

Guidelines for the Preparation & Use of the Pennsylvania Association of Realtors® Buyer's Reply to Inspections/Reports or Written Corrective Proposal (Form BRI)

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 be a 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.

Background Information

The PAR Standard Agreement for the Sale of Real Estate (Form ASR) contains an Inspection Contingency paragraph which permits a buyer to renegotiate or even terminate the Agreement based on the results of certain inspections. If the contingency is elected, the buyer must complete the chosen inspections and respond to the seller with a decision to either accept the property, terminate the Agreement, or submit a Written Corrective Proposal.

The Buyer's Reply to Inspections/Reports or Written Corrective Proposal (Form BRI) is designed to help the buyers and their brokers “standardize” the process of responding to these reports by providing a format that reflects some of these options. This form does NOT create a termination or negotiation right where one does not exist in the Agreement signed by the parties.

Note: While Form BRI can be used by the buyer to notify the seller of the buyer's choice to accept the property or renegotiate the Agreement, it will not operate as the buyer's termination of the Agreement. To terminate the Agreement, use a separate termination form, such as the Notice of Termination of Agreement of Sale, PAR Form TER.

IDENTIFICATION OF REPORTS

The first section of Form BRI lists a number of reports that buyers might receive as a result of the various inspections that they elected in the Agreement of Sale. Note that the list includes items that might be performed under the Home/Property Inspection Contingency, including a home inspection, as well as a number of reports that would be returned under other inspection contingencies, such as wood infestation, radon and on-lot sewage.

Use this section to identify the report or reports to which the buyer is responding. You can fill out a single form for multiple reports, or you may elect to use a separate form for each report. Using one form per report allows you to more easily track negotiations and separate the process for inspections that have different response times.

Practice Tip: It is possible – and often necessary – to use multiple Reply forms during the course of the transaction. For example, you might have some inspection contingencies with a 10-day Contingency Period and others with a 15-day Contingency Period, meaning that the reports and negotiations would have to be handled on different timelines. If you are submitting multiple forms for multiple inspections, be sure to clearly identify each inspection by selecting the appropriate reports.

Paragraph 1: BUYER ACCEPTS THE PROPERTY

Every contingency paragraph in the Agreement of Sale gives the buyer who elects that contingency the option to simply accept the property with no further negotiation after receiving the inspection report. While it is not absolutely required that a buyer indicate acceptance of a Property when he elects to not negotiate for repairs, buyers and sellers may prefer to have that acceptance in writing so there is no confusion on the matter. Use Paragraph 1 to show that the Buyer will not be seeking any repairs or concessions based on the inspection report(s) noted in the introductory section of the amendment.

Practice Tip: The acceptance indicated in this line is ONLY an acceptance under the terms of the specific inspection referenced in the list of identified reports. Acceptance under one report does NOT void the buyer's potential right to negotiate or terminate under any other contingency. For example, Buyer elects the property inspection contingency and the radon contingency. After 6 days, Buyer submits Form BRI identified as being in response to the radon contingency, and checks that he accepts the Property. Buyer still has the right to come back to the Seller to ask for concessions based on the results of a home inspection as long as it is done within the Contingency Period.

Paragraph 2: WRITTEN CORRECTIVE PROPOSAL

Paragraph 2 is designed to operate in conjunction with Paragraph 13(B) of Form ASR, which provides the buyer with an option to submit a Written Corrective Proposal in response to inspection reports and renegotiate the deal. This Paragraph includes the most common negotiation options. If the buyer wishes to renegotiate based on the content of one or more inspection reports, check the box at this Paragraph and fill in the rest as appropriate.

Subparagraph (A): Corrections/Repairs

A buyer who is unhappy with the results of an inspection may submit a request to the seller for corrections or repairs. Check the appropriate box and fill in the blank with a date by which the buyer would like the corrections or repairs to be completed. On the blank lines, describe the buyer's request as specifically as possible. The buyer may attach a contractor's proposal for reference. If the buyer is requesting a credit from the seller for specific identified repairs, use this subparagraph to state the amount of the credit.

Practice Tip: If the buyer is getting a mortgage, any credit must be acceptable to the mortgage lender(s). Certain mortgage lenders may not permit repair credits as part of the Agreement, or may have limitations on the amounts of credit or types of repairs that can be credited. Best practice is to check with the lender before making a request for a credit.

Subparagraph (B): Seller Assist

If the buyer will be requesting a seller assist as part of the renegotiations, check the appropriate box and note the amount of the assist here, either in a dollar amount or as a percentage of the Purchase Price. If a seller assist has been negotiated in the Agreement, remember that the new amount of the assist should be *cumulative* – do not list only the additional amount negotiated as a result of the inspection report.

Example: Buyer and Seller agree in the Agreement of Sale that Seller will provide a \$2,000 seller assist. After getting the home inspection report, the Buyer would like the Seller to provide an additional \$1,000 assist. When filling out Form BRI, state the new seller assist amount as \$3,000 (the original amount plus the additional amount).

Be very careful when requesting a credit or seller assist on Form BRI. Unlike most of the other provisions, which are specific to the contingency being negotiated, because the amounts in these provisions are cumulative there may be problems if the parties do not keep track of the numbers.

Practice Tip: Certain mortgage lenders may not permit sellers to provide repair credits as part of the Agreement, but they will allow for a seller assist. If you know that this is the policy of the lender in a transaction, advise your clients to negotiate under the appropriate sections of the form. If the parties agree to a credit that is not permissible by the lender, it could cause substantial last-minute problems in the transaction.

Subparagraph (C): Purchase Price

If the buyer would like to renegotiate the Purchase Price, note the requested change in this subparagraph.

Practice Tip: This is another provision that can sometimes be used in lieu of a repair credit. For example, assume that a \$200,000 home needs \$3,000 in repairs. One option would be to negotiate a \$3,000 repair credit, while another would be to offer a \$3,000 seller assist (thereby freeing up cash that would otherwise go towards closing costs to be used for repairs after settlement). A third option would be to lower the price of the house to \$197,000 to

reflect the needed repairs. Be careful when adjusting the purchase price, however, so that the parties are truly reflecting the value of the property.

Signatures & Dates

ACKNOWLEDGMENT

The buyer needs to understand that any corrections, repairs, changes to the Seller Assist, or changes in Purchase Price listed on this form are only requests that will be conveyed to the seller and will not alter the Agreement of Sale. Any changes to the Agreement that the parties may agree upon must be put into a writing that will be attached to the Agreement, such as the Change in Terms Addendum (PAR Form CTA).

SIGNATURES

Only the buyer(s) needs to sign the form. Since this is not intended to be attached to the Agreement, it is not necessary to include the seller's signature.