

**August 2016**

**ATTENTION – CHANGES TO RANM FORMS**

The following forms are either new to the RANM Forms Library or have been amended. Below is a synopsis of each of the new forms and the amendments to existing forms. The following forms will be available in Instant on August 22, 2016.

**LISTING AGREEMENT – EXCLUSIVE RIGHT TO SELL – FORM 1106**

1. On the second Cover Page, we have added the NMREC definitions of the various brokerage relationships available in New Mexico. In the current Listing Agreement, these relationships are listed, but not explained or defined. Instead, sellers are referred to another RANM form for the definitions. It is no longer necessary to access an additional form.
2. In Para. 3(C) “Other Rights” has been added and the Seller is asked if s/he is aware if any of the “other rights” have been severed from the Property. If the answer is “yes”, the Seller is asked to explain.
3. In Para 3(D), the Fixtures, Appliances, Personal Property and Exclusions sections of the Residential Purchase Agreement have been added.
4. A new Para. 4 has been added. It is to be completed ONLY when the Broker will NOT be entering the Property into the MLS within 48 hours of the beginning of the listing term. This section was added to address “pocket listings” and “coming soon” listings. As a side note, brokers should set the beginning date of the listing term as the day the parties (broker and seller) sign the listing agreement. If MLS marketing is going to be delayed, it should be addressed in this new Para. 4.
5. Para. 8(A) has been modified to clarify that the Seller’s Authorizations in this section (MLS, Internet, Signage, Lockbox Property Information and Photo/Videography) **cannot** be unilaterally changed by the seller; the broker must agree to any modifications of the authorizations in this section. Para. 8(B) are authorizations that the seller may modify with notice to the broker (no consent required); these include the divulgence of the existence and terms of other offers; and the enabling/disabling of blogging or AVMs.
6. Para. 9 is a new section that addresses Tenant Occupied Properties; it requires the seller to obtain a Tenant Consent to photograph or video the interior of the home before the broker will do so and tenant consent to hold an Open House. The paragraph references a new form we created, the Tenant Consent Form. **Please see Legal Corner of the [2<sup>nd</sup> Quarter RANM Voice](#) article for explanation as to why this paragraph was added.**
7. In Para. 10 – the Compensation for Sale paragraph, we’ve added three provisions: if the Seller enters into an Option to Sell the Property during the term of the listing agreement, the broker is entitled to his/her commission regardless of when that Option is exercised. This provision does not terminate if the Seller enters into another Listing Agreement. Also, in the Protection Period portion, we’ve added that if a party makes an offer to buy or lease the Property during the term, the broker does NOT need to provide the name of that person to the seller for the Protection Period to apply to that person. **The most noteworthy, is the addition of the GRT Location Code in this section. Please see Legal Corner of the [2<sup>nd</sup> Quarter RANM Voice](#) article for more information on this**

**issue. Generally, brokers will be able to determine the GRT Location Code on the chart or map found at the link below; however, if a broker is still unsure after reviewing the chart and map, s/he will have to contact the NM Tax and Revenue Department. To access GRT Location Codes, visit:**

**<http://www.tax.newmexico.gov/gross-receipts-tax-historic-rates.aspx>**

8. Para. 12 is specific to compensation due in the event of lease. The current Listing Agreement does provide that the broker receive compensation if the seller should decide to lease, instead of sell, the property; however, it was essentially “buried” in the definition of “sale” and often not discussed or addressed until/unless the seller chose to lease the Property. The new paragraph brings attention to the issue, so that the parties may have a substantive discussion about it and unambiguously agree to the compensation due in the event of lease.
9. Para. 13(A), the Seller’s Warranties section, has been amended to include additional warranties that seller has certain insurance on the property, that information provided by seller is complete and accurate and that seller has all necessary authority to use any seller-content provided to broker (such as photographs or renderings). In Para. 13(B), Representations, the Seller has been advised to investigate what, if any, ramifications may result from the Seller having filed for bankruptcy or a loan modification. In Para. 13(C), Indemnification, we have added an indemnification provision in the event any of the seller-provided content infringes on another’s copyright. In Para, 13(D), Seller’s Release, the language has been modified slightly to provide additional protections for broker while addressing some of the common concerns raised by sellers. In the new language, the seller releases the broker and co-op broker from liability for any damages or claims for any personal injury or damage to real or personal property asserted by third-parties or caused by acts of third parties, including, but not limited to, vandalism and theft or to acts outside of the parties’ control, including, but not limited to, acts of God and freezing water pipes **AS LONG AS** such acts were not caused by the broker’s or co-op broker’s intentional, reckless or negligent acts.
10. Para. 15 is a new paragraph regarding service providers; the language advises seller that if the broker makes a recommendation for a service provider, that the seller is not obligated to use that service provider and must conduct his/her own independent investigation of that service provider.
11. Lastly, a few additional “boilerplate” paragraphs were added to track with the other agreements (consent to conduct business electronically, attorney fees and costs, governing law and venue, severability).

## **BACK-UP PURCHASE AGREEMENT – FORMERLY “BACK-UP OFFER” – FORM 1530**

1. The first noticeable change is in the name. Since a Back-Up Offer becomes a Back-Up Contract upon seller’s acceptance of the offer, this Addendum has been renamed a “Back-Up Purchase Agreement”.
2. There is warning box at the top of the first page of the form that explains to the seller that s/he may only accept ONE Back-Up Purchase Agreement; this form is not intended to be used if the seller wishes to accept a second or subsequent back-up offers.

3. The first paragraph has been retitled “Contingency”. The language is essentially the same. A new definition has been added, “Primary Purchase Agreement” which refers to the purchase agreement the seller has entered into with Buyer #1.
4. The second paragraph has been retitled, “Notice”; it is here that Buyer #2 would enter the date by which seller must notify Buyer #2 that the Primary Purchase Agreement has terminated.
5. The “Date of Acceptance” paragraph has been moved to Paragraph 3.
6. Para. 4 has been retitled, “Time for Performance” and explains that the time for performance BEGINS when the seller notifies the buyer that the Primary Purchase Agreement has terminated. **It is important to note the language in Para. 4 regarding dates.**

### **PURCHASE AGREEMENT – RESIDENTIAL RESALE – FORM 2104**

Para. 4 – GRT Location Code field has been added. See explanation in paragraph 7 of Listing Agreement Section above.

### **BUYER’S SALE CONTINGENCY - FORM 2503**

1. In short, this form covers the same issues, but has been reworded, shortened and reformatted to do so with more ease.
2. The introductory paragraph has not changed in substance. **NOTE: it is important to fully understand the definitions of satisfy and waive before using this form.**
3. Paragraph 2 has been shortened significantly and retitled, “Marketing Periods and Contingency Deadline”; it consists of two subsections: Marketing Continues and Contingency Deadline. In the “Marketing Continues” subparagraph, it explains that the seller shall have the right to market the property until the Buyer notifies the seller that the buyer’s property has gone under contract. In the “Contingency Deadline” subparagraph, it explains that if the seller should get another offer on the property, the buyer shall have so many hours to satisfy or waive the contingency.
4. Para. 3 has been shortened significantly and retitled “Termination of Marketing Period”. It explains that the seller must cease marketing when notified by buyer that buyer’s property has gone under contract.
5. Para. 4 has been retitled, “Termination of Contract on Buyer’s Property”. This paragraph explains what happens if the contract on buyer’s property terminates for any reason: buyer must notify seller and explains seller’s options.
6. Para. 5 is entitled “Time for Satisfaction or Waiver of Contingency”, which was the name of the former Para. 3. However, this paragraph (unlike the current Para. 3) applies even if the buyer’s property has gone under contract.
7. In the new Para. 6, a sentence has been added for the buyer to disclose whether the buyer will be listing his/her property in the MLS and if so, the time frame for doing so.
8. **PLEASE REVIEW THIS FORM BEFORE IT IS NEEDED AND CALL THE LEGAL HOT LINE WITH ANY QUESTIONS.**

## **TENANT’S CONSENT TO TAKE PHOTOGRAPHS/VIDEO AND/OR HOLD AN OPEN HOUSE – NEW FORM 2110**

As referenced above, new language has been added to the Listing Agreement regarding tenant-occupied properties and a new Tenant Consent for Photography/Video and Open House form has been created. The new language in the Listing Agreement places the onus on the seller to obtain the tenant’s written consent prior to the broker photographing or taking video of the interior of the seller’s property. Further the Listing Agreement and accompanying form requires tenant’s consent to hold an “Open House” of the property. It is important to note, that the Listing Agreement does not obligate the listing broker to conduct an “Open House”; it merely requires the seller to obtain tenant’s authorization in the event the broker chooses to do so.

## **LANDLORD-TENANT LAW - SERVICE AND THERAPY ANIMALS IN PRIVATELY OWNED HOUSING INFORMATION SHEET – NEW FORM 6111**

This new Information Sheet is for use by property managers. The form was created to assist owners/property managers in understanding their legal rights and obligations when a tenant requests to have a service or therapy animal in the rental property.

## **FORMS REFERENCING FIRPTA**

As to certain scenarios, there have been some changes to the percentage of withholding. The Listing Agreement, Purchase Agreements and FIRPTA Information Sheet have been amended to reflect these changes. If the amount realized is between \$300,000 and \$1,000,000, but the buyer is not an individual OR the buyer will not be using the property as a primary residence, then the withholding rate has increased to fifteen percent (15%) of the amount realized. If the amount realized exceeds \$1,000,000, then the withholding rate has increased to fifteen percent (15%) of the full amount realized, *regardless of the type of buyer (individual or entity) or the buyer’s intended use for the property.*

## **PROPERTY DISCLOSURE STATEMENT – RESIDENTIAL – FORM 2301**

1. Organized into a chart format that provides for easier completion and clarity;
2. More clearly references RANM Form Information Sheets in the appropriate sections;
3. Removed initials requirement after the opening Para. 1 on page 1;
4. Added a statement on page 12 providing further protection of the real estate broker;
5. Removed the Lead Based Paint section due to redundancy. It is referenced in the Purchase Agreement and the LBP Disclosure that must be completed for every transaction involving a pre-1978 home.

## **PROPERTY DISCLOSURE STATEMENT - FARM AND RANCH –FORM 4104**

1. There is less boilerplate to read at the beginning and the end of the Disclosure;
2. The new formatting makes it much easier (and more intuitive) to quickly determine and mark the correct answer to a question. Although the form has been changed in a number of areas, the new formatting is the most significant and helpful change;
3. The questions are more organized in sections by subject matter – the process of determining the answer to a question should be more efficient;
4. The listing broker is advised to investigate further if the information regarding acreage and water on the Listing Agreement and the Disclosure are not in agreement.

## **PROPERTY DISCLOSURE STATEMENT - VACANT LAND - FORM 4103**

1. There is less boilerplate to read at the beginning and the end of the Disclosure;
2. The new formatting makes it much easier (and more intuitive) to quickly determine and mark the correct answer to a question. Although the form has been changed in a number of areas, the new formatting is the most significant and helpful change;
3. The questions are more organized in sections by subject matter – the process of determining the answer to a question should be more efficient;
4. The listing broker is advised to investigate further if the information regarding acreage and water/water rights on the Listing Agreement and the Disclosure are not in agreement.