

## 2016 AREA Purchase Contract Revisions

### Backgrounder: Seller and Buyer Void Options in the 2016 Purchase Contract

#### **Section 4 – Deposit, Clause 4.5 – seller void option**

This clause allows for a seller void option when the buyer fails to provide a deposit as promised.

Without a seller void option, the failure to pay a deposit doesn't automatically void the contract. This leaves the seller unsure as to the strength of the agreement, worried as to whether it will close and dissatisfied with the experience.

REALTORS® requested AREA add a seller void option to the contract because of the problems they and their seller clients have encountered with late deposits. One particular situation involved a seller who accepted an offer in a multiple offer situation based on the attractive amount of deposit offered. As it turned out, the deposit was never delivered, leaving the seller unsure about changes until completion day.

The 2016 clause provides the options for the seller to void the contract in a situation like this. The buyer is now more accountable to provide the deposits as promised.

Note: voiding the contract is an option for the seller. Often, there are legitimate reasons for a delay and the contract need not end if the parties agree to alternate terms. If an agreement is made to extend the deposit date, this agreement should be documented in writing on an Amendment form.

#### **Section 7 – Dower, Clause 7.1(b) – buyer void option**

This section addresses dower rights in a way that is consistent with the *Dower Act*.

The seller will know of the potential of dower rights existing at the time of the purchase contract because it is first addressed with a seller in the Exclusive Seller Representation Agreement (ESRA).

Clause 7.1 (b) indicates the seller will provide a completed Dower Consent and Acknowledgement form by an agreed date. Just as the seller has an option to void the contract if the buyer fails to pay a deposit, this clause gives the buyer an option to void the contract if the seller cannot provide proof of the non-owner spouse's consent. This optional buyer decision can be made if the buyer considers that the lack of a signed Dower Consent and Acknowledgment form will harm the buyer's transaction.

As with late deposits, there may be a reasonable explanation as to why satisfaction of this term is late, in which case the parties can agree to other terms. That agreement should be made in writing using an Amendment form.

#### **FAQ's on void options:**

##### **Q. Why are these options being added?**

**A.** The intent is to give the option to end the contract early in the transaction, before much time and effort is spent. For example, if, in the first days of the contract, the buyer shows unreliability in providing deposits, how can the seller trust that they will get financing and pay all the other costs?

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In lower situations, if a seller is not able to get the consent of the non-owner spouse that the property can be sold, the buyer will rightfully question whether the transaction will ever be able to close.

Providing an option to end the contract will allow the parties to move on without the stress and uncertainty caused by these situations.

**Q. How soon may the void option be exercised?**

**A.** The void option can be exercised when the term is not met by the agreed date. Example: The buyer's deposit is to be provided by November 15. If it is not provided by that date and the parties do not agree to amend the date, the seller can void the contract on November 16.

**Q. How long is the option to void the contract open?**

**A.** While there is no date limit, exercising the option is best done early in the transaction. A seller or buyer who voids late in the transaction may face a legal challenge by the other party. Legal cases are often judged by the actions and motivation of the parties and legal advice is recommended in all cases.

**Q. Why not simply have a pre-set void date? For example, if the buyer doesn't pay within 7 days of when they promised to pay, the contract automatically becomes void?**

**A.** This doesn't work for a couple of reasons. 1) It would give the buyer an easy out. They would only have to delay payment until that day and the contract would end. 2) The buyer has still made a promise to pay the purchase price on completion day and the seller may want to keep the contract even if the deposit is not provided. This option is available to the seller within the clause as written.

**Q. What form would I use to exercise this option?**

**A.** AREA has created two new Notice forms for this purpose. One is a Notice for the seller void option and the other is a Notice for the buyer void option. You can see these forms in the [2016 Purchase Contract Resources](#) for now. After publication they will be included in the forms on WEBForms®, Repree™ and on AREA's website.