

Guidelines for the Preparation & Use of the Pennsylvania Association of Realtors® Change in Terms Addendum to Agreement of Sale (Form CTA)

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 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 Change in Terms Addendum (Form CTA) is designed to provide an easy way to make some of the most common changes to the terms of the standard agreements of Sale. Form CTA can be used at any time during the transaction if it becomes necessary to make adjustments for any purpose, including renegotiations following inspections.

Paragraph 1: REPAIRS

If the seller agrees to make repairs or improvements to the Property – whether as a result of inspection negotiations or otherwise – provide a number of days prior to the settlement date that the seller should have the work completed.

Note: Be sure to leave enough time before the settlement date for any follow-up inspections that may be required by a municipality, lender, or insurer. If the settlement date will have to be rescheduled, you can use this form for that purpose, as well.

On the blank lines, describe the work that the seller will do as specifically as possible. The parties may also attach a contractor’s proposal(s) for reference.

Paragraph 2: SELLER ASSIST

Where the seller will be providing a seller assist as part of the renegotiated agreement, note the amount of the assist here. If a seller assist has been negotiated in the Agreement or through another form, remember that the new amount of the assist should be **cumulative** – do not list only the additional amount negotiated.

Example: Buyer and Seller agree in the Agreement of Sale that Seller will provide a \$2,000 seller assist. Later in the transaction, the seller agrees to provide an additional \$1,000 assist. When filling out Form CTA, state the new seller assist amount as \$3,000 (the original amount plus the additional amount).

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, be sure to 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.

Paragraph 3: PURCHASE PRICE

To make a change to the purchase price, note the old and new prices in this subparagraph. This might be done if there is a need to renegotiate the price after the Agreement has been signed.

Practice Tip: This can sometimes be used in place of a repair credit or seller assist in appropriate circumstances. 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.

Paragraph 4: ACCEPTANCE AND SETTLEMENT

Subparagraph (A): Acceptance Date

If after the buyer submits an offer for a property, the buyer and seller would like more time to reach an agreement, then use this Paragraph to extend the deadline for a final response by writing the new date by which all parties must indicate acceptance by signing the contract.

Note: Paragraph 4 should *not* be used to extend a Contingency Period or the Negotiation Period. This is meant to extend the time period set out in Paragraph 5 of Form ASR. Paragraph 6 is meant to change other time periods within the Agreement.

Subparagraph (B): Settlement Date

The settlement date stated in the Agreement is independent of all other dates and time periods. No changes or extensions to any other time period changes the settlement date; it can only be done by a written agreement explicitly changing the settlement date. Where the parties need to change the settlement date, insert the prior date and the new date in this subparagraph. Just like when selecting

the original settlement date, be sure to account for all other time periods to be sure that both parties will have completed all their responsibilities prior to settlement.

Paragraph 5: MORTGAGE TERMS

Subparagraph (A): Mortgage Type

This Paragraph would be used to indicate a change in the loan product that the buyer will be seeking. For example, if the buyer submitted an offer on a house with the intent to apply for conventional financing but later decides to apply for FHA financing, then the buyer would submit this form as a request to modify the Agreement.

Note: Keep in mind that Consumer Financial Protection Bureau regulations require lenders to issue an amended Closing Disclosure when the loan product changes, which comes with an automatic three-day review period for the buyer. Changing the loan product after the original Closing Disclosure has been issued may result in a delay in settlement.

Practice Tip: If a buyer submits this form with a request to change the mortgage type (or any other provision), that is a negotiable issue with the seller even though the parties have a signed Agreement. If the seller does not agree to the change, the buyer is still required to adhere to the original terms. For this reason, it is highly recommended that buyer agents encourage their clients to explore various financing options *before* they get to the point of making an offer. If buyers are well informed of their options in advance, they should be more likely to negotiate workable terms when submitting the original Agreement.

Subparagraph (B): Mortgage Amount

This paragraph would be used in two scenarios. First, where the Purchase Price of the property is changed, it may also be necessary to change the mortgage amount to keep the loan-to-value (LTV) ratio consistent. For example, if Buyer will be borrowing 95% of the purchase price for a \$200,000 property, the Agreement would state that the mortgage amount would be \$190,000. If the price of the property is lowered to \$197,000, the mortgage amount would then be lowered to \$187,150 to reflect a 95% LTV.

You can also use this Paragraph to notify the seller of a change in the buyer's plans regarding the amount of mortgage financing being sought. The mortgage contingency paragraph of Agreement of Sale states that the buyer is required to apply for financing "for the mortgage terms stated [in the paragraph] to the mortgage lender(s) identified [in the paragraph]." While a buyer might not be in default simply for applying for financing on different terms, including a different loan amount, the buyer would likely be deemed to be in default and not entitled to the return of his deposit monies if he applies for different terms and is turned down.

Example: Buyer submits an Agreement for a \$200,000 house, which states that he will be applying for a mortgage of \$180,000. Buyer's preapproval indicates that he would qualify for the loan, so Seller accepts the offer. After acceptance, Buyer decides instead to apply for 100% financing and submits an application for \$200,000. This application is turned down, and Buyer asks to have his deposits returned. Because Buyer did not apply for the mortgage terms stated in the Agreement, Buyer would not be entitled to the return of his deposits. When

Buyer decided to apply for \$200,000, he could have submitted Form CTA with that change. Had Seller agreed to the change, that would amend the terms of the Agreement and Buyer would be entitled to the return of deposits.

Subparagraph (C): Mortgage Lender

The mortgage contingency paragraph of the Agreement of Sale contains a space for the buyer to state the mortgage lender or lenders to which he will apply. This is an optional provision; however, if a lender is listed the buyer is required to make application to that lender. The mortgage lender paragraph of the Form CTA would be used to add a lender, substitute a new lender for the one listed in the Agreement, or delete a lender from the one listed in the Agreement. To track the language in the Agreement, separate lines are available for listing the lenders for the first and second mortgages.

Additionally, subparagraph (C) permits the parties to change the date by which the application must be made. If this section is left blank, the application date stated in the Agreement would still be in effect. If the parties agree, however, the application date can be extended or shortened here.

Practice Tip: Changing the date to make the mortgage application often will not be necessary. The most likely scenario for this change would be where a buyer is seeking to change the mortgage lender near the end of the original application period, and would not have the time to complete an application to a new lender. Remember, though, that without a change in the application date, there is no automatic extension. The parties may elect to insert a time period (e.g., “10 days from the execution of this addendum”) or a date (e.g., “no later than July 15”) in this blank.

Subparagraph (D): Loan-to-Value (LTV) Ratio

If a particular LTV ratio has been provided by the buyer, which the buyer would like to amend after the Agreement has been signed, use this Paragraph to renegotiate an acceptable LTV.

Subparagraph (E): Documentation of Mortgage Approval

Although the terms of the Agreement state that the parties agree to extend the length of time the buyer has to deliver proof that their mortgage application has been approved, if the buyer does not provide the documentation by that date, the seller does have the right to terminate any time after if financing has not yet been secured. Use this Paragraph to extend the time stated in the Agreement to avoid giving the seller an unchecked right to terminate. It may also be advisable to change this date if the parties agree in Paragraph 5(C)(3) to a substantial extension in the date to make a mortgage application.

Paragraph 6: TIME PERIODS

Throughout the Agreement there are multiple provisions requiring action by the seller or buyer within a certain time period. If it is necessary to change one of those times periods to accommodate one of the parties, it is highly advisable to do so in writing so there is no confusion. These time period lines in the Form CTA can be used to change any time period in the Agreement.

Practice Tip: Changes to one time period may affect other time periods. If a change is made to one time period in the Agreement, be sure to see what other time periods might need to

be changed for consistency purposes. Remember that “time is of the essence,” so parties who miss a stated deadline will have waived their rights under that contractual provision. It is no defense to state that “it should have been understood” that related time periods also should be changed – if a change is not made in writing, it is not part of the Agreement.

Paragraph 7: OTHER

Any other changes to the Agreement can be memorialized here. Reference the paragraph of the Agreement that is being amended and, again, be as specific as possible when writing a change to the terms of the original Agreement.

Example: Paragraph 7 is amended to exclude the mounting brackets and hardware for television and sound equipment from the sale of the Property.

Signatures and Dates

ACKNOWLEDGEMENT

The Agreement itself and this document, when attached, will represent the entire deal between the parties. All of the “standard” terms contained in the Agreement will remain unaffected unless indicated in writing.

SIGNATURES

To be valid and binding, this form must be signed by both parties, and the date of the signature must appear.