

Building a
STRONGER
NEW MEXICO
New Mexico Housing Summit
20 •  • 16
MFA



REALTORS® ASSOCIATION OF NEW MEXICO

LEGAL UPDATE

Presented By:

Ashley Strauss-Martin, Esq.

September, 2016

TOPICS COVERED TODAY

- NM REC ADOPTED RULES
- NEW/REVISED RANM FORMS
 - LISTING AGREEMENT
 - BUYER'S SALE CONTINGENCY
 - BACK-UP CONTRACT (OFFER)
 - TENANT CONSENT FOR PHOTOS AND OPEN HOUSE
 - SERVICE/THERAPY ANIMALS INFO SHEET
 - FIRPTA

TOPICS COVERED TODAY

- STATE/HOT LINE ISSUES
 - AUCTIONS
 - TITLE INSURANCE ON RECs
 - PERSONAL INJURY COVERAGE
 - FHA - ELIGIBILITY DISCLOSURE
 - BUILDING PERMITS

TOPICS COVERED TODAY

- NATIONAL ISSUES:
 - DEPT. OF LABOR RULES
 - NEW DRONE REGS
 - FHA CONDO RULES
 - FHAA DISPARATE IMPACT GUIDANCE
 - RESPA - TITLE 6
 - WIRE FRAUD

TOPICS COVERED TODAY

■ CASE LAW

- DUTY TO DISCLOSE FOUL ODOR
- DUTY TO VERIFY RENTAL PERMITS
- DUTIES OWED TO FORMER CLIENTS
- FAILURE TO DISCLOSE BUYER'S REASONS FOR PURCHASING PROPERTY - MINERAL RIGHTS
- DUTY TO DISCLOSE OFF-SITE CONDITIONS

TOPICS COVERED TODAY

- **CASE LAW**
 - BREACH OF BUYER'S BROKER AGREEMENT
 - BROKER LIABLE FOR BAD INVESTMENTS
 - DUTY OF CARE OWED BY TRANSACTION BROKER
 - BROKER'S DUTY TO DISCLOSE EROSION ISSUE

REC ADOPTED RULES

EXCEPT FOR NEW
BROKER DUTIES -
16.61.9.8,

ALL NEW RULES TAKE
EFFECT JAN. 1, 2017

EDUCATION

- CE INCREASED FROM 30 TO 36 HRS PER LICENSING CYCLE (EVERY 3 YRS)
- MUST INCLUDE REC APPROVED
 - (4 HR) ETHICS CLASS ONCE DURING EACH 3 -YR LICENSING CYCLE - NAR 2.5/2 YRS (2017)
 - 4 HR CORE ELECTIVE COURSE ONCE DURING EACH 3 -YR LICENSING CYCLE, AND
 - 4 HR CORE COURSE **ANNUALLY** DURING EACH OF THE 3 YEARS OF THE LICENSING CYCLE

EDUCATION

- If Broker Takes Mandatory On Or Before December 31, 2016, Broker Will **NOT** Have To Take Core Course Until Next *Licensing Cycle*
- Mandatory Course Will Not Be Offered After Dec. 31, 2016. Brokers Who Have Taken Mandatory Course And Who Wish To Take The New Core Course, Will Received 4 Additional Hours Of Education In Their Current Licensing Cycle
- ***BROKERS RENEWING AFTER FIRST OF DEC. 31, 2016 WILL BE REQUIRED TO HAVE 36 HOURS WHEN THEY RENEW!!***

EDUCATION

ELIMINATION OF
MANDATORY COURSE
AS OF DEC. 31, 2016

EDUCATION

- CORE COURSE – Covers.....
 - Broker Duties
 - E and O claims
 - Laws and Regulations AND
 - Disciplinary Case Studies

EDUCATION

- CORE ELECTIVE COURSE –
 - Residential Sales OR
 - Commercial Sales OR
 - Vacant Land/Ranch Sales OR
 - Property Management

REC ADOPTED RULES

- DEFINITIONS:

- Clarification that a (Residential) Property Manager is an Agent of the Owner

- Broker Duties: “Certain Duties Owed To Customers, Clients, Other Parties To The Transaction And Other Brokers”

DELAYED ADOPTION OF BROKER DUTIES

- **BROKER DUTIES –
16.61.19.8**

- DO **NOT** TAKE EFFECT JAN. 1,
2017
- NEW BROKER DUTY LANGUAGE
PUBLISHED IN DECEMBER AND
CONSIDERED AT JAN. MEETING
OF REC

DELAYED ADOPTION

- BROKER DUTIES TO CUSTOMER, CLIENTS -
- Honesty, reasonable care, and ethical and professional conduct

BUT DEFINITION EFFECTIVE 1.1.17

- DEFINITION OF HONESTY AND REASONABLE CARE AND ETHICAL AND PROFESSIONAL CONDUCT:
 - *conduct that a reasonable person would understand to meet standards of professionalism and ethical conduct within a profession, including but not limited to good faith, competence, trustworthiness, diligence, and lawful behavior.*

DELAYED ADOPTION

- **BROKERS DUTIES TO TENANTS:**

- Honesty, reasonable care, and ethical and professional conduct
- Compliance with local state, and federal fair housing and anti-discrimination laws, the NM real estate license law and the REC rules, the NM Uniform Resident Relations Act, and other applicable local, state, and federal laws and regulations.

DELAYED ADOPTION

- *Brokers Duties to Tenants:*
 - Performance of any and all written agreements entered into with the tenant
 - Prompt accounting for all money or property received by the broker from the tenant, including issuance of a receipt for cash received
 - Written disclosure that the broker is the agent of the owner of the property and not of the tenant.

DELAYED ADOPTION

- *Brokers Duties to Tenants:*
 - Written disclosure of any adverse material facts actually known by the broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction;
 - Adverse material facts do not include any information covered by federal fair housing laws or the NM Human Rights Act.

DELAYED ADOPTION

- Broker Duties to Tenants
 - Advice to tenants to consult an attorney regarding the effectiveness, validity, or consequences of any express written agreement the tenant is required to sign.

DELAYED ADOPTION

• BROKERS DUTIES TO OTHER BROKERS

- Honesty, reasonable care, and ethical and professional conduct
- Timely presentation of and response to all offers or counter-offers

DELAYED ADOPTION

- BROKERS DUTIES TO OTHER BROKERS
 - *participation in assisting their customer or client in complying with the terms and conditions of the contract and with the closing of the transaction;*

DELAYED ADOPTION

- **BROKERS DUTIES TO OTHER BROKERS**
 - local state, and federal fair housing and anti-discrimination laws, the New Mexico real estate license law and the REC rules, the NM Uniform Resident Relations Act, and other applicable local, state, and federal laws and regulations.

DELAYED ADOPTION

- **BROKERS DUTIES TO OTHER BROKERS**
 - Disclosure of any adverse material facts actually known by the AB or QB about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the NM Human Rights Act;

DELAYED ADOPTION - BROKERS DUTIES TO OTHER BROKERS

- *disclosure to other brokers involved in the transaction of any potential conflict of interest that the broker has in the transaction including but not limited to:*
 - *any written brokerage relationship the broker has with any other parties to the transaction;*
 - *OR any material interest or relationship of a business, personal, or family nature that the broker has in the transaction;*

DELAYED ADOPTION - BROKERS DUTIES TO OTHER BROKERS

- Non-interference with a purchase agreement or any express written agreement that another broker has with their client or customer.

MANAGEMENT AGREEMENTS

- If the property manager is prohibited by law or contract from providing the owner with a given document, such as a tenant's criminal background check or credit report, the property management agreement shall include the following:

MANAGEMENT AGREEMENTS

- a written disclosure to the owner that the PM is prohibited by law or contract from providing such documents to the owner, and
- the owner's written consent that such documents will not be provided.

MANAGEMENT AGREEMENTS

- Shall specify that the brokerage relationship between the property manager and the owner is an agency relationship.
- Shall define duties and responsibilities of broker and owner - **ADDED**
 - Disclosure of the status of any default or other financial situation that could affect the tenant's residency.

ADVERTISEMENTS

- *Brokerage office telephone number shall be prominently displayed in a type size not less than 33 percent of the AB's name, or in the case of a team of ABs, the team name*

ADVERTISEMENTS

- In the event that disclosure of the brokerage name and telephone number as registered with the Commission is not practical in electronic displays of limited information, such as “thumbnails”, text messages, links and “tweets” of 200 characters or less, such displays are exempt from the disclosure requirement provided such displays are linked to a display that includes all of the required disclosures.

RANM FORMS

LISTING AGREEMENT
EXCLUSIVE RIGHT
TO SELL
FORM 1106

RANM FORMS

- COVER PAGE II - BROKERAGE RELATIONSHIPS DISCLOSURE
 - Transaction broker: Defined
 - Exclusive agency: Defined
 - Dual agency: Defined

LISTING AGREEMENT

- **ADDED TO PROPERTY - PARA. 3**
 - **OTHER RIGHTS.** Unless otherwise provided herein, Seller shall convey to Buyer all existing wind, solar, water and mineral rights appurtenant to the Property.
 - Is Seller aware of any wind, solar, water or mineral rights that have been severed from the Property Yes No If "Yes", explain

LISTING AGREEMENT

- ADDED TO PROPERTY - PARA. 3
 - LIST OF AFFIXED AND PERSONAL PROPERTY (AND SPACE TO LIST EXCLUSIONS) FROM RESIDENTIAL PURCHASE AGREEMENT

LISTING AGREEMENT

- **NEW PARA. 4** - THIS SECTION TO BE COMPLETED **ONLY IF** PROPERTY WILL NOT BE ENTERED INTO THE MULTIPLE LISTING SERVICE (MLS) WITHIN 48 HOURS OF THE BEGINNING TERM DATE SET FORTH IN PARAGRAPH 2. Check applicable provision.

LISTING AGREEMENT

- Broker shall not market Property through the MLS.
- Broker shall begin marketing the Property in the MLS within 48 hours of _____ (DATE) or

(Event would be entered here)

LISTING AGREEMENT

- Seller acknowledges that Seller has been informed of the marketing benefits of the MLS and Seller hereby waives such marketing benefits as set forth in this Paragraph 4.

NOTE: BROKER'S MLS MAY REQUIRE SELLER TO COMPLETE A WAIVER OF MLS BENEFITS. FOR MORE INFORMATION ON MLS BENEFITS, SEE RANM FORM 1820 - MLS INFORMATION SHEET.

- _____ Seller's Initials

LISTING AGREEMENT

- OWNER'S AUTHORIZATIONS: NEW
- *Material Authorizations. the following owner's authorizations serve as material inducement for formation of this agreement and may not be withdrawn without broker's written consent. owner's attempt at non-compliance with this provision constitutes interference with broker's ability to perform under this agreement and a material default of this agreement, which entitles broker to all remedies available through law and/or equity.*

CAN'T BE CHANGED WITHOUT BROKER'S CONSENT

- PLACE IN MLS
- INTERNET
- PLACE A FOR SALE/LEASE SIGN ON PROPERTY
- LOCKBOX INSTALLATION
- BROKER OBTAIN INFO ON PROPERTY
- INCLUDE INTERIOR PHOTOS/VIDEO
- OTHER

LOCKBOX

- A lockbox is a locked container on the Property in which a key is placed. The lockbox may be opened by a key, combination, or programmer key, permitting access to the Property.
- Seller acknowledges that a lockbox and any other keys left with or available to Broker will permit access to the Property by Broker or any other broker, with or without potential purchasers or tenants even when Seller or occupant is absent.

LOCKBOX

- Seller further acknowledges that, from time to time, unauthorized persons may have gained access to properties using lockboxes.
- Seller acknowledges that neither the Brokerage, Broker, nor any Board or Association of REALTORS® is insuring Seller or occupant against theft, loss or vandalism resulting from any such access.

LOCKBOX

- Seller is responsible for taking such steps as may be necessary to secure and protect the Property and its contents during any time that a lockbox is being used.
- Broker to provide keys to other Brokers and Agents and other authorized personnel to show the Property and to permit access for marketing and inspections.

LISTING AGREEMENT

- *CAN BE CHANGED WITHOUT BROKER'S CONSENT - WITH WRITTEN NOTICE TO BROKER*
 - DIVULGING TERMS AND/OR CONDITIONS OF OFFERS
 - BLOGGING
 - AVMs

LISTING AGREEMENT

- **NEW PARA. 9. - TENANT OCCUPIED PROPERTY.**
- If Property is currently tenant-occupied, then Seller must obtain written consent from Tenant for the following: (Tenant's Consent - RANM Form _____):

LISTING AGREEMENT

- to photo/video the inside of the Property and provide such authorization to Broker. If Seller is unable to obtain such authorization, Broker shall not photo or video the inside; AND
- to hold an “Open House” to allow prospective Buyers to inspect the premises. If Seller is unable to obtain such authorization, Broker shall not hold an “Open House” of the Property. NOTE: Tenant’s grant of consent allowing Broker to hold an “Open House” does *not* obligate Broker to do so.

LISTING AGREEMENT

- COMPENSATION PARAGRAPH
 - GRT Location Code
_____ (to be
completed by Broker)
 - Based on Property Location

LISTING AGREEMENT

- COMPENSATION PARAGRAPH - NEW
- Compensation due if at ANY time, a Buyer who obtained an option to purchase during the term of this Agreement exercises that option. This provision WILL NOT terminate if Seller enters into a written exclusive listing agreement with another licensed real estate broker.
-

LISTING AGREEMENT

- Protection Period - It shall not be necessary to provide the name(s) of any buyer who has made an offer to purchase or lease the Property.

LISTING AGREEMENT

- **NEW PARA. 12 - COMPENSATION FOR LEASE.**
 - AMOUNT PLUS GRT
 - PROTECTION PERIOD
 - AUTHORIZATION TO SHARE COMPENSATION
 - NO PROPERTY MANAGEMENT CREATED

LISTING AGREEMENT

- ADDED TO WARRANTIES:
 - Maintain Insurance
 - All Seller-provided information is accurate
 - All material defects disclosed to Broker
 - Listing Content does not infringe

LISTING AGREEMENT

- USE OF LISTING CONTENT; INTELLECTUAL PROPERTY LICENSE.
 - Owner acknowledges and agrees all photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, remarks, narratives, pricing information, and other copyrightable elements relating to the Property provided by Owner to Broker (the "*Owner Listing Content*"), or otherwise obtained or produced by Broker in connection with this Agreement (the "*Broker Listing Content*"),

LISTING AGREEMENT

and any changes to the Owner Listing Content or the Broker Listing Content, *may be filed with one or more multiple listing services, included in compilations of listings, and otherwise distributed, publicly displayed and reproduced, subject to the limitations listed in Section 8 of this Agreement*

LISTING AGREEMENT

- *Owner hereby grants* to Broker a non-exclusive, irrevocable, worldwide, royalty free *LICENSE* to use, sublicense through multiple tiers, publish, display, and reproduce the Owner Listing Content, to prepare derivative works of the Owner Listing Content, and to distribute the Owner Listing Content or any derivative works thereof, subject to the limitations listed in Section 8 of this Agreement.

LISTING AGREEMENT

- This non-exclusive license *shall survive the termination* of this Agreement for any reason whatever. Owner represents and warrants to Broker that the Owner Listing Content, and the license granted to Broker for the Owner Listing Content, *do not violate or infringe upon the rights*, including any copyright rights, of any person or entity.

LISTING AGREEMENT

- Owner acknowledges and agrees that as between Owner and Broker, *all Broker Listing Content is owned exclusively by Broker*, and Owner has no right, title or interest in or to any Broker Listing Content .

LISTING AGREEMENT

- Seller Representation
 - Bankruptcy? Yes No
 - Loan modification? Yes No
 - If yes to either, Seller should determine what, if any implications, such bankruptcy and/or loan modification may have on the sale of the Property
 - Option to Purchase Yes No. If yes, provide a copy of the Option to Purchase.

LISTING AGREEMENT

- OWNER INDEMNIFICATION:
 - incorrect or undisclosed information about the Property which Owner knew or should have known;
 - injury to third-parties occurring at the Property provided such injury is not due to Broker's own negligent, reckless or intentional action; and
 - *infringement of any copyright arising out of Broker's use of Owner Listing Content.*

LISTING AGREEMENT

- Added
 - Electronic signature consent
- Modified - so language is the same as in the purchase and other agreements
 - Attorney fees and costs
 - Governing law and venue
 - Severability



BUYER'S SALE CONTINGENCY

BUYER'S SALE CONTINGENCY

- *INTENDED PURPOSE.*
 - *the Buyer is making an offer on the Seller's property; and*
 - *the Buyer is attempting to sell his existing property; and*
 - *the Buyer is making his offer to purchase Seller's property subject to the sale, closing and funding of his property; and*
 - *the Seller agrees to discontinue MLS marketing of the his property once the Buyer's property goes under contract.*

BUYER'S SALE CONTINGENCY

- The term “satisfies” and any variation thereof means that the Buyer has closed on the sale of his property.
- The term “waives” and any variation thereof means that it is no longer necessary for the Buyer to sell his property in order to purchase the Seller’s property. If the Buyer “waives” this Contingency, the Buyer is no longer making the purchase of the Seller’s property contingent on the Buyer first selling his own property.



BUYER'S SALE CONTINGENCY

The following agreement is an Addendum to the Purchase Agreement dated _____ between _____ (“Buyer”) and _____ (“Seller”) relating to the following real estate: _____ (“Subject Property”), hereinafter referred to as the “Purchase Agreement”.

1. **CONTINGENCY.** The Purchase Agreement is subject to the sale, closing and funding of Buyer’s property located at: _____ (“Buyer’s Property”).

2. **MARKETING PERIOD AND CONTINGENCY DEADLINE.**

A. **MARKETING CONTINUES.** Seller shall have the right to offer the Subject Property for sale and to consider additional offers until Buyer delivers written notice to Seller that Buyer has entered into a contract for the sale of Buyer’s Property (“Marketing Period”).

B. **CONTINGENCY DEADLINE.** In the event Seller receives another acceptable offer to purchase the Subject Property during the Marketing Period, Seller shall deliver written notification (Notification to Satisfy or Waive Contingency, Page 4 of this Agreement) to the Buyer that this Contingency must be satisfied or waived within _____ hours of receipt of such notification (“Contingency Deadline”). If Buyer does not satisfy or waive this Contingency by the Contingency Deadline, this Purchase Agreement shall terminate and any Earnest Money will will not be refunded to Buyer.

BUYER'S SALE CONTINGENCY

- 2. TERMINATION OF CONTRACT ON BUYER'S PROPERTY.** In the event Buyer has entered into a contract for the sale of Buyer's Property and that contract subsequently terminates for any reason, Buyer must notify Seller of such termination within ____ days of such termination. In this event, Buyer shall have the option of waiving the contingency; however, if Buyer is unwilling or unable to waive the contingency at the time he provides notice to Seller, then Seller, in his sole discretion, may terminate the Purchase Agreement.
- A. NOTICE.** If Seller elects to terminate, Seller shall deliver written notice to Buyer within ____ days of receiving Buyer's notice of the termination of the contract on Buyer's Property and Earnest Money will be refunded to Buyer. If Seller fails to timely notify Buyer of Seller's intent to terminate, Seller's right to terminate shall be deemed waived.
- B. MARKETING RESUMES.** If Seller elects *not* to terminate the Purchase Agreement or *waives* his right to terminate the Purchase Agreement by failing to timely respond to Buyer's notice (Para. 4.A), Seller may resume marketing of the Subject Property until such time as Buyer notifies Seller that Buyer has entered into another contract for the sale of Buyer's Property ("Subsequent Marketing Period"). In the event Seller receives another acceptable offer to purchase the Subject Property during the Subsequent Marketing Period, Seller shall deliver written notification (Notification to Satisfy or Waive Contingency, Page 4 of this Agreement) to the Buyer that this Contingency must be satisfied or waived by the Contingency Deadline (Para. 2.B). If Buyer does not satisfy or waive this Contingency by the Contingency Deadline, this Purchase Agreement shall terminate and any Earnest Money will will not be refunded to Buyer.

BUYER'S SALE CONTINGENCY

5. **TIME FOR SATISFACTION OR WAIVER OF CONTINGENCY.** Without any notice or demand, Buyer shall notify Seller in writing on or before _____ (“Contingency Date”) that this Contingency has been satisfied or waived. If Buyer does not satisfy or waive this Contingency by the Contingency Date, this Purchase Agreement shall terminate and any Earnest Money will will not be refunded to Buyer. NOTE: THE FACT THE BUYER HAS ENTERED INTO A CONTRACT FOR THE SALE OF BUYER'S PROPERTY IS NEITHER A SATISFACTION, NOR A WAIVER OF THE CONTINGENCY (SEE DEFINITIONS OF “SATISFACTION” AND “WAIVER” IN THE INTRODUCTORY PARAGRAPH) AND THIS PARAGRAPH SHALL APPLY EVEN IF BUYER HAS ENTERED INTO A CONTRACT FOR THE SALE OF BUYER'S PROPERTY.

6. **BUYER REPRESENTATIONS.**

A. Buyer's Property is for sale.

- i. Buyer's Property is listed with _____ (Broker's name) of _____ Brokerage.
- ii. Buyer's Property is is not currently listed with a MLS. The MLS listing number is _____.
- iii. Buyer's Property has been on the market since _____.

B. Buyer's Property is not yet for sale.

- i. Buyer will will not list Buyer's Property with a licensed real estate broker within _____ days from Date of Acceptance. If Buyer will be listing Buyer's Property with a licensed real estate broker, Buyer will deliver proof of this listing to Seller within _____ days from Date of Acceptance. If Buyer fails to deliver proof of said listing, the Purchase Agreement shall terminate and any Earnest Money deposit will will not be refunded to Buyer.
- ii. Buyer will will not list Property with the MLS. If Buyer will be listing Buyer's Property with the MLS, Buyer will do so within _____ days of Date of Acceptance.

BUYER'S SALE CONTINGENCY

7. NOTICES.

A. Any notices made by Buyer under this Contingency Agreement shall be made to (check applicable box)

Seller's Broker Seller Other _____

Notices shall be delivered as in accordance with the Purchase Agreement.

B. Any notices made by Seller under this Contingency Agreement shall be made to (check applicable box)

Buyer's Broker Buyer Other _____

Notices shall be delivered as in accordance with the Purchase Agreement.

C. In the event there are multiple Buyers/Sellers on the Purchase Agreement, each Buyer/Seller shall be considered the agent of the other Buyer(s)/Seller(s) for purposes of giving and receiving notice. Written notice to ANY of said Buyers/Sellers shall be considered written notice to ALL Buyers/Sellers.

BUYER'S SALE CONTINGENCY

8. WAIVER OF CONTINGENCY.

A. If Buyer elects to waive this Contingency for the sale of the Buyer's Property, and is thereafter unable to close and fund on the sale of the Subject Property due to the failure to close and fund on the sale of Buyer's Property, any Earnest Money deposit will NOT be refunded to Buyer; it will be paid to the Seller. Further, Seller reserves any rights to other damages to which Seller may be entitled as a result of Buyer's financial inability to fulfill the terms and conditions of the Purchase Agreement.

B. Seller's Right to Approve (Initial Below if applicable).

Notwithstanding the foregoing, Buyer shall provide to Seller, at the time of waiver of this Contingency, evidence satisfactory to Seller that Buyer is financially qualified to purchase the Subject Property. Buyer's waiver of this Contingency is conditioned on Seller's approval of Buyer's financial qualifications. Seller will inform Buyer of Seller's approval or disapproval within ____ hours after receipt of the evidence referred to above. If Seller disapproves of Buyer's financial qualifications, the Purchase Agreement will terminate and any Earnest Money will be returned to Buyer. If Seller fails to provide notice of disapproval within the time specified, Seller is deemed to have approved of Buyer's financial qualifications and waives his right to terminate the Purchase Agreement based thereon. Seller may not unreasonably withhold approval.

Initial here if the above paragraph applies:

____ Buyer ____ Buyer ____ Seller ____ Seller

BUYER'S SALE CONTINGENCY

9. TIME PERIODS FOR PERFORMANCE.

- A. Earnest Money shall be deposited as specified in the Purchase Agreement the date that the Buyer delivers written notice that the Buyer's Property has gone under contract for sale the date Buyer delivers notice that this Contingency has been satisfied or waived or other _____.
- B. Time periods in the Purchase Agreement for performance of all other obligations shall begin as specified in the Purchase Agreement the date that Buyer delivers written notice that Buyer's Property has gone under contract for sale the date that the Buyer delivers written notice that this Contingency has been satisfied or waived or other _____.




ADDENDUM FOR BACK-UP PURCHASE AGREEMENT

ADDENDUM FOR BACK-UP PA

REALTORS ASSOCIATION OF NEW MEXICO ADDENDUM FOR “BACK-UP” PURCHASE AGREEMENT

ADDENDUM NO. _____

 **This “Back-Up” Purchase Agreement obligates seller to sell and buyer to buy if the Primary Purchase Agreement terminates; Seller can only sign one of these “Back-Up” Purchase Agreements.**

The Addendum is part of the Residential Commercial Vacant Land Farm and Ranch Purchase Agreement dated _____, 20____ between _____ (“Buyer”) and _____ (“Seller”) and relating to the following Property:

Address

City

Legal Description

or see metes and bounds description attached as Exhibit _____, _____ County, New Mexico (“Back-Up Purchase Agreement”).

ADDENDUM FOR BACK-UP PA

1. CONTINGENCY.

Buyer acknowledges that Seller has entered into a purchase agreement with another Buyer to sell the Property (“Primary Purchase Agreement”) and that this Back-Up Purchase Agreement is contingent on termination of the Primary Purchase Agreement. For purposes of this Back-Up Purchase Agreement, the Seller, in his sole discretion, shall determine if the Primary Purchase Agreement has terminated.

2. NOTICE.

Seller must notify Buyer immediately of the termination of the Primary Purchase Agreement. If Seller does not provide written notification to Buyer on or before _____, 20__ that the Primary Purchase Agreement has terminated, then the Back-Up Purchase Agreement shall terminate and any Earnest Money shall be refunded to Buyer.

3. DATE OF ACCEPTANCE

Date of Acceptance continues to mean the date on which the Back-Up Purchase Agreement is fully executed and delivered. The Back-Up Purchase Agreement shall be in full force and effect as of the Date of Acceptance.

4. TIME FOR PERFORMANCE. Neither party is obligated to perform on the Back-Up Purchase Agreement until and unless the Primary Purchase Agreement has terminated. Time periods in the Purchase Agreement for performance shall begin when Buyer receives written notice from Seller that the Primary Purchase Agreement has terminated. NOTE: there CANNOT be any specific calendar date (e.g. March 1st) deadlines for performance in the Back-Up Purchase Agreement; all dates in the Back-Up Purchase Agreement MUST BE expressed in number of days (e.g. 4 days).



TENANT
PHOTO/VIDEO
AND OPEN HOUSE
CONSENT

TENANT CONSENT FORM

TENANT'S CONSENT TO TAKE PHOTOGRAPHS AND/OR HOLD AN OPEN HOUSE

WHEREAS, Tenant is currently renting property located at _____

_____ (“Property”);

AND WHEREAS, Owner of Property intends to market the Property for Sale or Lease through _____
_____ (“Brokerage”);

AND WHEREAS, part of Brokerage’s marketing of the Property includes taking photographs of the interior and exterior of the Property for publication in one or more Multiple Listing Services, as well as on various publicly-accessible internet websites, including, but not limited to Zillow.com, Trulia. Com and Realtor.com.;

AND WHEREAS, part of Brokerage’s marketing of the Property includes holding open houses which would allow members of the general public to view the interior and exterior of the Property;

TENANT CONSENT FORM

TENANT DOES HEREBY CONSENT TO THE FOLLOWING:

PHOTOGRAPHY CONSENT:

_____ To allow Owner, Brokerage or Brokerage's photographers to take photos of the interior and exterior of the Property, which may include photos of items belonging to Tenant.

Tenant will be notified at least 24 hours in advance that Brokerage will be taking photos, so that Tenant may remove any personal belongings that Tenant wishes to have excluded from photos. If such items are not easily movable, Brokerage will refrain from photographing such items. Please specify any such immovable personal items below: _____

TENANT CONSENT FORM

OPEN HOUSE CONSENT:

_____ To Brokerage conducting an open house to allow prospective Buyers or Tenants, as applicable, to inspect the premises. Such open house may occur on (check all applicable):

DAYS:

If no date is specified, Owner, Property Manager or Brokerage shall notify Tenant at least three days in advance of any scheduled Open House. Tenant consents to the following notification:

- Text _____ (number) and/or
- E-Mail _____ (address)



**SERVICE AND THERAPY ANIMALS
IN PRIVATELY-OWNED
RENTAL PROPERTY
INFORMATION SHEET**

INFO SHEET

- Applicable Anti-Discrimination Laws
- Service and Therapy Animals
- “No Pet” Policies
- Request for Reasonable Accommodation
- Vaccinations
- Denying a Request for Reasonable Accommodation
- Damage Caused by Assistance Animal

FIRPTA

- DETERMINING WITHHOLDING RATE.
- If all 3 apply, then the rate is 10%:
 - Sales prices exceeds \$300,000, but does not exceed \$1,000,000; AND
 - Property will be used by the buyer as a primary residence; AND
 - Buyer is an individual.

FIRPTA

- If the amount realized is between \$300,000 and \$1 mil., but buyer is not an individual OR buyer will not be using the property as a primary residence, then the withholding rate is 15% of the amount realized.
- If the amount realized exceeds \$1,000,000, then the withholding rate is 15% of the full amount realized, *regardless of the type of buyer or the buyer's intended use for the property.*

ODDS AND ENDS

- AUCTIONS
- TITLE INSURANCE ON RECs
- PERSONAL INJURY COVERAGE
- FHA - ELIGIBILITY DISCLOSURE
- BUILDING PERMITS

NATIONAL ISSUES

- DEPT. OF LABOR RULES
 - IF NO OVERTIME, EMPLOYEE MUST MAKE AT LEAST \$47,476 ANNUALLY - INCREASED FROM \$23,660
 - AUTO UPDATES EVERY THREE YEARS
 - MAY SATISFY UP TO 10% OF MINIMUM SALARY LEVEL WITH NON-DISCRETIONARY PAYMENTS, BONUSES AND COMMISSIONS - MUST BE MADE AT LEAST QUARTERLY
 - EFFECTIVE DATE DEC. 1, 2016

NEW DRONE REGS

- SMALL UNMANNED AIRCRAFT SYSTEM (UAS)- LESS THAN 55 LBS.
- EFFECTIVE AUGUST 29, 2016
- REMOTE PILOT CERTIFICATE W/UAS CERTIFICATION - NO 333 WAIVER - NO PILOTS LICENSE REQUIRED
- VISUAL LINE OF SIGHT
- DAYLIGHT OPERATIONS ONLY
- NO OPERATIONS OVER PERSONS

REMOTE PILOT CERTIFICATE

- at least 16 years old;
- able to read, write, and understand the English language;
- in a physical and mental condition that allows for the safe operation of UAS;
- pass an initial aeronautical knowledge test

BEST PRACTICES

- Tell other people you'll be taking pictures or video of them before you do.
- If you think someone has a reasonable expectation of privacy, don't violate that privacy by taking pictures, video, etc.
- Don't fly over other people's private property without permission if avoidable.

FHA CONDO RULES

- Reduces FHA condo owner-occupancy ratio to 35%, unless FHA takes alternative action within 90 days from Aug 24th
- Directs FHA to streamline the condo recertification process.
- Provides more flexibility for mixed use buildings.
- Directs FHA to allow small transfer fees

FHAA DISPARATE IMPACT GUIDANCE

Criminal History-Based Housing Policies and Practices

Do's

Create tailored criminal history-based policies/practices.

Be sure to have clear, specific reasoning for the criminal history-based policy/practice that can be supported by evidence.

Exclude individuals only based on criminal convictions that present a demonstrable risk to resident safety or property.

Don'ts

Don't create arbitrary or overly-broad criminal history-based policies/practices.

Don't maintain a policy/practice, or any portion thereof, that does not serve a substantial, legitimate, nondiscriminatory interest.

Don't create exclusions based on arrest records alone.

FHAA DISPARATE IMPACT GUIDANCE

Consider the nature and severity of an individual's conviction before excluding the individual based on the conviction.	Don't create a blanket exclusion of any person with any conviction record.
Consider the amount of time that has passed since the criminal conduct occurred.	Don't provide inconsistent explanations for the denial of a housing application.
Consider criminal history uniformly, regardless of an individual's inclusion in a protected class.	Don't use criminal history as a pretext for unequal treatment of individuals of a protected class.
Treat all applicants for housing equally, regardless of protected characteristics.	Don't use comparable criminal history differently for individuals of protected classes.

FHAA DISPARATE IMPACT GUIDANCE

Conduct individualized assessments that take into account mitigating factors, such as facts and circumstances surrounding the criminal conduct, age at the time of the conduct, evidence of good tenancy before/after conduct, and rehabilitative efforts.

Don't make exceptions to a policy or practice for some individuals, but not make the same exception for another individual based on the individual's inclusion in a protected class.

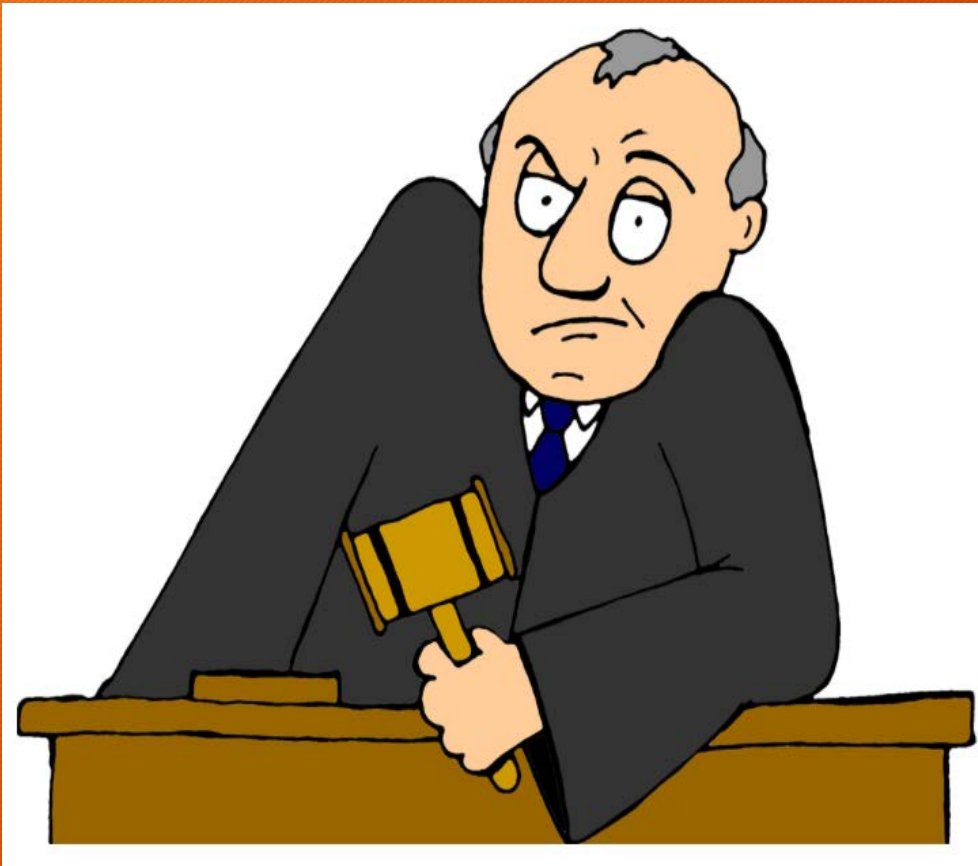
Housing providers may exclude persons convicted of the illegal manufacture or distribution of a controlled substance.²

Don't include a blanket prohibition against individuals convicted of drug possession.

WIRE FRAUD ISSUES

IMPORTANT NOTICE: Never trust wiring instructions sent via email. Cyber criminals are hacking email accounts and sending emails with fake wiring instructions. These emails are convincing and sophisticated. Always independently confirm wiring instructions in person or via a telephone call to a trusted and verified phone number. Never wire money without double-checking that the wiring instructions are correct.

CASE LAW



**YOU BE
THE
JUDGE**

CASE LAW - CA

- Buyer notices “foul” odor
-
- Broker says it’s “sea air”
- “Just replace sheetrock”
- After purchase, buyer noticed oil-like odor on first floor
- Investigated and found buried septic and oil tanks
- To fully remediate had to remove entire house

CASE LAW

**WAS
AGENT
LIABLE?**

CASE LAW - CA

- **AGENT SETTLED FOR \$275,000**
- **SELLER WENT TO COURT**
 - **NO FRAUD, BUT NEGLIGENT MISREPRESENTATION FOR AGENT'S REMARKS**
- **QUESTION OF DAMAGES AND ATTORNEY FEES**

CASE LAW- NY

- **PROPERTY MANAGER RENTED PROPERTY WITHOUT HAVING NECESSARY PERMITS**
- **TENANT CLAIMED BROKER BREACHED FIDUCIARY DUTIES**

CASE LAW- NY

- **No duty to disclose no permit**
- **Broker was agent of owner, not tenant, so no fiduciary duties**
- **But... NY REC said “don’t think this means no duty to know legal status of property ”– other cases say otherwise, e.g. Duty to know property was not connected to sewer system**

CASE LAW- GA

- Broker worked as pm until April, 2010
- Brokerage rec'd call asking for owner's home address
- Broker said, "I'm no longer pm and won't provide home address"
- Turns out it was a process server
- Tenants were bringing suit for mold
- Default judgment for \$75,000 was filed b/c no response to suit

CASE LAW- GA

COURT SAID

- B/C PM WAS NO LONGER REPRESENTING THE OWNER; AND
- PROCESS SERVER HAD NOT STATED THE PURPOSE OF THE CALL,
- NO DUTY TO ALERT THE OWNER TO CALL

CASE LAW- OH

- Buyer said “I plan on raising livestock on land” and told owner
- Really buyer wanted property for mineral rights
- Mineral rights double value of property \$460 k to \$2.1 mil
- Buyer sued for fraudulent inducement, fraudulent misrepresentation and breach of FD

CASE LAW- OH

- Seller and buyer settled - \$450 k
- Broker failed to answer requests for admissions
- Admissions said “broker had duty to advise the seller about buyer’s use and breached FD
- Awarded \$1.2 mil.

CASE LAW- NY

- During showing, prospective tenant tripped on curtain cord from open curtains and fell down stairs
- Broker could not remember if she opened curtains
- Tenant sued owner and broker

CASE LAW- NY

- Trial court found for broker - said broker is not responsible for injuries occurring on property during showing unless it can be shown that the real estate professional controlled the premises
- And no evidence of broker controlled the owner's apartment

CASE LAW- NY

- Appellate court reversed
- 1st theory of liability of brokerage b/c of its contractual relationship with owner
- But this required the owner to rely on the performance of the brokerage's contractual duties that resulted in injury - not the case here

CASE LAW- NY

- 2nd theory required broker to take control of the property - not the case
- 3rd theory could impose liability if broker “launched the instrument of harm” .
- In this case, the curtain cord
- Back to trial court

CASE LAW- 3RD CIR.

- FAILURE OF DEVELOPER AND BROKER TO DISCLOSE TO A BUYER THE PRESENCE OF UNRULY NEIGHBOR
- BROKER SAID "NEIGHBOR IS NO PROBLEM"
- BUYER HAD TO GET RESTRAINING ORDER AGAINST NEIGHBOR

CASE LAW- 3RD CIR.

- NJ had duty to disclose off-site conditions that are material to transaction - off-site conditions
- But not to disclose social conditions
- No way to know neighbor was going to be hostile to buyer
- Trial court affirmed

CASE LAW- CONN.

- BUYER-BROKER AGREEMENT WITH BROKER #1
- BUYER ENTERED INTO ANOTHER BBA AND USED BROKER #2 TO BUY PROPERTY
- BROKER #1 FILED LIEN AGAINST BUYER'S PROPERTY
- BROKER WON!

CASE LAW- OR

- Elderly seller relied on broker in choosing properties for a 1031 exchange
- Sued broker claiming
- But seller signed agreement that explained seller should seek tax and legal services
- Buyer's children claim elderly abuse and negligence

CASE LAW- OR

- Court found women didn't suffer damages because seller paid commission
- No negligence in identifying replacement properties because of disclaimer
- Not unreasonable at time of purchase, real estate market collapsed since purchase

CASE LAW- GA

- Broker working as transaction broker
- Limited service; provide notice of all necessary paperwork requested by seller and alert buyer to to communications from seller
- Buyer sent all things timely except proof of funds was 30 days old
- Seller rejected b/c of outdated proof of funds

CASE LAW- GA

- Communication issues and buyer did not get property
- Buyer brought suit against broker claiming breach of reasonable care for failing to provide timely information
- Trial court - for broker; buyer appealed
- As transaction broker, duties are limited by statute
- Only owe reasonable care when performing ministerial acts - acts not requiring broker to exercise professional judgement. List in statute
- Sent back to trial court.

CASE LAW- GA

IF COURT FINDS THAT THE BROKER DID NOT TIMELY COMMUNICATE THE NEED FOR UP-TO-DATE PROOF OF FUNDS, THEN IT COULD BE CONSIDERED A BREACH OF THE DUTY OF REASONABLE CARE.
SENT BACK FOR FURTHER PROCEEDINGS

RANM LEGAL HOT LINE

1-877-699-7266

LEGALHOTLINE@NMREALTOR.COM

MONDAY – FRIDAY

9:00 TO 1:00 PM

