

- Contract date – May 1
- Seller to provide Documents - May 6
- Buyer's Condition Day to review documents - May 11

These staggered dates allow the seller 5 days to provide the documents, and allow the buyer 5 days to review the provided documents prior to Condition Day. However, in some cases, the seller did not deliver the documents as agreed – in one situation, the seller deliberately did not provide the documents so that the offer would fail, allowing the seller to accept another offer. While this is not acting in good faith, the remedies are often impractical.

When the documents are not provided as promised, this leaves the buyer without enough time to both gather the documents and have a proper review done prior to Condition Day. While the buyer could ask the seller for an extension of the Condition Day, the seller was not obligated to agree.

#### How does the 2016 clause correct this?

The 2016 clause allows for a pre-arranged extension of time if the seller fails to provide the documents by the Document Delivery Day and a process for how this will happen:

(ii) The seller will cooperate by providing to the buyer, at the seller's cost, true copies of the Documents before \_\_\_\_ \_\_\_\_ .m. on \_\_\_\_\_, 20 \_\_\_\_ (Document Delivery Day).

(iii) If the seller does not provide the Documents before the Document Delivery Day, the buyer may, at the buyer's option, obtain the Documents.

(iv) To exercise the buyer's option, the buyer will give written notice to the seller before the Condition Day of the buyer's intent to obtain the Documents and the Condition Day will extend to \_\_\_\_ \_\_\_\_ m. on \_\_\_\_\_ 20, \_\_\_\_.

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A pre-arranged, optional extension of the buyer's condition solves for the seller's refusal of an extension request and alerts the seller to the time consequence that will occur should they fail to provide the documents as agreed.

#### **Buyer's costs to obtain documents when the seller fails to provide**

While the condominium documents condition is a buyer's condition, the 2016 contract clarifies that the cost of the condominium documents is a seller's cost. In the event the seller does not provide the documents and the buyer chooses to obtain them, the buyer can recoup their costs by an adjustment on completion day or by issuing the seller an invoice.

(v) The buyer's costs to obtain the Documents will be invoiced to the seller and may include reasonable costs such as Land Titles Office fees, condominium manager or board fees and solicitor/client legal fees and disbursements. The buyer may require the seller to pay the invoiced amount to the buyer within 30 days of invoice date or have the amount adjusted for on Completion Day.

An adjustment on completion day is a simpler and more certain method of recouping costs than an invoice to the seller. However, if the buyer does not waive the condition, there will be no completion day. The only remaining option is a buyer invoice to the seller.