
2016 AREA Purchase Contract Revisions

Form:

- All residential purchase contract forms

The “Final Signing” section of the 2014 purchase contracts no longer appears in the 2016 version. Below is the clause as it appears in the 2014 form:

15. FINAL SIGNING

15.1 Final Signing of this Contract occurred at _____ .m. on _____, 20____.
Initials of the person(s) who signed last _____

This section and the acknowledged date and time was important to the 2014 contract (and previous versions) to guide the trustee (usually a brokerage) as to when to deposit the deposit funds into trust.

2014 Deposit section:

3.2 The Initial Deposit shall be deposited no later than the third Business Day following the day that Final Signing occurred (as per clause 15.1). Additional Deposits shall be deposited no later than the third Business Day following the day the Additional Deposit is received by the brokerage.

This clause first appeared in the contract in 1994. At that time, it was usual for the buyer to write out a physical deposit cheque and the cheque would accompany the offer as a demonstration of good faith. The sole purpose for adding the clause was to provide a 3 Business Day timeline for the trustee to deposit the cheque.

Over time, some REALTORS® have come to incorrectly believe that it has relevance to the contract. During the purchase contract review, the following concerns were identified through broker, REALTOR® and legal feedback, as well as AREA research:

Broker feedback:

- The 2014 contract contemplates a deposit cheque accompanying an offer. This goes back to the days when cheques were provided when the offer was presented. This rarely happens now.
- When the parties negotiate a deposit payment date that goes beyond 3 Business Days of “Final Signing” it is impossible to comply with 3.2. In these cases, the clause should be amended to indicate a different deposit requirement. REALTORS® often miss this step.

REALTOR® feedback:

- A call or a text is received from the other side of the deal saying that the seller or buyer completed “Final Signing”, but the accepted contract is not delivered for hours or days afterward.
- “Final Signing” is misunderstood as meaning the time the contract obligations begin. This can cause disputes when something is to be done within a set timeline like “24 hrs”.
- Often, this is not filled in.
- It has no use and only causes confusion.

Legal Feedback:

- “Final Signing” has no relation to creation of legal obligations. Obligations begin with communication of acceptance of the contract. (In this context, “communication means delivered in person or sent by fax or email”. These terms are set out in the contract. If another method is preferred, it must be agreed to in writing.)
- If the accepted offer is not communicated by being delivered in person or sent by fax or email, there is no contract and therefore no requirement for a deposit.
- The “Final Signing” section is numbered as other contract sections; however, it comes after the signatures causing uncertainty as to whether it is part of the contract or not.

AREA Research:

- This clause is sometimes thought to be a RECA requirement, however, it came into effect in 1994, prior to RECA’s inception, and is not a RECA requirement.
- A review of various jurisdictions shows only one other jurisdiction has a clause similar to “Final Signing”.
- The 2014 contract provides no clear guidance as to when the contract begins. This may be the cause of incorrect reliance on the time and date in the “Final Signing” section of the 2014 contract as having some meaning to the contract.

2016 Contract:

As a result of this feedback, key changes were made to the 2016 contract. First, the 2016 contract addresses broker concerns about when to deposit the deposit funds into the trust account with this revised clause:

4.6 The trustee will deposit all deposits into a trust account within three Business Days of receipt.

Changing the deposit requirement to follow “receipt” means a “Final Signing” date and time is no longer relevant to deposit timelines. The broker (trustee) will know when they have received the deposit funds and will have three Business Days to make the deposit into the trust account.

A simple way to ensure that the cheques are deposited within three Business Days is to routinely set a Tuesday and a Friday as deposit days. If so, the deposits will always be made within three Business Days.

How do you know when the legal obligations begin without the “Final Signing” section?

While “Final Signing” never triggered legal obligations, it was sometimes misunderstood to do so. To clarify, the 2016 contract clearly informs the parties as to when the legal obligations begin in section 16.

16. LEGAL OBLIGATIONS BEGIN

16.1 The legal obligations in this contract begin when the accepted contract is delivered in person or sent by fax or email. The obligations bind the seller and buyer as well as their heirs, administrators, executors, successors and assigns.

The key time is: *“when the accepted contract is delivered in person or sent by fax or email”*.

Many transactions are conducted electronically, making it simple to track when the document was sent. If it is delivered in person, note when that was done or get a receipt for the delivery.

Section 16 correctly captures when the obligations begin and is supported by other sections within the 2016 contract:

- 13.1 A notice under this contract means a written document, including notices required by this contract, and this contract when accepted.
- 13.2 A notice is effective at the time the document is delivered in person or sent by fax or email.
- 14.1 The seller and buyer may each authorize a representative to send and receive notices as described above. Once authorized, notices will be effective upon being delivered in person or sent by fax or email to the authorized representative.

Final Note: The accepted contract must be communicated (delivered in person or sent by fax or email) prior to the “open for acceptance” time and date.