

2016 AREA Purchase Contract Revisions

Tenants and the 2016 Purchase Contract

The 2016 purchase contract has a new process for tenanted properties.

Let's compare:

- The previous contract, clause 4.1, stated that *"vacant possession will be available...subject to the rights of the existing tenants, if any"*.
- The 2016 contract, clause 2.3, states that *"vacant possession"* will be given to the buyer.

With the previous contract, the onus was on the buyer to be aware that the property was tenanted and decide if this is what they wanted. If they did not want a tenant, the words *"subject to the rights of the existing tenants, if any"* had to be stroked out or the buyer might be required to assume a tenant when they were not prepared to do so. While this was required to protect the buyer, AREA learned that many REALTORS® did not know this should be done.

Now, with the 2016 contract, vacant possession is the default and if there is not tenant, no changes need to be made. However, if there is a tenant who will be staying in the property, then the word *"vacant"* should be stroked out and *"subject to the terms of the Tenancy Schedule"* added. As well, the details of the tenancy – name, term, rental rate, etc. - should be recorded in the revised 2016 Tenancy Schedule* and attached to the contract by checking the box in Section 9 – Attachments and Additional Terms.

***NOTE:** In 2016, AREA also improved the way Alberta REALTORS® record tenancy details. Previously the Tenancy Schedule was part of another schedule called "Property Schedule", which included both tenancy and manufactured home details. This was not intuitive and many REALTORS® were not aware that a form dealing with tenancy existed.

The revised 2016 Tenancy Schedule contains only tenancy information, is correctly named and easy to find when needed.

Why make this change to remove *"subject to the rights of the existing tenant, if any"*?

Most sales of residential real estate involve a property that is not tenanted and where the new owner wants to live in their new home. It makes sense for the contract to reflect that reality, rather than requiring contracts that did not have a tenant to have a clause routinely stroked out.

In the 2016 contract, the onus is now on the seller to deal with the tenancy issues. This is a logical progression because the seller is aware of the tenant and the tenancy terms.

Tenancy issues are best discussed at the listing stage. If the seller wants to sell the property and give vacant possession as indicated in the contract, they must ensure proper notice is given to the tenant so this can occur.

Best Practice: Tenancy situations can be complex, so take care to advise a client to get expert advice on the *Residential Tenancy Act* requirements.