Guidelines for the Preparation & Use of the Pennsylvania Association of Realtors® Buyers' Financial Information Form (Form BFI)

General Notes on Usage of PAR Standard Forms

The Pennsylvania Association of Realtors® Standard Forms are developed by the PAR Standard Forms Committee for use in a wide variety of transactions and market areas. To provide maximum flexibility to the parties, many provisions contain blank spaces that can be filled in as appropriate. Further, it is helpful to remember that where pre-printed language is not agreeable to the parties it can be crossed out and/or modified, with the parties dating and initialing the change in the margins. As a general rule, text added by the parties that changes pre-printed text, or pre-printed text altered by the parties, will prevail over pre-printed language should a dispute arise.

As stated in the title, these are only guidelines for the proper use of this form. The Guidelines presented here should be used in conjunction with, and as a supplement to, your professional education, and are in no way meant to substitute for a proper professional education. Seek guidance from your Broker and/or your legal counsel if you have any questions about the proper use of this or any PAR form in a transaction.

To make these Guidelines more useful there may be helpful "extras" added to the main text. Many of the "Note" or "Practice Tip" items you will see are based, in part, on the experiences of PAR members and legal counsel, and are designed to point out some of the more practical items involved in filling out this form.

General Purpose of Form

Most potential real estate buyers will obtain a pre-qualification and/or pre-approval from a mortgage lender early in the process. Aside from helping the buyers get an idea of an appropriate price range for their purchase, a pre-qualification or pre-approval letter is often used to help prove to sellers that the buyer has the financial ability to purchase a particular property.

One potential weakness for sellers who would rely on a pre-approval letter as evidence of a buyer's financial abilities is that the seller doesn't know how the lender reached their determination. At this stage of the process the lender is probably not doing a substantial amount of research to verify financial claims by the buyer. If the buyer provides bad information to the lender (whether intentionally or accidentally), the lender's initial decision may be substantially different than its eventual lending decision once a formal mortgage application is made.

Another potential weakness arises when dealing with buyers who make a cash offer. In this instance, there is no mortgage lender to pre-screen a buyer, so sellers need a tool to look into the finances of such a buyer.

Using the Buyer's Financial Information form (Form BFI) is one way for sellers to get a better feel for the financial abilities of a potential buyer. By asking buyers to disclose certain information about their financial situation, a seller and listing broker can see if there are any "red flags" that might cast doubt on the terms of a pre-approval letter. In addition, if it turns out that the buyer has provided false financial information on Form BFI to make his offer look better, but the buyer is turned down for financing by a lender, the seller may have a better claim that the false information puts the buyer in default of the Agreement of Sale.

Note that there is no law, regulation or ethical provision that requires a seller or listing broker to request that the form be filled out, nor is there any legal requirement that the buyer fill out the form if a request is made. Use of Form BFI is an issue that the parties are free to negotiate. If the buyer does elect to fill out the form, however, the buyer must be truthful in the information being provided.

Introductory Questions

The first seven questions of Form BFI are designed to get some basic background on the buyer's financial status and ability to finance the property. The answers to these questions won't necessarily indicate that a particular buyer is or isn't qualified to purchase a property, but knowing why they are being asked can help provide a seller with information that relates to the general financial situation of the buyer.

(1) Occupancy: Certain financing options may not be available to purchasers who will be using the property as an investment rather than as a primary residence. If the buyer indicates that the property will not be owner-occupied, check the terms of the mortgage contingency in the Agreement to see if the terms of the contingency are realistic for this situation.

(2) Bankruptcy: A history of bankruptcy or late payments will often have a substantial negative affect on a buyer's ability to get financing. Where financing is available, it may only be available through selected types of products and/or at higher than usual interest rates.

(3) Source of Funds: Sellers may want the buyer to show not just that he can make the regular mortgage payments on a property, but also that he has access to the cash necessary to get the transaction to closing. Buyers are asked to list their assets and income later in the form, but sometimes a buyer will be planning to use money from a gift, bonus or inheritance that wouldn't show up in the assets section of the form. Where current assets may not be sufficient, this question allows the buyer to show that other funds will be used in the purchase. If the buyer intends to apply for a mortgage, the mortgage financing can be excluded from this list.

> **Note:** The purpose of asking the buyer to attach documentation showing the availability of funds is not meant to require the buyer to attach account statements for all sources of funds. Only when the source is one that is not listed in the "Assets" section would documentation have to be provided to the seller.

(4) Sale of Other Property: If the buyer will have to sell a parcel of real estate owned by the buyer to purchase the seller's property, the buyer is asked to indicate as such here. A line is provided for the buyer to provide any details of the sale of the buyer's property.

(5)/(6) Support Orders and Arrearages: Where a buyer is under a court order to pay child support or spousal support, that order may take priority over other liens. At a minimum, they will reduce the amount of income available for a buyer to use on mortgage payments.

(7) Divorce or Separation: A buyer who is going through a divorce or separation may not have the right to use marital assets to purchase a property. A divorce or separation agreement that indicates which assets and liabilities belong to which spouse can help a seller determine if the potential buyer is financially secure.

Assets

Buyers are asked to disclose current assets to show that they have sufficient cash (or convertible investments) to afford the cash portion of the transaction. For a cash purchase, this would require showing sufficient liquid assets to afford the entire purchase price of the house along with all closing costs. Where a mortgage is required, buyers would show, at a minimum that they have sufficient assets to cover the expected closing costs.

> **Practice Tip**: Buyers in some circumstances may feel that disclosing assets beyond the amount needed to cover closing costs would make their offer look stronger than a competing offer. At the same time, however, disclosing more than the necessary minimum may be a signal to some sellers that they have more room to try to negotiate the price higher. Use caution with clients in deciding what and how much information to disclose and be sure the client is aware of the positives and negatives of each approach.

The instructions for this section state that the buyer need only disclose an amount sufficient to cover the expected closing costs (or the cash sales price) of the transaction. If the buyer has additional assets there is no requirement to list them. Depending on the circumstances there may be a reason to disclose only the absolute minimum required, or there may be a reason to disclose more than the minimum.

> **Practice Tip**: State law requires that buyers and sellers each be provided with a copy of their estimated closing costs before signing an Agreement of Sale. Buyer's agents should double-check the estimated closing costs in a transaction to be sure that the buyer has sufficient resources for that transaction. If an offer isn't accepted or a transaction fails to close and the buyer makes an offer on another property, check out Form BFI to be sure the disclosed assets are also sufficient for this new property.

Liabilities

Buyers use this section to provide information on liabilities for which they are responsible. This would include things like car payments, student loans, child or spousal support, and any other debts that might affect the buyer's ability to afford the property. Unlike the Assets section, where the buyer can choose to limit the amount of information disclosed based on the amount of assets necessary to close the transaction, the buyer should be thorough in disclosing liabilities.

> **Practice Tip**: With a cash offer there is no need for a buyer to list liabilities unless a liability would be a lien that might affect they buyer's ability to utilize the assets disclosed in the

Assets section. For example, if the seller indicates he is willing to sell a $20,000 car to raise money for a deposit, then he should also disclose if there is an existing $10,000 car loan.

Note: Buyers should include information on owned real estate in the space provided. Even if a buyer is planning to sell real estate as part of this transaction, it should still be listed as a potential liability until the property has closed and the mortgage satisfied.

Employment Information

Information about buyer's employment is requested to get an idea of the amount and stability of buyer's income as it relates to his ability to make regular mortgage payments. As with the Liabilities section, information only needs to be provided if the buyer is planning on getting a mortgage, as future income would be irrelevant for a cash transaction. Like the instructions for the Assets section, the buyer need only disclose enough about his income to prove that he would qualify for the requested mortgage amount.

For example, if the buyer has two jobs but could be approved for a mortgage based just on the income of the first, it wouldn't be necessary to list the second. Similarly, if the buyer's income was $100,000 per year but income of $50,000 per year would be sufficient to support the anticipated mortgage payments, the buyer could choose to disclose a salary of only $50,000 per year.

Practice Tip: Just as with the Assets section, there may be positives and negatives for a buyer who wishes to disclose more than the minimum information requested on the form. Be sure that the buyer understands these issues before filling out the form.

Additional Information

Use this space to include any information that may help the buyer look stronger and/or would explain any issues not easily understood from the form itself.

Affirmation

The first paragraph after "Additional Information" is an affirmation by the buyer that the information in the form is truthful. In this affirmation language, the buyer affirms that all the information provided in the form is truthful and acknowledges that the buyer risks being in default of the agreement and losing deposits if the information is not truthful. This language works in conjunction with language in the Mortgage Contingency paragraph of the Agreement of Sale stating that the buyer will be in default if found to have provided untruthful information to a lender or to the seller where that information results in the denial of mortgage financing.

Release

The first second paragraph expressly permits the broker to provide a copy of this form to others involved in the transaction. Because the broker doesn't have any real authority to prevent any of these parties from potentially misusing the information, a release and "hold harmless" clause is included to help protect against any misuse of the information by a third party.

Note: Just as with most other releases or indemnification clauses, this is not designed to protect the broker against deliberate misuse by the broker, nor is it likely to protect a broker who knows that the information is likely to be misused but who provides it anyway.