



APPENDIX:
PROJECT DETAILS &
SUMMARY OF FORMS
CHANGES

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Project Purpose & Intent

The Commercial and Agricultural Forms project will provide an improved set of standard forms for practising industry members.

Project Timelines

2014-2015	2016/2017	November 16, 2017	April 4, 2018	May 9, 2018	June 2018	Summer 2018
Project Launched	Stakeholder engagement & Volunteer Member Review	FPC accepted AREA staff recommendations	FPC directed staff to seek AREA BoD's approval	AREA BoD Approval	Stakeholders update & communication	Forms Publication

Stakeholders

- Real Estate Council of Alberta (RECA)
- Legal Education Society of Alberta (LESA)
- Canadian Bar Association (CBA)
- Alberta Law Society (ALS)
- Alberta Real Estate Association (AREA) Industry Members
- AREA Board of Directors (AREA BoD)
- Forms & Practice Committee (FPC)

Engagement & Review

Throughout the project, stakeholder engagement and members' input were paramount and foundational. We understand the importance of involving our members, as subject matter experts, in the creation and redesign to ensure all forms meet their needs and requirements. In addition to member engagement, AREA retained the services of Field Law, to ensure all changes and recommendations are legally sound and appropriate.

1. Legal Review (Field Law):

Kevin Schouten, Partner, Practice Group Leader: Kevin is a business lawyer who applies years of practical corporate experience in helping clients involved in sophisticated commercial transactions with an Alberta connection. He advises businesses of all sizes throughout Canada with corporate and commercial law issues, such as share and asset acquisitions, business formations, drafting and interpreting commercial contracts and commercial property matters, including both acquisitions and commercial leasing. Kevin leads 18 lawyers as Field's business practice group leader and heads the firm's residential real estate department with a team of paralegals.

Jim Doyle, Partner, Practice Group Leader: Jim is legal counsel to REIX and is well experienced in FPC projects and initiatives. Jim oversees the business relationship between Field and AREA.

2. Member Review

All Alberta boards and brokerages were asked to submit names of volunteer reviewers who had an interest in the project. From this, two feedback groups were created:

- Agricultural Forum: 19 volunteers
- Commercial Forum: 28 volunteers

3. Forms and Practice Committee Meetings

While work has been underway over the past two years on this project, at the November 16th, 2017 Forms and Practice Committee (FPC) meeting, significant changes to most of the Agricultural forms and schedules were presented and discussed. Resulting from that meeting, Committee directed staff to finalize all remaining improvements and changes and bring forward all forms and schedules for final review at the next Committee meeting.

At the April 4, 2018 FPC meeting, final drafts of all forms and schedules were presented. Further recommendations and changes were completed post-meeting, and on May 9, 2018, all Agricultural and Commercial Forms and Schedules were approved by the Committee to bring forward for AREA Board of Directors for the next escalated approval process prior to live publication.

Summary of Changes

At the completion of the project, 16 forms and schedules have been revised. Below, are the details of the recommended and approved changes.

1. AGRICULTURAL FORMS & SCHEDULES

A. Form – Agricultural Purchase Contract

- Additional conditions added – Property Inspection, Sewage System, Property Schedule, Subdivision Plan, Sale of Buyer’s Property
- Removal of letters on schedules
- Added schedules – sale of buyer’s property, residential lease schedule, manufactured home schedule (for each of these, will use the existing residential version)
- Deleted schedule- Poultry/Livestock Quotas Schedule
- Changed 14.1 to “Brokerage Representation”
- Members were specifically asked if there was need for a condominium schedule for agriculture. The response was, no.

B. Schedules – Agricultural

- (a) Grazing Leases and Permits Schedule
- (b) Land Description Schedule
- (c) Property Leases Schedule
- (d) Real Estate Property Schedule
- (e) Surface Leases and Income Schedule
- (f) Water and Irrigation Rights Schedule

Most of the schedules were largely left unchanged with only one minor change; being, the buyer’s signature line on all schedules was kept as is.

2. BOTH FORMS – AGRICULTURAL PURCHASE CONTRACT AND COMMERCIAL PURCHASE CONTRACT

For consistency, the Agricultural Purchase Contract and the Commercial Purchase Contract follow the format of the 2016 purchase contract with property type specific clauses. Those members who trade in more than one property type will now recognize many of the same clauses.

- Method of payment kept as is; not be same as Residential Purchase Contract which has already been published and Committee did not feel it necessary to disturb the published Residential Purchase Contract.
- Change section title from “Closing” to “Closing Process”
- Both - Financing condition – member comments are the ___% used in residential is not necessary in comm and agricultural
- Damage Repair; deleted 8.1(c)(v), eliminate duplication
- Completion Day adjustments - 10.4: the previous versions had a half day calculation in both the agricultural and commercial contracts, which made it necessary for law firms to perform manual calculations based on “half day” adjustments; manual adjustments that potentially are prone to error, disagreements and further increase workload. Both forms were changed to “as of 24:00” on the completion day.

3. COMMERCIAL FORMS & SCHEDULES

A. Forms – Commercial Purchase Letter of Intent (New)

- Changed name and replaced “Commercial Purchase Non-Binding Term Sheet”
- This is a new addition to the AREA forms catalogue. Members generally like the form, however, some are more used to a Letter of Intent.

B. Schedules – Commercial Purchase Contract

a. Commercial Purchase Contract Financing Schedule

- Clause 1 – Seller Financing: In the residential form, this is expressed as a mutual condition in which the parties are to obtain qualified mortgage advice and reach agreement on terms. In the commercial draft, the clause is not expressed as a condition and simply states the terms. An argument for this is that commercial clients are typically more sophisticated than residential clients and would know when to seek outside advice or rely on internal support within their own business entities. Therefore, the clause is a term and not a condition. However, the reasons for the change to mutual condition in the residential contract still apply to protect member liability regardless of the property type. Those reasons are that REALTORS® are not qualified or licensed to give mortgage advice and having blanks for terms within the agreement would tend to require the REALTOR® to participate in filling in the form with the client. FPC direction was to keep same as before. No changes.
- Clause 2 – Mortgage Assumption: This clause remains as a conditional clause because the lender is the entity that will give approval for mortgage assumption.
- Clause 3 – Other value – This is identical to the Residential Purchase Contract clause.

b. Commercial Purchase Contract – Condominium Property Schedule

Members were specifically asked if they wanted a separate Commercial Condominium Purchase Contract or did they prefer it to be handled with a condominium scheduled. Unanimous feedback was for the latter. This form mirrors the version used with the Country Residential Purchase Contract. While adapting the residential forms for commercial and agricultural use has been a good strategy, recent discussions on this form will take us back to the drafting table to consider including the condominium document review condition as part of the due diligence condition rather than as a separate condition as is done in residential. At the November 16 FPC meeting, significant changes to most of the Commercial forms and schedules were presented and discussed. Resulting from that meeting, Committee directed staff to finalize all remaining improvements and changes and bring forward all forms and schedules for final review at the next Committee meeting.

c. Commercial Purchase Contract – Condominium Legal Description Schedule

- Renamed from “Schedule”

C. Forms – Non-Binding Offer to Lease

- Replaced previous “Commercial Agreement to Lease”, which will be retired.
- Binding or Non-Binding - the most significant change is to clarify that the Offer to Lease is not a lease and is therefore, not binding until the lease agreement is signed.

Detailed Changes - Current Form Vs Replacement Form:

The current form has “Part A – Offer to Lease” and “Part B – Acceptance”.

“Part B – Acceptance” includes the wording: *“The Landlord accepts the Tenant’s offer and agrees to lease the Premises according to the terms of the Agreement”*. This, and the form title “Commercial Agreement to Lease” has caused some members to assume that the form is also the lease and anecdotal information is that a formal lease is often never formed.

Replacement Form:

Volunteer reviewers were specifically told that the draft was non-binding and that the intention is that the document lead to the formation of a formal lease. They were asked if they approve of that approach. The majority agreed. A few objected because many landlords don’t have their own lease and therefore use the form as the lease (a practice AREA does not recommend).

The changes that clarify that the form is an offer, that is intended to lead to a formal lease are:

- Title: “Commercial Non-Binding Offer to Lease” vs. current “Commercial Agreement to Lease”
- Title: “this offer is between” vs. current, “ This Commercial Agreement to Lease (the “Agreement”) is between”
- 1.1: clarification of Premises as “entire parcel”, or “a portion” to be outlined on an attached plan.
- 2.1: addition of a General Terms sections similar to the 2016 Purchase Contract with appropriate property specific changes
- 4.1: relocation of the Renewal clause (4) to follow the Term clause (3) as opposed to near the end of the form

- 5.1: clarification of the Basic Rent Section by the inclusion of a chart providing additional detail
- 6.1: added clarity by removing one line dealing with costs, in favour of a reference to the Additional Rent Schedule
- 6.2 and 6.3: add clarity by providing definitions for “Proportionate Share” and “Operating Expenses”
- 7.1: regarding details of GST payable to be “pursuant to the Lease.”
- 8.1: Inducements section. This is a new section detailing optional inducements to be negotiated by the parties regarding tenant improvement allowances being payable when “(a) the Lease has been signed,”
- 9: Deposit section: improved by the Landlord’s option to terminate offer if deposit not paid and the removal of trustee’s responsibility to determine entitlement in the event of a dispute
- 9.4(a): that the deposit will be returned to the tenant if the Lease is not executed
- 9.4(b): that the deposit will be paid to the landlord after execution of the Lease
- 10: Work, Possession, Condition. This section provides significantly more detail on dates for fixturing (10.2) and the work to be done per the respective Landlord and Tenant Work Schedules (10.3, 10.4). It also relocates the environmental clauses to this section (10.6, 10.7)
- 10.5: that the removal of fixtures and improvements will be as per the Lease
- 11: Parking. This section is improved by the added detail regarding unassigned and assigned stalls (10.1) and the monthly charges for various stall types
- 12: Signage – clarity is added by providing space to detail the tenant’s signage requirements and adding the details for removal of the signage at the end of the Lease
- 13: Use and Exclusivity – significant detail is added regarding the terms of Exclusivity (13.3)
- 13.1: details of use and exclusivity are set out in the Lease
- 15: Attachments and Additional Terms - adds a spot for a Plan of the premises (15.1) and space for “Other Terms (15.2)
- 15.1: includes a checkbox for the inclusion of the Landlord’s standard Form Lease as an attachment
- 16: Lease – the inclusion of blank spaces in 16.1 and 16.4 regarding preparation and execution of the lease requires the parties to put their minds to the selection and negotiation of appropriate dates. This differs from the current form which provides for 10 days for lease preparation and a “reasonable time” for execution.
- 17 & 18: improved Notice and Authorization sections mirror the corresponding sections in the 2016 purchase contract
- 20: Non-Binding Agreement – describes that the obligations are dependant on an executed lease. This replaces the current clause which indicates that the accepted offer shall constitute a “binding Agreement to Lease”
- 22.1: The landlord’s acceptance includes an agreement to prepare a lease that reflects the agreed terms

D. Schedules – Non-Binding Offer to Lease

a. Additional Rent Schedule

This form is a schedule to be attached to and form part of the Commercial Non-Binding Offer to Lease. The schedule details items that are to be obtained and provided by the landlord. The columns indicate who will pay (landlord or tenant). Column C is an exception recommended for additional clarity. It

provides space to indicate items that are to be obtained and paid for by the Tenant directly. Example: Tenant obtains and pays for its own outside Janitorial Services. Therefore, items inserted in Column C are not technically items of additional rent, however, these additional details provide additional clarity.

The columns have been rearranged so that the items that are paid by the landlord are in A, those that are the Tenants are in B and things that are not included and are solely the Tenant's responsibility are in C. Also, better explanation is provided for each of B and C.

b. Landlord's Work Schedule

- a clarifying introductory statement: "The landlord will perform the work described below in the premises:"
- signature section that mirrors the style in the Residential Purchase Contract
- deletion of the words in the current form "This Agreement is between", as the schedule is not an agreement, instead it is attached to and forms part of the agreement

c. Tenant's Work Schedule

- a clarifying introductory statement: "The tenant may perform the work described below in the premises:"
- use of "may" vs. "will", as used in the Landlord schedule, allows flexibility for the tenant's improvements. All improvements desired should be listed here, however, should the tenant later decide not to make an improvement, they are not obligated to do so
- signature section that mirrors the style in the Residential Purchase Contract
- deletion of the words "This Agreement is between", as the schedule is not an agreement, instead it is attached to and forms part of the agreement