



2022 Statewide Forms Manual of Changes and Practice Tips

Each fall, Maryland REALTORS® presents updates to its Statewide Forms Library, which contains the form contracts, disclosures, and addenda that members like you use to service clients and bring real estate transactions to settlement. This year's changes bring a total of nine (9) new forms, including a refreshed Residential Contract of Sale, as well as seven (7) revised forms. This Manual is designed as a guide to Maryland REALTORS® members to these new forms and changes to existing forms

We also strongly encourage you to take advantage of our additional educational materials, including a series of informational videos and a Condominium and Homeowners Association Forms Practice Guide, all of which will be available at <http://www.mdrealtor.org/Resources/Forms/Statewide-Forms> on or before October 1, 2022. As always, brokers and office managers seeking additional support are welcome to contact our Legal Affairs Department attorneys to schedule Statewide Forms Update sessions for their agents. Association attorneys are also available via our Legal Hotline service to answer questions about all of our Statewide Forms.

I. NEW FORMS

RESIDENTIAL CONTRACT OF SALE

Our Residential Contract of Sale was substantially refreshed as part of a joint effort between a Contracts Review Task Force assembled by our 2022 Maryland REALTORS® President, Craig Wolf, and our Statewide Forms Committee. Arguably the most noticeable change is that the paragraphs contained within the old Residential Contract of Sale have been reorganized by subject matter into seven (7) sections:

- 1) General Contract Provisions
- 2) Payment of the Purchase Price
- 3) Property Condition and Inspections
- 4) Property-Specific Disclosures
- 5) General Disclosures
- 6) Transfer of Title and Closing
- 7) Breach of Contract and Dispute Resolution

Section 1 – General Contract Provisions:

This Section is designed to incorporate the majority of material terms to the Contract of Sale, including:

- Date of Offer
- Time is of the Essence Provision
- Purchase Price
- Settlement Date
- Names of the Parties
- Payment Terms for any Earnest Money Deposit
- Identification of Addenda and Disclosures
- Computation of Days
- Existing Leases

The new form was designed with the goal of concentrating all of these critical terms at the very beginning. That stated, as is the case throughout the new Residential Contract of Sale, many of the provisions contained within Section 1 will be familiar to members who have used the old Residential Contract of Sale. Members with experience with the old form will also note that:

- The Time is of the Essence provision is now its own paragraph (#2);
- Provisions allowing for the transaction to be conducted electronically with electronic signatures are now combined into their own paragraph (#12);
- The Leases paragraph (#16) now references the Tenant Occupied Addendum.

Practice Tip – *The sale or transfer of real property does not invalidate any Lease Agreement or landlord-tenant relationship that may exist between a seller and tenant. Sellers of properties where a tenant is in place should include the **Tenant Occupied Addendum** amongst their other disclosures to put prospective buyers on notice of the tenancy.*

Section 2 – Payment of the Purchase Price:

Section 2 contains provisions concerning the financing of the transaction, including the method by which the subject property will be financed, the timing for the buyer to apply for financing and provide a written financing commitment, and the buyer's right to pursue alternate financing within the agreed-upon timeframe. Provisions in Section 2 were carried over from the previous version of the Residential Contract of Sale.

Section 3 – Property Condition and Inspections

Section 3 addresses the condition in which the property is to be conveyed at settlement. Paragraph 24 concerns Inclusions and Exclusions, which are now stated in the new **Disclosure of Inclusions, Exclusions, Leased Items, Utilities Addendum**, rather than in the body of the Residential Contract of Sale. Further, wood destroying insect inspection and repair procedures are now dealt with via the Property Inspections Addendum so as to bring the body of the Residential Contract of Sale closer to a true, “As Is” Contract. If a buyer wishes to conduct a wood destroying insect inspection, they must specify this within a Property Inspections Addendum.

***Practice Tip** – In June 2022, the VA [updated its policy](#) regarding VA buyer’s ability to pay for wood destroying insect inspections and associated repairs. VA buyers now may pay for such expenses. Accordingly, while a VA buyer’s right to conduct an inspection is preserved by way of the revised VA Financing Addendum, VA buyers must be sure to include “Wood Destroying Insect” among the inspections in the Property Inspections Addendum so as to retain the contractual right to negotiate associated repairs with sellers.*

If a buyer is going to conduct any inspection or testing of the subject property pursuant to an Addendum to the Residential Contract of Sale, the buyer should initial next to “Inspection Addenda Attached” under the **Inspection Contingency** paragraph and ensure that the appropriate Addenda are checked off in the **Addenda/Disclosures** paragraph (#11) in Section 1.

Section 4 – Property-Specific Disclosures

Section 4 contains legal disclosures that may be relevant to the subject property. For example, the **Homeowner’s Association / Condominium** paragraph (#27) in references the need for sellers to acknowledge whether a subject property is part of a homeowner’s association and/or a condominium regime. The party responsible for paying taxes that may be assessed to due to a subject property’s status as an **Agriculturally Assessed Property** (#29) or pursuant to a **Forest Conservation and Management Program** (#31) would be stated here. Sellers’ obligation to disclose deferred water and sewer assessments (#28) and conservation easements (#30) are also stated in Section 4.

Section 5 – General Disclosures

Section 5 contains several disclosures that are general to the transfer of residential real property, including the buyer’s right to receive the Maryland Residential Property Disclosure and Disclaimer Statement (#33), notice to buyers of their rights in connection with lead-based paint disclosures (#35), notice regarding flood insurance and rate maps

(#38), and wetlands, (#41). Section 5 also places the parties on notice of the fact that brokers, their agents, subagents, and employees make no representations with respect to certain aspects or conditions of the subject property (#44).

Section 6 – Transfer of Title and Closing

Section 6 addresses Deed and Title provisions, including the buyer's statutory right to select settlement services providers (#47) and pay for all settlement costs and charges (#50), as well as the procedure by which title defects are addressed (#48). The **Transfer Charges** paragraph (#51) features language that is designed to clarify that the default agreement is for buyers and sellers to equally share all transfer and recordation taxes. The **Transfer Charges** paragraph now contains space for the parties to state their agreement as to a *different* split of those charges, including in instances when the buyer is a First-Time Maryland Homebuyer. These changes allow us to retire the oft-misunderstood Maryland First-Time Homebuyer Transfer and Recordation Tax Addendum.

***Practice Tip** – A simple statement within the appropriate blank field provided in the **Transfer Charges** subparagraphs, such as “Seller to pay all transfer and recordation taxes,” will suffice to state an agreement other than an equal split of transfer charges.*

Section 6 contains a notice to **Maryland Non-Resident Sellers** (#52) that a withholding tax shall be withheld from the proceeds of the transaction at settlement unless the seller is subject to an applicable exemption. Specifics regarding **Property Owner's Title Insurance** are also addressed (#58).

Section 7 – Breach of Contract and Dispute Resolution

All dispute resolution obligations and available legal remedies are contained within Section 7, including the parties' agreement to first mediate any disputes that arise out of the Residential Contract of Sale prior to, during, or within one (1) year following the actual contract settlement date or when settlement should have occurred.

***Practice Tip** – Pursuant to the *Mediation of Disputes* paragraph, the parties to a Maryland REALTORS® Residential Contract of Sale must first attempt to **mediate** any disputes. Parties to the Residential Contract of Sale should carefully review the *Mediation of Disputes* paragraph so as to fully understand what they agreed to in this regard.*

Either the buyer or seller to a Contract of Sale can initiate the mediation process at any time. Additional information regarding mediation may be found at the Maryland REALTORS® website at <http://www.mdrealtor.org/Legal/Code-of-Ethics-Resources/Mediation>. The Maryland REALTORS® Mediation program is administered through O.M. Mediation Services: <https://www.mediate.com/mdrealtors/>. These websites

include detailed information on how to file a request for mediation, costs, and so on. Note that the parties are not obligated to use the Maryland REALTORS® Mediation program.

Once the mediation obligations under Paragraph 35 of the Contract of Sale have been exhausted, parties to a Contract of Sale could opt to pursue court action to resolve the dispute. Each party may also choose to retain the services of a competent attorney in this regard at any time to provide them with legal advice.

Practice Tip – *The **Date of Contract Acceptance** field under the signature lines for the parties now includes a definition. The **Date of Contract Acceptance** is defined as the “date on which all final initials and signatures of all parties have been affixed to this Contract.”*

Property Inspections Addendum

The new Property Inspections Addendum incorporates wood-destroying insect inspections as an option for buyers, whereas that right was previously contained within the body of the old Residential Contract of Sale. We note that the Veterans Administration recently changed its policies regarding wood-destroying insect inspection fees and repair costs, such that these fees and costs **may** now be paid by VA buyers. Should VA buyers wish to retain the right to negotiate payment for repairs of damage caused by wood-destroying insects with the seller, the Wood Destroying Insect inspection line should be initialed in the Property Inspections Addendum (see Paragraph 1.A(7)).

Pursuant to Paragraph 1.B(i), buyers now have the ability to unilaterally terminate the Contract of Sale based on their general dissatisfaction with the results of the inspection(s). The basis for this change is rooted in the reality that many buyers simply do not wish to proceed with a transaction where the property is discovered to have certain unacceptable conditions – regardless of whether the seller is willing to conduct repairs or offer a credit. The old Property Inspections Addendum gave buyers no option but to request repairs, often resulting in failed negotiations, wasted time, and breaches of Contracts of Sale giving way to protracted disputes. Affording buyers the ability to unilaterally terminate the Contract of Sale within the Property Inspections Addendum also renders the As Is Addendum obsolete, thereby allowing us to retire the As Is Addendum from the Statewide Forms Library.

Practice Tip – *The now-retired As Is Addendum was often misused, in that buyers who incorporated it into their offer would later leverage it as a way to request repairs or credits – even though the As Is Addendum afforded buyers no contractual right to do so. These scenarios resulted in sellers being caught off guard by unexpected repair requests when the transaction was meant to be As Is, as well as improper use of the Property Inspections Notice and disputes over repair negotiations.*

Finally, the parties both gain a contractual framework to engage in “additional negotiations” over repairs or seller credits pursuant to inspection results (see Paragraph 1.B(iv)). This change is reflected in the revised Property Inspections Notice.

Additional As Is Provisions Addendum

The Additional As Is Provisions Addendum is designed to address situations (for example, estate sales) where a subject property may need to be conveyed:

- With trash and debris remaining in the property;
- With unresolved orders or notices of violations issued against the property by a condominium regime or homeowner’s association, and/or;
- With unresolved orders or notices issued against the property by governmental authorities.

Practice Tip – *Members representing buyers should explain to their clients that they may be responsible for resolving such violation notices and orders after settlement, should they agree to these provisions in the Additional As Is Provisions Addendum.*

Disclosure of Inclusions/Exclusions, Leased Items, and Utilities Addendum

This form is designed to serve as a single place for sellers to disclose what items will be included and excluded in a sale of their property, the leased items may exist on the property, and what utilities service the property.

With this change, there is no need for a statement of Inclusions/Exclusions in the new Residential Contract of Sale. The Inclusions, Exclusions, and Utilities Addendum to Exclusive Right to Sell Residential Brokerage Agreement was also retired.

Practice Tip – *The completed Disclosure is designed to be uploaded to the MLS by listing agents to be reviewed and submitted by buyers as an Addendum to their offer. This practice eliminates the need for members representing buyers to copy data from the MLS into the Residential Contract of Sale.*

Advanced Treatment Unit (ATU) and/or Best Available Technology (BAT) Septic System Disclosure

Per state regulations, “ATU” and “BAT” septic systems installed on properties require an ongoing maintenance contract to remain in place or that homeowners otherwise comply with maintenance, testing, and reporting requirements. These systems utilize technology approved by the Maryland Department of the Environment for removing nitrogen from onsite sewage disposal systems.

This new form allows sellers to disclose the existence of such systems on a property and provide the necessary documentation and information to buyers in order for them to remain in compliance with system maintenance, testing, and reporting requirements.

Practice Tip – ATU/BAT systems are required in Maryland for new large septic systems with a design flow of 5,000 gallons per day or greater and all new systems installed within “Critical Areas” (land within 1000 feet of tidal waters). Listing agents should encourage their sellers with property serviced by on-site septic to contact their septic service provider to confirm whether their system contains ATU/BAT components.

Change in Terms Addendum to Brokerage Agreement

This form allows the parties to any of the four (4) Maryland REALTORS® Brokerage Agreements to agree to changes in terms. This single form was developed to work across all four (4) Brokerage Agreements, with the subject Agreement to be amended identified by a checkbox at the top of the form.

Practice Tip – Always ensure that you are authorized by your broker or their designee to sign any contractual agreements on behalf of your brokerage.

Post-Settlement Occupancy Agreement

This form serves as a *separate* contractual agreement between parties to a residential sale transaction – it is not an addendum to our Residential Contract of Sale. The form allows a buyer to grant a seller a *license* to remain in the subject property for no more than sixty (60) days after settlement.

Practice Tip – Buyers who purchase and finance properties that they affirm will serve as their owner-occupied, primary residence are required by most lenders to occupy those properties within sixty days of closing. The failure of such a buyer to timely occupy the property could result in allegations of mortgage fraud. Accordingly, the Post-Settlement Occupancy Agreement is designed to accommodate occupancy periods of no more than sixty days.

Practice Tip – The phrase “rentback” should be avoided when addressing the potential for post-settlement occupancy, as the term “rent” implies the establishment of a landlord-tenant relationship.

Commercial Property Exclusive Listing and Commission Agreement

This form may be used by brokers seeking to list improved or unimproved commercial properties.

Practice Tip – Members who wish to expand their business into commercial real estate transactions should do so only with the guidance and supervision of experienced brokers. Buyers and sellers of commercial properties will generally require the counsel of a licensed attorney to bring such transactions to settlement, as the nature and particular terms of commercial transactions often vary greatly from property to property.

Addendum A to Commercial Property Exclusive Listing and Commission Agreement

This form, designed to be used together with the Commercial Property Exclusive Listing and Commission Agreement form, allows brokers and their seller-clients to document property-specific information such as exclusions, leased items, amenities, and the utilities that serve listed commercial property.

II. REVISED FORMS

VA Financing Addendum

The title of the Termite Inspection paragraph has been changed to “Wood Destroying Insect Inspection.” The content of the paragraph has been updated to reflect the Veterans Administration’s recently updated policy regarding payment of wood-destroying insect inspection fees and repair costs. Specifically, while a wood-destroying insect inspection is still required by the VA, the inspection fees and costs associated with necessary repairs **may** now be paid by VA buyers.

Practice Tip – VA buyers should continue to use the Property Inspections Addendum and Notice to ensure they retain the contractual right to conduct inspections of all kinds, including wood-destroying insect inspections, and negotiate the cost of necessary repairs with the seller.

USDA Financing Addendum

The title of the Termite Inspection paragraph has been changed to “Wood Destroying Insect Inspection,” with the language adjusted to be consistent with that of the VA and FHA Financing Addenda.

FHA Financing Addendum

The title of the Termite Inspection paragraph has been changed to “Wood Destroying Insect Inspection,” with the language adjusted to be consistent with that of the VA and USDA Financing Addenda.

Conventional Financing Addendum

The final subparagraph of the Appraisal Contingency section has been amended to add the following verbiage:

“Buyer’s failure to provide written notice to the Seller of their election within the agreed-upon timeframe will automatically constitute the Buyer’s agreement to elect to purchase the property at the Purchase Price in accordance with Option ‘B’ in this subparagraph.”

Property Inspections Notice

The “PIN” has been updated to conform with the new Property Inspections Addendum.

Exclusive Right to Sell Residential Brokerage Agreement

The Addenda paragraph (#32) has been updated to reflect the retirement of the Inclusions/Exclusions and Utilities Addendum to Exclusive Right to Sell Residential Brokerage Agreement and the addition of the Disclosure of Inclusions, Exclusions, Leased Items, and Utilities Addendum.

Practice Tip: The Addenda paragraph of the Exclusive Right to Sell Residential Brokerage Agreement should not be treated as a “checklist” of necessary documents for sellers to review and/or sign in connection with listing their property. By incorporating an Addendum into a listing agreement, the content of that Addendum becomes part of the listing agreement and is binding on the parties to the listing agreement.

Unimproved Land Contract of Sale

The Unimproved Land Contract of Sale has been updated to mirror the organization and verbiage of the new Residential Contract of Sale, using the same “Section” headings and paragraph numbering to maintain consistency within the two forms where applicable and practical.

III. RETIRED FORMS

The following forms will be retired from the Maryland REALTORS® Statewide Forms Library as of October 2022:

1. Disclosure of Leased Items Addendum to Contract of Sale
2. Inclusions/Exclusions and Utilities Addendum to Exclusive Right to Sell Residential Brokerage Agreement
3. As Is Addendum
4. First-Time Maryland Homebuyer Transfer and Recordation Tax Addendum