



Explanatory Form - Residential Purchase Contract (Text Version):

Overview

Every transaction is different, as REALTORS® well know. The terms in the purchase contract are intended to cover most transactions, most of the time. If a contract term does not suit your situation it may be altered. If a term is needed that does not appear in the contract, it may be added. Some space for these items are found in sections of the contract marked “other”. If more space is needed to capture all the necessary points, use the Addendum form.

For assistance in drafting clauses, use AREA’s Guide to Supplementary Clauses. This document is found on repree™ and WEBForms®.

Specific Sections

Contract Number Insert a different contract number for each transaction you do. Every additional document used in the transaction, such as amendments or notices, should also include the same contract number. This will serve to tie the documents to each other.

Seller and Buyer: Name the parties to the transaction. For the seller, record the names as indicated on the land title. For the buyer, record the names as they will be shown on the land title when the property transfers from the seller to the buyer. Best practice - If a corporation is a party to the contract, or, if a Power of Attorney has been given; ensure you have a record of the signing authority in the brokerage file. Note: a spouse with a dower interest should not be named as a seller because that spouse does not have an ownership interest in the property. For more on dower, see Sec. 7.

Section 1 The Property:

1.1: The property description includes:

(a) The land and buildings - record the correct municipal address and land title description. Property Tax records are a good source for this information. The legal description is typically found on the tax record or can be found on the land title.

(b) Unattached goods are items located in or on the property but not physically attached to the land or buildings. Examples: Stove, riding lawn mower, furniture. These items are typically not included in the sale but can be included if the seller and buyer agree. If unattached goods are to be included, describe them in detail in this section. To help avoid disputes on completion day, include detailed identifying information such as serial numbers or photographs.



(c) Attached goods are items that are physically attached to the land or buildings in some way. Example: attached by nails, bolts, screws, cement, etc. Attached goods are typically included in the sale of the Property. If an attached good is not to be included in the sale, describe it here. Also, indicate if the item will be replaced and provide details - Example: "stained glass window in front entry door to be replaced with clear double pane glass". If there is any question as to whether an item will be included, provide additional clarifying details within the contract. An example is a wall-mounted TV. Disputes have arisen as to whether it is the mounting gear that is attached to the property or the television itself. Avoid these disputes by clarifying in the contract what the intentions of the seller and buyer are. Too much information is preferred over too little!

Section 2 Purchase Price and Completion Day

2.1 - insert the offered amount.

2.2 - Because this contract is most often used for residential resale transactions, where GST is typically included in the purchase price, 2.2 states GST is included. This means if there is any payment of GST due, it will be the seller's responsibility to pay it. If the seller listed the property using the Exclusive Seller Representation Agreement, they committed in that agreement to be responsible to determine whether GST is applicable. Ensure your client gets independent advice on GST.

2.3 - Insert the Completion Day here. On this date, the Purchase Price is due and vacant possession given to the buyer. It is best to use a Business Day, when lawyers, banks and Land Titles offices are open. If the property is tenanted and vacant possession is not to be provided, stroke out vacant and record the tenancy details on the Tenancy Schedule. Indicate the Tenancy Schedule is attached to the contract by checking the appropriate box in Section 9 (Attachments and Additional Terms).

Terms such as "substantially same condition" and "normal working order" are not black and white definitions. However, they provide a guide for a reasonable buyer and seller to understand that no property is perfect. "Substantially the same condition" can allow for reasonable acceptance of minor items such as paint scrapes caused during the moving process. "Normal working order" means that on Completion Day, the item works as expected based on factors such as age and condition. Example: A Property is sold with a 15-year old chest freezer. The freezer works but has a lower efficiency rating and is noisier than a new freezer. This would be considered "normal working order" for a freezer of this vintage.

Note:

- make sure your seller understands they must ensure these warranties are met. If they are not, the seller will continue to be responsible beyond the Completion Day.



- if there are specific repairs to be made, provide details in Section 9 (Attachments and Additional Terms). If more room is needed, document the details in an Addendum and check off the box in Section 9 to indicate an Addendum is attached).
- If an item does not work and the seller does not intend to have it fixed prior to Completion Day, a term should be added to clarify that the item is not in working order and is being sold as is.

Section 3 – General Terms

This section sets out how the seller and buyer will perform in their actions and the general terms they both agree to. It includes contract terms such as “laws of Alberta apply” (3.1(b)), “Business Day” (3.1(d)), “Alberta time applies” (3.1(c)), and “written changes supersede pre-printed clauses” (3.1(j)).

Use this section as an opportunity to discuss the following important items with your client:

3.1(a) – agency. This clause discusses who represents whom. When clients understand agency, REALTOR® liability is reduced.

3.1(f) - Known Material Latent Defects to be disclosed by the seller. This is supported by section 6 (Representations and Warranties) where 6.1(f) states that known Material Latent Defects have been disclosed. If there is any question as to whether something must be disclosed, recommend the seller obtain legal advice.

3.1 (g), (h) and (i) all deal with seller and buyer due diligence and state that they will assume the risks if they do not complete their own due diligence. While a review of the entire contract with your client is important, special focus on this section may bring forth items of importance to your client that may require a specific condition to protect their interests. The list of due diligence items is not all inclusive because areas of concern will differ from person to person. This type of information leads to well informed clients and potentially reduced REALTOR® liability.

3.1(h) – the seller’s due diligence items are listed to ensure the seller is able to truthfully make the representations and warranties in the contract. For example, without reviewing the RPR, a seller cannot be sure the warranties made in 6.1(e) are true.

3.1(i) - the buyer is provided with information on inspections and advice that may be available to them. Ask your buyer if there is anything about the property they would like to know more about. If so, assist them in finding the answer before writing the contract, or, include a condition to allow time for that item to be investigated.

3.1(k) – here, the parties agree to read the contract and obtain relevant advice before signing it. Many calls come to AREA from buyers and sellers who did not read the contract. Some say their REALTOR® did not give them time to read the contract and they were just told to sign it. To protect your client’s interests and reduce your liability, never allow your client to sign a contract they have not read and fully understood.



3.1(l) – here, the parties give authority for the use of information related to the transaction under certain circumstances, primarily to support the MLS® system data.

3.1(m) – This clause comes from The Provincial Practice Rules for Alberta REALTORS®. Section 12 of those Rules requires REALTORS® to ensure the purchase contract says which brokerage will be responsible to ensure documents are provided to the lawyers for closing purposes. The intention of this Rule is to ensure one of the brokerages provides the lawyers the details of the transaction. (This is to correct a real-life situation where neither brokerage informed the lawyers of the transaction). Naming one brokerage does not prevent both brokerages from sending documents if they choose to do so.

Section 4 – Deposits

4.1 Here, the parties agree to the terms of trust that follow.

4.2 - A trustee is appointed. In real estate transactions, one of the brokerages will often be named as trustee, however, the parties may agree to appoint another person as trustee.

4.2 and 4.3 - provide for details of: deposit amounts, that the deposits will form part of the purchase price, the method by which the payments will be made and when the payments are ~~due~~ to be made.

4.3 and 4.4 – the reference to “on or before _____” provides options for recording when the deposit is to be paid. Take care that the information is clearly stated. Options for filling in this space include:

on or before:

- a set date, i.e. December 5, 2016
- 2 Business Days of communication of an accepted offer
- X Business Days following notice of removal of all conditions

Best Practice: a specific date is the clearest and least disputed and is the recommended choice. Avoid use of “x hours”. This is restrictive and in the case of deposits, can allow a seller to void a contract if the deposit not paid on the appointed hour. Example: at 9 AM on Monday the 20th, acceptance is communicated and the contract is created. If the deposit is to be paid within 48 hours, it must be paid by 9AM on the 22nd. However, if two Business Days had been used, payment would be due on the 22nd but not necessarily by 9 AM.

4.5 – Seller option to void.

This clause offers the seller an option to void the contract if a deposit is not paid by the agreed date. However, there may be a legitimate reason for a delay and the parties can agree to new terms. If so, document the new terms in writing on an Amendment form.



Remember, if the seller accepts a late deposit, the seller's option expires. On the other hand, if the deposit is not paid, the contract and the seller's option will continue. This illustrates the importance of the buyer making the deposit payments on time.

4.8 – this clause details the trustee role in deposit disbursement. First, the funds must be confirmed as being in the trustee's trust account. The circumstances for the trustee to disburse the deposits are clearly laid out. The term "without prior notice" indicates the trustee does not need to communicate to the buyer or seller how they will be disbursing the deposits.

Section 5 – Land Title

This clause lists items that may be on title after Completion Day. Whether you are acting for a seller or a buyer, get a copy of the title and review it before the contract is written or make the contract conditional on the review of the title documents. If there are items on the title document that you do not understand, refer your client to their lawyer.

Section 6 – Representations and Warranties

Sellers make important warranties in the contract. The contract first informs sellers of seller due diligence requirements in 3.1(h). Unless a seller has completed their due diligence, they are at risk of making an untrue statement in section 6. If the seller cannot make a warranty because they know it is untrue, it should be stroked out. This will raise concerns for the buyer and legal advice may be advised.

6.1(b) "not a non-resident" is confusing language! It is expressed this way because this is the term used in the *Income Tax Act*. By stating "not a non-resident", the seller is also stating that the non-resident requirements of the *Income Tax Act* do not apply. The seller is responsible to determine their status under clause 3.1(h)(ii). If the seller is a non-resident, this clause should be stroked out and the seller should obtain legal advice.

6.1(c) If an attached item has not been fully paid for, someone may have a legal claim to it. Here the seller states that no one has that legal right.

6.1(d) Often a property may be being used for a purpose that is not compliant with local by-laws (example – home based business or illegal suite). Here, the seller states that the current use complies.

6.1(e) Confirmation of compliance of the building location warranties comes from a Real Property Report. This clause illustrates the importance of having this document well in advance of an offer because a seller cannot confidently make these representations and warranties without an RPR. Seller's agents are wise to encourage sellers to get the RPR early in the process so that any potential issues can be dealt with before a contract is formed. If the property was listed using the Exclusive Seller Representation Agreement, the seller will have committed to



provide the RPR to the brokerage within 10 days. Hold the seller to this commitment and you both will experience a much smoother transaction.

6.1 (f) – The seller states that any Material Latent Defects (defined in Section 3.1(f)) have been disclosed. If the seller is unsure of what must be disclosed, recommend legal advice.

6.1(g) – Here, the seller states that they have disclosed within the contract information the seller knows about notices they have received about the property and lack of development permits the seller knows about. The requirement is only to disclose what is known to the seller.

6.2(a) The warranties are all to be true on Completion Day. If there is an item that needs to be put in order by the seller, make sure there is enough time between offer and Completion Day to allow this to happen.

Note: The warranties are typically seller’s warranties about the property. An exception is found in the Country Residential Purchase Contract where there is a buyer warranty regarding eligibility to purchase Controlled Land as defined in the *Foreign Ownership of Land Regulations* (Alberta).

Section 7 – Dower

This section addresses dower rights in a way that is consistent with the *Dower Act* and alerts buyers when dower rights exist. The potential of dower rights existing should be known at the time of the purchase contract as it is first addressed with a seller in the Exclusive Seller Representation Agreement (ESRA). REIX reports that increased dower focus has reduced claims against REALTORS® for mishandling dower.

The clause provides a step-by-step process of what is to be done:

7.1 – provides a seller representation and warranty that dower rights do not exist (and no further action is required). Otherwise, if dower rights do apply, then the seller will,

(a) have the non-owner spouse sign the contract in the non-owner spouse signature section and,

(b) provide a completed Dower Consent and Acknowledgement form by an agreed date.

Note: buyer’s agents should not fill in this space with a date as only the seller will know the dower circumstances and the availability of the non-owner spouse. Another option is for the seller’s agent to provide the required details in the private listing remarks so the buyer can fill in the clause in accordance with the seller’s needs. If so, a seller sign-back can be avoided.

Also in 7.1(b) – just as a seller is given an option to void the contract if the buyer fails to pay a deposit, here, the buyer has 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 why satisfaction of this term is late, in which case the parties can agree to other terms. Ensure that any changes to contract terms are agreed to in writing.

Section 8 – Conditions:

The conditions in the contract follow the trend to unilateral conditions. This means there are no or few additional terms added to the condition and the decision to waive the condition is dependent on one party.

Always allow reasonable time for a client to meet the conditions. This will vary between market locations and market conditions. Example: in a slow market, a home inspector will likely be available sooner than in a fast market.

8.1(a) – the parties agree to act reasonably and in good faith in satisfying their conditions

8.1(b) - sets out cost responsibilities upfront

8.2 – Buyer's Conditions – indicates the buyer's conditions are for the buyer's benefit.

8.2(a) Financing – this condition contains only one detail about the financing the buyer is seeking – the % of the purchase price. This means if a buyer has 10% down, the buyer is seeking financing for 90% of the purchase price. If the buyer has 50% down, then they are seeking financing for 50% of the purchase price. This will enable sellers to know if the buyer is seeking high ratio or conventional financing. If the seller wishes to know more of the buyer's financing details, they can request that information in a sign-back.

8.2(b) Property inspection – the clause specifies that a licensed home inspector be used. If this is not the case, change the clause according to your situation. If the seller or the buyer wish to set parameters for the condition such as a financial limit to repairs, that may be added at their option.

8.2(c) Sale of Buyer's Property – to be used when the buyer must sell a property in order to purchase the subject Property. Use the Sale of Buyer's Property Schedule and check off that the schedule is included in clause 9.1.

8.3 Allows space for seller's conditions. Seller's conditions are less common than buyer's conditions. Some examples are: time to confirm that a seller warranty is correct, legal advice, accept a back-up offer once an existing offer ends, etc.

8.4 Condition Notices – details how one party will give notice to the other that (a) the condition is waived or satisfied, and if not, that the contract ends and, (b) that a condition will not be waived and the contract will end. For courtesy purposes, if one of the parties knows well in



advance of the Condition Day that their condition cannot be met, they may give notice to the other. This will end the contract and allow the seller to return the property to the open market and the buyer to offer on another property.

Section 9 – Attachments and Additional Terms

9.1 – lists the standard documents AREA produces as supporting forms for the purchase contract. If a supporting form is used, check the box to indicate it is attached to and forms part of the contract. Indicate the same contract number on the supporting form as appears on the contract. This will serve to tie the contract and any supporting form together to form a complete document.

9.2 – space is provided for optional terms. If there is not enough space, use the Addendum form. Note: an Addendum is used to add terms during negotiation. An Amendment is used to amend the terms of an agreed contract.

Section 10 – Closing Process

This section details the closing process and primarily affects the work of the lawyers when conveying the property from the seller to the buyer.

Closing Documents

10.1 – describes when the documents are to be provided to the buyer's lawyer.

10.2 – describes an RPR as a closing document. Note: lawyers report that late delivery of the RPR is the single biggest source of contract problems. When a property is listed, the Exclusive Seller Representation Agreement states that the seller is to provide an RPR to the brokerage. Many REALTORS® do not hold their client accountable to this agreement. This means when an offer comes, there is no RPR to support the seller's warranties. If this is the case, it is recommended that buyer's agents protect the buyer's interests by inserting an RPR condition, which will enable the buyer to know the important property details prior to being committed to a contract.

Payments and Costs

This section details who pays what, how and when.

10.3 – describes the methods by which the Purchase Price may be paid.

10.4 – defines items that the seller will be responsible for "*for the entire Completion Day*" and afterward assumed by the buyer.

10.5 – the seller's lawyer is authorized to pay the seller's obligations from the Purchase Price funds.



10.6 – here, the seller instructs their lawyer to pay their fee obligation to their real estate brokerage. This is closely connected to 10.5, however, as it is intended to assist brokerages in collecting their fee, it is set apart to bring additional focus to the obligation.

10.7 – details costs to be paid by the seller.

10.8 – details costs to be paid by the buyer.

Closing Day Delays

10.9 – this clause details the process to be followed if the seller fails to comply with their closing obligations.

10.10 – this clause details the process to be followed if the buyer fails to comply with their closing obligations.

10.11 - The “Protocol” is an agreement of the Law Societies to follow alternate closing procedures when a traditional transaction is not feasible. Example: a quick closing date. The Protocol allows a buyer to have possession of the property and a seller to receive sale proceeds before all documents are registered with Land Titles. The Protocol only applies to certain residential resale properties.

Section 11 – Insurance

A short and simple statement that indicates what will happen if the Property suffers loss or damage. It is important for both sellers and buyers to contact their insurance companies to ensure the Property is fully insured before, during and after transfer.

Section 12 – Remedies

This section details the remedies both parties have if either one defaults on the obligations within the contract.

12.3 – this clause indicates that the parties agree that a unique item is being sold (the Property) and the buyer may seek a remedy of “specific performance” from a court. If awarded, specific performance would require the seller to perform their specific contractual duty to sell the property to the buyer. This remedy differs from the remedy of damages, which usually directs a payment to the wronged party.

Section 13 – Notice and Documents

This section combines the concepts of notice and communication:

13.1 – describes what a notice is



13.2 – describes when a notice is effective. Notice is effective at the point of delivery (in person) or when sent by fax or email.

13.3 – clarifies what “giving notice” means. Note: An oral communication is not giving notice. Only a document that is written is a “notice” and it must be given by an agreed method

13.4 – provides for contracts and other documents to be signed using electronic means

Section 14 – Authorization

Here, the seller and buyer will authorize a representative to send and receive notices on their behalf.

14.1 - indicates that both the seller and buyer authorize their respective brokerage and brokerage representatives.

14.2 – while REALTORS® prefer that they be the representative for their client, the client may wish to authorize another person. Or, the client may be an unrepresented seller or buyer who is not working with a brokerage.

14.3 – here, the seller and buyer agree to give notice to the other if there are changes to the authorization information.

Note: REALTORS® should clarify with their clients the preferred method of communication so they can be contacted quickly. Have the client agree to a communication method in writing. This will help ensure that important documents are not sent to the wrong place or avoided. A good means to document the agreed communication method is to include it in the Exclusive Seller Representation Agreement or Exclusive Buyer Representation Agreement.

Section 15 – Confirmation of Contract Terms

This section was drafted with the assistance of REIX lawyers to provide clarity to clients and reduce REALTOR® liability. In conjunction with the buyer and seller due diligence clauses in Section 3 (General Terms) it provides a strong message that the contract IS the contract and no other promises, statements, etc. are effective if they not written into the contract

15.1 – here the seller and buyer confirm the contract is what they intend it to be

(a) – the contract is the entire agreement

(b)(i) – nothing outside of the contract – verbal or written – has been relied on to enter into the contract and unless it is written into the contract, does not form part of the contract.

(b)(ii) – if something induced the seller or buyer to enter into the contract, it must be contained in the contract to be effective.



In practice, REALTORS® can use this clause to confirm with their client that the property and contract terms meet their needs. Examples:

- If the buyer believes the property to be 1,500 square feet and requires a property of that size, then the contract should state the that property size is not less than 1,500 square feet.
- If the buyer is buying the property because of statement made (by the seller, REALTOR® or anyone else) that the property can have a home-based business, the buyer should be advised to proceed with caution. Options are to add a suitable term regarding the representation, a seller warranty that the use is allowed, or a condition that the buyer have time to perform due diligence to confirm the use is allowed.
- If the seller and buyer verbally agree that the seller will take the antique wrought iron gate that is currently attached to the fence, this should be detailed as an exception in “the attached goods except” clause.

Section 16 – Legal Obligations Begin

This clause clarifies that the legal obligations begin when the accepted contract is communicated by one of the agreed methods (delivered in person or sent by fax or email). A phone call or text letting the other party know the contract has been accepted is not enough.

Once the contract negotiations are complete and the last party to accept the terms has done so, the contract document and any included forms or documents must be communicated to the other party. The time and date at which this is done triggers the contract obligations.

Signature Sections:

Section 17 – Offer

17.1 states the buyer’s intent to buy the property according to the terms of the contract. All necessary terms must be in writing to be effective.

17.2 the time and date an offer or counter offer is “open for acceptance” is very important in ensuring a contract negotiation is done in a timely manner. Each time an offer and counter offer is made, the time and date that that offer is open for consideration by the other party should be specifically identified.

Section 18 – Acceptance

18.1 – here the seller signs that they agree to sell based on the contract terms. Again, all necessary terms must be in writing to be effective.



Note: ensure that the acceptance of the offer or acceptance of any sign-backs occurs and is communicated before the expiry time in 17.2.

Non-owner spouse signature (when dower rights apply)

As the section title states, this section provides space for a non-owner spouse to sign the contract when dower rights apply and as required by the *Dower Act*.

After the contract terms:

The following are positioned after the signature section. As such, they do not form part of the contract and therefore optional:

Rejection – here the buyer or seller can indicate that they do not accept the offer and will not be countering the offer.

While the same effect can be achieved by writing and initialling “rejected” on the offer, this section was requested by REALTORS® who wanted a more formal process to show their clients that their offer had, in fact, been presented but the other party chose not to go forward with the negotiations.

A story will help to illustrate: A REALTOR® told AREA that they had submitted an offer on a property in a multiple offer situation. There was no communication back. The buyer felt their offer was a good one and asked for confirmation that the seller had actually seen the contract and rejected it. When the buyer’s REALTOR® made this request of the seller’s REALTOR®, no response came for a short time. However, what did come was a seller counter offer to the buyer on the original contract written by the buyer. While no accusations were made, this led the buyer’s REALTOR® to believe that the offer had not been presented when first offered, and when it was, the seller liked what they saw.

Conveyancing - This section is also optional. It provides space for information of the seller and buyer and their respective lawyers.

To ask a forms-related question, email AREA at forms@albertarealtor.ca