


## UNDERSTANDING NABOR'S 2019 FORMS A SUMMARY OF IMPORTANT REVISIONS

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By: *Kevin R. Lottes, Esq., Lottes Law Group, PLLC*   
*Florida Bar Board Certified Real Estate Attorney*  
*Kevin@LottesLaw.com*

Approximately every two years, the REALTOR® and attorney members of NABOR's Legal Resources Committee review and update NABOR's forms to address changes in the law and the real estate marketplace. The revised NABOR forms are the product of more than one year's worth of study, input, evaluation and deliberation by the members of NABOR's Legal Resources Committee. The updated forms have been approved by the Board of Directors of NABOR, the Marco Island Association of REALTORS® and the Collier County Bar Association and will soon be available for use.

All of the NABOR forms of been re-issued bearing the new copyright date of January 1, 2019, shown as "© 1/1/2019" which appears in the lower right-hand corner of each new NABOR form. All older versions of the NABOR forms should be discarded when the new forms are released for use.

Although this article does not address every change in every NABOR form and each of the revised forms should be reviewed carefully, the following is an explanation and guide to the most significant revisions affecting buyers, sellers and realtors which of been made to the NABOR forms.

As in the past, all of the revised forms will be available at NABOR.com, Transaction Desk, the Florida Realtors website and in ZipForms disc format that can be ordered through the NABOR store. In addition, NABOR will be offering several live seminars focusing on the changes to the NABOR forms.

### **NABOR SALES CONTRACT AND RELATED FORMS**

#### **NABOR SALES CONTRACT**

**NOTE:** The paragraph references are to the NABOR "Sales Contract (Residential Improved Property)". Similar changes, where and when applicable, have also been made to the corresponding provisions of the following NABOR forms:

- "Sales Contract – AS-IS (Residential Improved Property)" (*unless noted with a \**);
- "Sales Contract (Residential Vacant Land)";
- "Listing of Residential Improved Property – Exclusive Right and Authority to Sell Contract"; and
- "Listing of Residential Vacant Land – Exclusive Right and Authority to Sell Contract".

**REVISED – Inclusion of “Landscaping” as part of the Property, Sales Contract page 1:** The first page of the Sales Contract has been revised to specifically include, as part of the Property to be conveyed, “the lawn, trees, shrubbery and landscaping” (which are collectively referred to as “the Landscaping”). The Landscaping is also specifically addressed in revised Sales Contract Standards D(2)(c) and D(2)(e)(i), D(2)(e)(iv).

**NEW – Type of Mortgage Financing, Sales Contract paragraph 4(B):** Sales Contract Section 4(B) has been revised by adding “checkboxes” to identify the type of mortgage financing being sought by the Buyer (whether “Conventional”, “VA”, “FHA” or “Other”). If none of the checkboxes are selected, the type of financing is deemed to be “Conventional”. Revised Sales Contract paragraph 4(B) also states in bold print that, if either of the “VA” or “FHA” checkboxes are selected, **“The Addendum to Sales Contract VA/FHA Financing should be attached hereto and made a part hereof.”**

**REVISED – Revision of Real Estate Transaction Standards, Sales Contract page 3:** Immediately before Sales Contract Standard A, the phrase **“THE REAL ESTATE TRANSACTION STANDARDS SHOULD NOT BE REVISED OR MODIFIED EXCEPT IN OTHER TERMS AND CONDITIONS AND/OR BY ADDENDUM/ADDENDA”** has been added.

**REVISED – Termination of Sales Contract Due to Uncured Title/Survey Defects After Expiration of “Clearance Period”, Sales Contract Standard B:** Sales Contract Standard B has been revised to provide that the deadline for the Buyer to terminate the Sales Contract due to the Seller’s failure to cure title or survey defects is now 5 days after the expiration of the “Clearance Period”.

**REVISED – Deadline for Buyer to Have Property Surveyed and to Notify Seller of Survey Objections, Sales Contract Standard C(1):** Sales Contract Standard C(1) has been revised to provide that the deadline for the Buyer to have the Property surveyed and to notify Seller of any “Survey Objections” is now 5 days prior to the Closing Date.

**REORGANIZED – Reorganization of Disclosures, Sales Contract Standard D(1):** The “Disclosures”, as previously all contained in Sales Contract Standard D(1), have been reorganized into new subsections as follows:

- (A)(1-5) – **“Seller Disclosures”**, which contains disclosures by the Seller to the Buyer;
- (B)(1-4) - **“Mandatory Disclosures”**, which contain those disclosures required by Florida or Federal law; and
- (C)(1-7) – **“Advisements and Acknowledgments”**, containing specific advisements to and acknowledgments by the Buyer.

**CLARIFIED – Definition of “Open Permits”, Sales Contract Standard D(2)(b):** The definition of “Open Permits” in Sales Contract Standard D(2)(b) has been clarified to collectively refer to “any void, expired, issued, open, under review or other building permits which have not been finalized, completed, issued a certificate or

occupancy or completion or otherwise resolved without necessity of further action as documented by the applicable governmental agency".

**CLARIFIED – Unlawful Non-Conforming Structures, Sales Contract Standard D(2)(b) \*:** Sales Contract Standard D(2)(b) has been clarified to expressly provide that a "non-conforming structure" must be "unlawful" in order to constitute a "Defective Inspection Item".

**CLARIFIED – Scope of "Buyer's Election" and "Seller's Maintenance Obligation" Do Not Include Association-Maintained Items, Sales Contract Standards D(2)(b)\* and D(2)(c):** The Sales Contract has been amended and clarified to specifically provide that the "scope of Buyer's Election" (under Sales Contract Standard D(2)(b)) and the "scope of Seller's Maintenance Obligation" (under Sales Contract Standard D(2)(c)) "shall not include or extend to any item for which Seller has no maintenance, repair or replacement obligation under the governing documents of any applicable condominium or homeowners association".

**REVISED / REORGANIZED – Risk of Loss; Casualty; Insurance Matters, Sales Contract Standard D(2)(e)\*:** New Sales Contract Standard D(2)(e) addresses several matters, including risk of loss, casualty and insurance. While many of the provisions of new Sales Contract Standard D(2)(e) are relocated from different Standards of the previous NABOR Sales Contract, the substantively "new" provisions of Sales Contract Standard D(2)(e) include the following:

- **"Casualty" Defined:** New Sales Contract Standard D(2)(e)(i) defines "Casualty" to be "[a]ny loss or damage ... caused by fire, flood, extreme weather conditions or other casualty occurring between the Effective Date of this Contract and the Closing Date or date of possession, whichever is earlier";
- **Deadline for Buyer to Terminate Sales Contract Due to Post-Casualty Insurance Unavailability of Insurance and/or Conditions:** New Contract Standard D(2)(e)(ii) provides that, if as the result the deadline for the Buyer to terminate the Sales Contract due any post-Casualty unavailability of "insurance at a reasonable rate" and/or "services essential for closing" is 35 days after the Casualty date;
- **Deadline for Either Party to Terminate Sales Contract Due to Post-Casualty Uninsurability and/or Unfitness for Habitation:** New Contract Standard D(2)(e)(iii) provides that the deadline for the either the Buyer or Seller to terminate the Sales Contract if "any such Casualty loss or damage renders the Property on the Closing Date either: (1) uninsurable under the residential underwriting standards of the Citizens Property Insurance Corporation, as documented in a letter from Seller's or Buyer's insurance agent or underwriter, or (2) unfit for habitation under local building codes, as documented in a letter issued by the governmental agency having jurisdiction over said matters pertaining to the Property" in 5 days after "receipt of such documentation";
- **Limitation of Seller's Liability for Restoration of Landscaping Caused By Casualty:** New Sales Contract Standard D(2)(e)(iv) provides that Seller's financial obligation for

restoration of Landscaping damage caused by a Casualty shall not exceed 1% of the Purchase Price; and

- **Post-Casualty Inspection Rights:** New Sales Contract Standard D(2)(e)(v) provides that, "[N]ot later than 5 days after Seller notifies Buyer that safe access to the Property is available following a Casualty", the Buyer (or Buyer's representative) may conduct an additional inspection of the Property for the limited purpose of identifying any Casualty loss or damage.

*NEW – Submerged Land Lease Transfer Fees and Sales Tax, Sales Contract Standard F(15):* New Sales Contract Standard F(15) provides that the Buyer pays any "submerged land lease assignment and transfer fees, including any applicable sales tax".

*NEW – Buyer's Right to Terminate if Condominium Unit Subject to Ground Lease with Less than 40 Years Remaining on Lease Term, Sales Contract Standard J:* The provisions of Sales Contract Standard J have been revised to permit the Buyer to terminate the Sales Contract within the 30 days after the Effective Date if: (a) the Property consists of a Condominium unit which exists upon a ground lease; and (b) there are, as of the Effective Date, less than 40 years remaining under term of such ground lease.

*NEW – Wire Fraud Advisory, Near End of Sales Contract, Just Before Signature Lines:* A new "Wire Fraud Advisory" paragraph has been added in bold, underlined, all in all capital letters which advises the parties to the Sales Contract concerning the disclosure of private information and the wiring of funds. The new paragraph also contains specified indemnification provisions.

#### **SALES CONTRACT FORMS WITH NEW NAMES**

**ADDENDUM TO SALES CONTRACT CDD/MSTU ASSESSMENTS** has been renamed from the previous form entitled "Addendum to Sales Contract CDD/MSTU Assessments Disclosure".

**CONDOMINIUM/COOPERATIVE DOCUMENTS RECEIPT** has been renamed from the previous form entitled "Acknowledgment of Receipt – Condominium/Cooperative Documents".

**HOMEOWNER DOCUMENTS RECEIPT** has been renamed from the previous form entitled "Acknowledgment of Receipt – Homeowners Documents".

**INSPECTION NOTICE – LIST OF SYSTEMS AND EQUIPMENT WHICH ARE DEFECTIVE INSPECTION ITEMS** has been renamed from the previous form entitled "Inspection Notice – List of Systems and Equipment Not in Working Condition".

**TERMINATION/CANCELLATION NOTICE AND DIRECTIVE – RESALE CONDOMINIUM/ COOPERATIVE UNIT** has been renamed from the previous form entitled "Cancellation Notice and Directive – Resale Condominium/Cooperative Unit".

**TERMINATION OF SALES CONTRACT AND DEPOSIT RELEASE AGREEMENT** has been renamed from the previous form entitled "Termination and Deposit Release Agreement".

**NEW FORMS FOR USE IN CONNECTION WITH SALES CONTRACT**

**ASSOCIATION/COMMUNITY FEE WORKSHEET** – This new NABOR form provides a, OPTIONAL manner by which a Seller may disclose certain association, community, club and other charges to a Buyer. The use of this form is NOT required under Florida law and expressly does NOT release a Seller from providing the "Homeowner's Association Disclosure Summary" to the extent that such form is required by Section 720.401, Florida Statutes. This new form specifically provides that information contained in the document is "NOT deemed reliable". Real estate licensees are advised to use caution if using this form and are advised NOT to complete (or provide the information to be contained in) this form.

**DISCLOSURE OF LICENSEE INTEREST** – This new NABOR form enables a real estate licensee to disclose that such licensee: (a) is a party (or related to a party) to the Sales Contract; or (b) has an ownership interest in or business relationship with a party to the Sales Contract.

**MISCELLANEOUS SALES CONTRACT FORMS**

**ADDENDUM TO SALES CONTRACT – COOPERATIVE** - The provisions of paragraph 3 of this Addendum have been revised to permit the Buyer to terminate the Sales Contract within the 30 day "Examination Period" if: (a) the of a Cooperative unit which exists upon a ground lease; and (b) there are, as of the Effective Date, less than 40 years remaining under term of such ground lease

**ADDENDUM TO SALES CONTRACT – FIRPTA RESIDENTIAL USE CERTIFICATE** - This document has been revised to add the following sentence in bold, underlined, all in all capital letters which advises that "**BUYER IS ADVISED TO CONSULT A LEGAL AND/OR TAX PROFESSIONAL PRIOR TO EXECUTION OF THIS ADDENDUM**".

**TERMINATION OF SALES CONTRACT – BUYER NOTICE** – This NABOR form has been revised to add the following Addenda and/or Sales Contract provisions which form the basis for Buyer's unilateral termination of the Sales Contract:

- "Addendum to Sales Contract – Review by Advisor (Buyer);
- "Addendum to Sales Contract - Sale of Buyer's Existing Property";
- "Addendum to Sales Contract – Survey Inspection";
- "Sales Contract Paragraph 7 – Existing Leases with Post-Closing Occupancy (Lease Information Unacceptable to Buyer)";

- "Sales Contract Standard B – Title Defect, Failure to Deliver Possession or Lack of Legal Access within Clearance Period";
- "Sales Contract Standard D.2.b – SELLER refusal or counter of Buyer's Election for Remedial Action, credit in lieu of Remedial Action or combination; or failure to respond to BUYER's Election, as to any Defective Inspection Item"; and
- "Sales Contract Standard D.1.A.4 – Change of Property Zoning Classification".

In addition, this revised form contains the following advisory sentence in underlined capital letters: "IN ADDITION TO THIS FORM, THE ESCROW/CLOSING AGENT(S) MAY REQUIRE BUYER AND SELLER TO SIGN A TERMINATION OF SALES CONTRACT AND DEPOSIT RELEASE AGREEMENT PRIOR TO RELEASING BUYER'S DEPOSIT FUNDS."

**TERMINATION OF SALES CONTRACT – SELLER NOTICE**– This NABOR form has been revised to add the following Addenda and/or Sales Contract provisions which form the basis for Seller's unilateral termination of the Sales Contract:

- "Addendum to Sales Contract – Review by Advisor (Seller)";
- "Addendum to Sales Contract – Sale of Buyer's Existing Property"; and
- "Paragraph 4 of Sales Contract – No Waiver of Buyer Financing Contingency".

In addition, this revised form contains the following advisory sentence in underlined capital letters: "IN ADDITION TO THIS FORM, THE ESCROW/CLOSING AGENT(S) MAY REQUIRE BUYER AND SELLER TO SIGN A TERMINATION OF SALES CONTRACT AND DEPOSIT RELEASE AGREEMENT PRIOR TO RELEASING BUYER'S DEPOSIT FUNDS."

## **LISTING CONTRACT FORMS**

### **LISTING-RELATED FORMS WITH NEW NAMES**

**ADDENDUM TO LISTING CONTRACT – CDD/MSTU ASSESSMENTS** has been renamed from the previous form entitled "Addendum to Listing Contract – CDD/MSTU Taxes and Assessments".

**AMENDMENT TO LISTING CONTRACT – RENTAL CHANGES** has been renamed from the previous form entitled "Amendment to Rental Listing Contract – Changes".

**LISTING CONTRACT EXCLUSIVE RIGHT AND AUTHORITY – RENTAL** has been renamed from the previous form entitled "Rental Listing Contract Exclusive Right and Authority".

### **NEW FORMS FOR USE IN CONNECTION WITH LISTING CONTRACT**

**TERMINATION OF LISTING CONTRACT** – This new NABOR form provides for the mutual termination of a Listing Contract by the Seller and the listing Broker; however, the form specifically provides that the provisions of Listing Contract paragraph 4(K)(5) (including the "protection period" contained therein) survive the termination of the Listing Contract.

**TERMINATION OF LISTING CONTRACT – RENTAL** – This new NABOR form enables a Landlord and rental listing Broker to mutually terminate a NABOR Rental Listing Contract; however, the form specifically provides that the provisions of Rental Listing Contract paragraphs 4(B), 4(C), 4(E) and 4(K) survive the termination of the Rental Listing Contract.

**CHANGES TO MISCELLANEOUS LISTING-RELATED FORMS**

**LISTING OF RESIDENTIAL VACANT LAND – EXCLUSIVE RIGHT AND AUTHORITY TO SELL CONTRACT** – The provisions of new paragraph 4(C) of this document (which have been (and remains) contained in the "Listing of Residential Improved Property – Exclusive Right and Authority to Sell Contract") has been added to this form.

**REFERRAL AGREEMENT – BROKER TO BROKER** – This form has been revised to provide that, if the "blank" in paragraph 2 of the form is left blank, it is presumed that the date applicable to such "blank" is the date "one (1) year from [the] date the Referral Broker's Signature Date".

**SHOWING/COMMISSION AGREEMENT FOR RENTALS (NO BROKERAGE RELATIONSHIP)** – Paragraph 1 of this form has been revised to contain add the following sentence: "Landlord acknowledges receipt from Broker of the Notice of No Brokerage Relationship."

As stated above, this article does not address every change in every NABOR form. Please read and re-familiarize yourself with the revised forms before using them. Also, do not mix old forms with new forms – section numbers and time periods have been updated. We hope that you will agree that, with these additions and revisions, NABOR's forms remain the best forms in the business.