

Pennsylvania Association of Realtors®

**Sale & Settlement Contingency Addenda
to Agreement of Sale**

PAR Form SOP

PAR Form SSP

PAR Form SSP-CM

PAR Form SSP-TKO

PAR Form SRA

Guidelines for Preparation & Use

Updated April 2018



Pennsylvania Association of Realtors®

Note to PAR Form Users

As stated in the title, this document is only a *guideline* for the proper use of the Sale & Settlement Contingency Addenda. The suggestions presented here should be used in conjunction with, and as a supplement to, your professional education; they are not meant as a substitute for proper professional education.

The sale of a home is complicated. No set of instructions, no matter how complete, could possibly cover all of the issues and nuances that appear in any individual transaction. Seek guidance from your Broker and/or your legal counsel if you have any questions about the progress of a transaction or about the proper use of this or any PAR Standard Form.

To make these Guidelines more useful there are numerous 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, staff and legal counsel, and are designed to point out some of the more practical items to consider when filling out the Agreement.

General Notes on Usage

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.

Where there is pre-printed language that is not agreeable to the parties and is not required by law, 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.

Purpose

The forms explained in these Guidelines are used when a buyer needs to sell other property in order to complete the purchase of another, and would like to make an offer that is contingent on his or her ability to sell the other property. Each of the contingency forms has the effect of overriding and altering portions of the Mortgage Contingency contained in the PAR Agreement of Sale, but each is used in different circumstances. Because the contingency forms are so similar, this set of Guidelines explains them all in a single document in an effort to better assist Realtors® in selecting the appropriate form for each transaction. Please read each explanation and make sure you fully understand all of the forms that will be used in these types of contingencies.

Due to the nature of the transactions requiring use of these forms, multiple sellers and buyers are involved. For the purposes of these Guidelines, the term “Seller” with a capital “S” refers to the seller in the current transaction, receiving an offer with Form SOP attached. Similarly, the term “Buyer” with a capital “B” refers to the buyer in the current transaction, making the offer with Form SOP attached. The term “Property” with a capital “P” will refer to the Seller’s Property; the term “property” with a lower-case “p” will refer to the Buyer’s property which must be sold. The term “Agreement” or “Agreement of Sale” will refer only to the contract between the Buyer and the Seller, not the Buyer’s contract on his property.

Settlement of Other Property Contingency (Form SOP)

In some instances a Buyer who needs to sell existing property will already have accepted an offer on that property but hasn't yet have closed the transaction before making an offer on the Seller's Property. If the Buyer must close on his or her own property in order to obtain financing for the current purchase, use the Settlement of Other Property Contingency. If the Buyer has no Agreement for the property or is currently in negotiations, do not use Form SOP; use another form described below.

Paragraph 1: Property & Settlement Date

Paragraph 1 identifies the Buyer's property that must be settled to satisfy the contingency and provides the expected settlement date. Identify the Buyer's property with specificity, using the full address. If there is any confusion as to which property is involved, including a tax parcel number or other identifier is acceptable. In order to help verify that the contract is legitimate, the Buyer is asked to attach a copy of the document to this form for review by the Seller.

Practice Tip: Although most transactions involving the sale of other property involve the Buyer's current residence, there may be instances in which the necessary sale involves some other asset. For example, the Buyer may need to sell a vacation home or investment property in order to finance this transaction. Knowing the type and location of the property may help the Seller evaluate the likelihood that the transaction will go to closing.

Paragraph 2: Termination

If settlement for the Buyer's property does not occur on or before the settlement date stated in Paragraph 1, the *Seller* has the authority to terminate the Agreement with the Buyer by providing written notice to the Buyer. If the Seller does not elect to terminate the Agreement at that time, both parties agree that the date for settlement is automatically extended until such time as the Seller decides to terminate the Agreement. In the event the Seller does authorize the right to terminate, all deposits are to be returned to the Buyer.

Note: This language reserves the right to terminate the Agreement to the seller, not to the buyer. In part, this is to prevent a buyer who wishes to get out of an Agreement from deliberately delaying closing on another property in order to have a reason to terminate this Agreement.

Practice Tip: Buyer and Seller can really only extend the contingency until the settlement date stated in the Agreement of Sale. Be sure that the Buyer's deadline to obtain a contract for the Buyer's property is sufficiently earlier than the Settlement Date to provide the parties with the time to assess the situation and see if termination or extension is advised, and to provide the parties with enough time to make any changes to the primary Agreement if necessary.

Paragraph 3: Change to Mortgage Contingency

The Mortgage Contingency in the Agreement of Sale provides the Seller with the right to terminate the Agreement of Sale if the Buyer receives notice from the lender that the Buyer's mortgage is conditioned on the sale of other property. Since the Buyer has already informed the Seller by the use of this form that the contingency is necessary, this language overrides that portion of the Agreement and eliminates the Seller's ability to cancel based on a notice containing that sort of term.

Note: This language overrides **only** that small portion of the Mortgage Contingency; all other aspects of the contingency are in full effect unless otherwise modified in writing.

Sale & Settlement of Other Property Contingency (Form SSP)

If it is necessary to sell other property but no contract for that property has yet been secured, the Buyer can use one of three forms to make the Agreement of Sale contingent on his or her ability to sell and settle on his or her property. **If the parties agree to use Form SSP, the Seller is agreeing to take his or her property off the market during the time the Buyer is attempting to sell his or her property.**

Paragraph 1: Property

Identify the Buyer's property that will be sold. Identify the property with specificity, using the full address. If there is any confusion as to which property is involved, including a tax parcel number or other identifier is acceptable.

Practice Tip: Although most transactions involving the sale of other property involve the Buyer's current residence, there may be instances in which the necessary sale involves some other asset. For example, the Buyer may need to sell a vacation home or investment property in order to finance this transaction. Knowing the type and location of the property may help the Seller evaluate the likelihood that the transaction will go to closing.

Paragraph 2: Duty to List

Buyer agrees that his or her property is already listed for sale, or that his or her property *will be* listed for sale within a certain period of time following the Seller's acceptance of the offer. Fill in a number of days to give the Buyer to have his or her property listed. If no number is provided, the Buyer will have two days from the date of the Seller's acceptance to list his or her property. If the Buyer's property is already listed for sale, fill in the blank with a zero (0) or "N/A."

The Buyer also agrees to fully cooperate in the marketing and sale of the property. This Paragraph sets forth various responsibilities of the Buyer, including listing with a broker, allowing the broker to list the property with a multiple listing service, conducting open houses, and otherwise cooperating in the sale of the Buyer's property. Be sure the Buyer understands that this Paragraph, as written, does not permit the Buyer to attempt to sell the Property on his or her own. Further, they should understand that failure to fully cooperate with the broker might be considered to be a breach of the Agreement of Sale and could put their deposits at risk.

Note: Note that the Buyer is not required to do "anything necessary" to sell the property, only what is reasonably necessary.

Paragraph 3: Price and Term

The Buyer should fill in the maximum price at which the property will be listed, along with the anticipated period of the listing contract. This information is provided to assist the Seller in determining how likely it is that the other property will sell in a timely manner. For example, if the Buyer plans on listing the property at a price that seems substantially above its projected market value, the Seller may not want to accept the Agreement.

Paragraph 4: Buyer Receives an Offer

When the Buyer receives an offer on his or her property that the Buyer would like to accept, the Buyer must provide a copy of that contract to the Seller.

Subparagraph (A): Seller's First Response

Fill in a number of days that the Seller will be given to respond to the Buyer's contract. If no number is inserted on the line, then the Seller will have two days to provide a response. Within that time period, the

Seller must let the Buyer know, in writing, whether the terms of Buyer's contract are acceptable or if they are rejected.

Practice Tip: When picking a number to fill in, be mindful of the duties and expectations of the Buyer when receiving his or her own offer on the property. For example, the potential buyers may ask for a response to their contract within three days. If a "4" is put on the line, and no one asks the potential buyer for additional time for the Buyer to respond, then the Buyer risks losing out on the contract for his or her property because too much time has been given to the Seller to review the agreement.

If the Seller rejects the contract for the Buyer's property, he or she must include in the written rejection specific reasons for the rejection. The Seller cannot simply say "no," but must state exactly the reasoning behind it in order to give the Buyer the opportunity to renegotiate with his or her potential buyer.

Practice Tip: For the most part, the Seller is reviewing this other contract to be sure that the terms appear to be reasonable and that the buyer of the property appears to be legitimate. This approval process is meant to avoid situations in which a Buyer might falsely claim to have an offer for the other property or those in which a sham contract is created just for the purpose of getting the Seller to take the Property off the market. Note that seller should not be passing judgment on the wisdom of the contract or the business decisions made by the Buyer; their sole purpose is just to be sure that the deal looks to be legitimate.

The same holds true with the Buyer's financial proof of the Buyer's ability to proceed without selling his or her property. The Seller has a chance to review the source of funding, its likelihood of coming through and its amount. A reputable lender that is willing to provide a bridge/swing loan to the Buyer for an amount large enough to move forward is an example of viable proof. A letter from the Buyer stating that the Buyer's great aunt will come up with the money, which provides no other proof, may be less reliable.

Within the two-day period, the Seller must review the Buyer's financial proof or the contract for Buyer's property and notify the Buyer whether the Seller accepts the Buyer's financial proof, accepts the contract for Buyer's property, or terminates the Agreement of Sale. If the Seller provides no response by the deadline, the Seller will be deemed to have accepted the proof and/or agreement of sale that the Buyer submitted.

Subparagraph (B): Buyer's Response

If the Seller rejects the offer for the Buyer's property, then the Buyer will have the opportunity to respond and still proceed with the transaction for the Seller's Property. Fill in a number of hours that the Buyer will have to respond to the Seller's rejection.

If the Buyer chooses, the Buyer can respond with documentation showing any of the following:

1. That he or she has the financial ability to purchase the Property without selling his or her property after all;
2. A renegotiated contract for the sale of his or her property; or
3. A new contract for the sale of his or her property with terms that are acceptable to the Seller.

Note: Of course, the Buyer may not have any of these things. The Buyer may not be able to afford to proceed with the purchase of the Seller's Property, the potential buyer could refuse to renegotiate on terms that the Seller wanted to see, and the Buyer may not have another offer in hand.

Subparagraph (B) creates automatic termination of the Agreement in any of three instances:

1. If the Seller rejects the Buyer's renegotiated or new contract for the Buyer's property;
2. If the Buyer does not provide the documentation to the Seller within the time stated; or
3. If the Buyer does not respond at all.

If the Agreement is terminated for any of these reasons, then all deposit monies are to be returned to the Buyer.

Subparagraph (C): Seller's Second Response

If the Seller is presented with a renegotiated or new contract for the Buyer's property, as stated above, then he or she must respond to the Buyer in a timely manner. Fill in a number of hours for the Seller to respond to the Buyer's documentation.

Note: The Seller does not have the opportunity to reject the Buyer's documentation that he or she can proceed with the sale of the Property. Presenting such proof removes the contingency from the Agreement and both parties must proceed.

Paragraph 5: Agreement Date

This Paragraph sets the date by which the Buyer must have his property under a binding contract, approved by the Seller. If there is no contract for the Buyer's property before the stated date, the *Seller* has the authority to terminate the Agreement after the date listed. If the Seller does not elect to terminate the Agreement at that time, both parties agree that the deadline for the Buyer to get a contract is automatically extended until such time as the *Seller* decides to terminate the Agreement. In the event the Seller does authorize the right to terminate, all deposits are to be returned to the buyer.

Note: This language reserves the right to terminate the Agreement to the Seller, not to the Buyer. In part, this is to prevent a buyer who wishes to get out of an Agreement from deliberately delaying an offer for the other property in order to have a reason to terminate this Agreement.

Practice Tip: Buyer and Seller can really only extend the contingency until the settlement date stated in the Agreement of Sale. Be sure that the Buyer's deadline to obtain a contract for the Buyer's property is sufficiently earlier than the Settlement Date to provide the parties with the time to assess the situation and see if termination or extension is advised, and to provide the parties with enough time to make any changes to the primary Agreement if necessary.

Paragraph 6: Change to Mortgage Contingency

The Mortgage Contingency in the Agreement of Sale provides the Seller with the right to terminate the Agreement of Sale if the Buyer receives notice from the lender that the Buyer's mortgage is conditioned on the sale of other property. Since the Buyer has already informed the Seller by the use of this form that the contingency is necessary, this language overrides that portion of the Agreement and eliminates the Seller's ability to cancel based on a notice containing that sort of term.

Note: This language overrides that small portion of the Mortgage Contingency; all other aspects of the contingency are in full effect unless otherwise modified in writing.

Sale and Settlement of Other Property Contingency (With Right to Continue Marketing) Addendum (Form SSP-CM)

A second form that the parties may wish to use if it is necessary to sell other property but no contract for that property has yet been secured, is the Sale and Settlement of Other Property Contingency with Right to Continue Marketing. If the parties agree to use Form SSP-CM, the **Seller is permitted to continue marketing the Property and is permitted to terminate the Agreement if he or she receives another acceptable offer.**

Paragraph 1: Property

Identify the Buyer's property with specificity, using the full address. If there is any confusion as to which property is involved, including a tax parcel number or other identifier is acceptable.

Practice Tip: Although most transactions involving the sale of other property involve the Buyer's current residence, there may be instances in which the necessary sale involves some other asset. For example, the Buyer may need to sell a vacation home or investment property in order to finance this transaction. Knowing the type and location of the property may help the Seller evaluate the likelihood that the transaction will go to closing.

Paragraph 2: Right to Market

This is the language that gives the Seller the right to continue marketing the Property rather than taking the Property off the market while waiting for the Buyer to find a purchaser for his or her property.

Paragraph 3: Accepting Another Agreement

If the Seller decides to accept another offer, the Seller is obligated to tell the Buyer that the other offer has been accepted. This notification acts as the termination of this contract, and the Seller must release deposits to the Buyer. The Seller is permitted to accept any other offer at any time ***without prior notice to the Buyer.***

Paragraph 4: Agreement for Buyer's Property

Once the Buyer has obtained a valid Agreement of Sale for his or her property, the Seller loses the right to continue marketing the Property. To be sure that any contract is legitimate, the Seller is given the chance to review the contract for the Buyer's property and to "approve" its terms. Assuming that it appears to be a legitimate deal, the Seller would provide written approval and the Seller's Property would now be taken off the market.

Practice Tip: For the most part, a Seller is reviewing this other contract to be sure that the terms appear to be reasonable and that the buyer of the property appears to be legitimate. This approval process is meant to avoid situations in which a Buyer might falsely claim to have a buyer for the property or those in which a sham contract is created just for the purpose of getting the Seller to take the property off the market. Note that Sellers are not to be passing judgment on the wisdom of the deal or the business decisions made by the Buyer; their sole purpose is just to be sure that the deal looks to be legitimate.

Paragraph 5: Termination

This Paragraph sets the date by which the Buyer must have his property under a binding contract, approved by the Seller. Fill in the blank with a date that will give the Buyer a reasonable time to procure an offer on his or her property. If there is no contract for the Buyer's property before the stated date, the *Seller* has the authority to terminate the parties' Agreement. If the Seller does not elect to terminate the

Agreement at that time, both parties agree that the date for an Agreement is automatically extended until such time as the *Seller* decides to terminate the Agreement. In the event the Seller does authorize the right to terminate, all deposits are to be returned to the Buyer.

Note: This language reserves the right to terminate the Agreement to the Seller, not to the Buyer. In part, this is to prevent a Buyer who wishes to get out of an Agreement from deliberately delaying an offer for his or her property in order to have a reason to terminate this Agreement.

Practice Tip: Buyer and Seller can really only extend the contingency until the settlement date stated in the Agreement of Sale. Be sure that the Buyer's deadline to obtain a contract for the Buyer's property is sufficiently earlier than the Settlement Date to provide the parties with the time to assess the situation and see if termination or extension is advised, and to provide the parties with enough time to make any changes to the primary Agreement if necessary.

Paragraph 6: Change to Mortgage Contingency

The Mortgage Contingency in the Agreement of Sale provides the Seller with the right to terminate the Agreement of Sale if the Buyer receives notice from the lender that the Buyer's mortgage is conditioned on the sale of other property. Since the Buyer has already informed the Seller by the use of this form that the contingency is necessary, this language overrides that portion of the Agreement and eliminates the Seller's ability to cancel based on a notice containing that sort of term.

Note: This language overrides that small portion of the Mortgage Contingency; all other aspects of the contingency are in full effect unless otherwise modified in writing.

Sale and Settlement of Other Property Contingency (With Right to Continue Marketing Contingency and Timed Kickout Clause)

Addendum (Form SSP-TKO)

The final form that the parties may wish to use if it is necessary to sell other property, but no contract for that property has yet been secured, is the Sale and Settlement of Other Property Contingency with Right to Continue Marketing and Timed Kickout Clause. If the parties agree to use Form SSP-TKO, the Seller is permitted to continue marketing the Property, but must notify the Buyer if he or she receives another offer and provide the Buyer with a chance to show proof of the financial ability to proceed with the transaction without the sale of the Buyer's property.

Paragraph 1: Property

Identify the Buyer's property with specificity, using the full address. If there is any confusion as to which property is involved, including a tax parcel number or other identifier is acceptable.

Practice Tip: Although most transactions involving the sale of other property involve the Buyer's current residence, there may be instances in which the necessary sale involves some other asset. For example, the Buyer may need to sell a vacation home or investment property in order to finance this transaction. Knowing the type and location of the property may help the Seller evaluate the likelihood that the transaction will go to closing.

Paragraph 2: Duty to List

Buyer agrees that his or her property is already listed for sale, or that his or her property *will be* listed for sale within a certain period of time following the Seller's acceptance of the offer. Fill in a number of days to give the Buyer to have his or her property listed. If no number is provided, the Buyer will have two days from the date of the Seller's acceptance to list his or her property. If the Buyer's property is already listed for sale, fill in the blank with a zero (0) or "N/A."

The Buyer also agrees to fully cooperate in the marketing and sale of the property. This Paragraph sets forth various responsibilities of the Buyer, including listing with a broker, allowing the broker to list the property with a multiple listing service, conducting open houses, and otherwise cooperating in the sale of the Buyer's property. Be sure the Buyer understands that this Paragraph, as written, does not permit the Buyer to attempt to sell the Property on his or her own. Further, they should understand that failure to fully cooperate with the broker might be considered to be a breach of the Agreement of Sale and could put their deposits at risk.

Note: Note that the Buyer is not required to do "anything necessary" to sell the property, only what is reasonably necessary.

Paragraph 3: Price and Term

The Buyer should fill in the maximum price at which the property will be listed, along with the anticipated period of the listing contract. This information is provided to assist the Seller in determining how likely it is that the other property will sell in a timely manner. For example, if the Buyer plans on listing the property at a price that seems substantially above its projected market value, the Seller may not want to accept the Agreement.

Paragraph 4: Right to Market

This is the language that gives the Seller the right to continue marketing the Property rather than taking the Property off the market while waiting for the Buyer to find a purchaser for his or her property.

Paragraph 5: Buyer Receives an Offer

When the Buyer receives an offer on his or her property that the Buyer would like to accept, the Buyer must provide a copy of that contract to the Seller.

Subparagraph (A): Seller's First Response

Fill in a number of days that the Seller will be given to respond to the Buyer's contract. If no number is inserted on the line, then the Seller will have two days to provide a response. Within that time period, the Seller must let the Buyer know, in writing, whether the terms of Buyer's contract are acceptable or if they are rejected.

Practice Tip: When picking a number to fill in, be mindful of the duties and expectations of the Buyer when receiving his or her own offer on the property. For example, the potential buyers may ask for a response to their contract within three days. If a "4" is put on the line, and no one asks the potential buyer for additional time for the Buyer to respond, then the Buyer risks losing out on the contract for his or her property because too much time has been given to the Seller to review the agreement.

If the Seller rejects the contract for the Buyer's property, he or she must include in the written rejection specific reasons for the rejection. The Seller cannot simply say "no," but must state exactly the reasoning behind it in order to give the Buyer the opportunity to renegotiate with his or her potential buyer.

Practice Tip: For the most part, the Seller is reviewing this other contract to be sure that the terms appear to be reasonable and that the buyer of the property appears to be legitimate. This approval process is meant to avoid situations in which a Buyer might falsely claim to have an offer for the other property or those in which a sham contract is created just for the purpose of getting the Seller to take the Property off the market. Note that seller should not be passing judgment on the wisdom of the contract or the business decisions made by the Buyer; their sole purpose is just to be sure that the deal looks to be legitimate.

If the Seller does not respond within the time provided, then Seller will be deemed to have accepted the contract on the Buyer's property.

Subparagraph (B): Buyer's Response

If the Seller rejects the offer for the Buyer's property, then the Buyer will have the opportunity to respond and still proceed with the transaction for the Seller's Property. Fill in a number of hours that the Buyer will have to respond to the Seller's rejection.

If the Buyer chooses, the Buyer can respond with documentation showing any of the following:

1. That he or she has the financial ability to purchase the Property without selling his or her property after all;
2. A renegotiated contract for the sale of his or her property; or
3. A new contract for the sale of his or her property with terms that are acceptable to the Seller.

Note: Of course, the Buyer may not have any of these things. The Buyer may not be able to afford to proceed with the purchase of the Seller's Property, the potential buyer could refuse to

renegotiate on terms that the Seller wanted to see, and the Buyer may not have another offer in hand.

Subparagraph (B) creates automatic termination of the Agreement in any of three instances:

1. If the Seller rejects the Buyer's renegotiated or new contract for the Buyer's property;
2. If the Buyer does not provide the documentation to the Seller within the time stated; or
3. If the Buyer does not respond at all.

If the Agreement is terminated for any of these reasons, then all deposit monies are to be returned to the Buyer.

Subparagraph (C): Seller's Second Response

If the Seller is presented with a renegotiated or new contract for the Buyer's property, as stated above, then he or she must respond to the Buyer in a timely manner. Fill in a number of hours for the Seller to respond to the Buyer's documentation.

Note: The Seller does not have the opportunity to reject the Buyer's documentation that he or she can proceed with the sale of the Property. Presenting such proof removes the contingency from the Agreement and both parties must proceed.

Paragraph 6: Termination

This Paragraph sets the date by which the Buyer must have his property under a binding contract, approved by the Seller. Fill in the blank with a date that will give the Buyer a reasonable time to procure an offer on his or her property. If there is no contract for the Buyer's property before the stated date, the *Seller* has the authority to terminate the parties' Agreement. If the Seller does not elect to terminate the Agreement at that time, both parties agree that the date for an Agreement is automatically extended until such time as the *Seller* decides to terminate the Agreement. In the event the Seller does authorize the right to terminate, all deposits are to be returned to the Buyer.

Note: This language reserves the right to terminate the Agreement to the Seller, not to the Buyer. In part, this is to prevent a Buyer who wishes to get out of an Agreement from deliberately delaying an offer for his or her property in order to have a reason to terminate this Agreement.

Practice Tip: Buyer and Seller can really only extend the contingency until the settlement date stated in the Agreement of Sale. Be sure that the Buyer's deadline to obtain a contract for the Buyer's property is sufficiently earlier than the Settlement Date to provide the parties with the time to assess the situation and see if termination or extension is advised, and to provide the parties with enough time to make any changes to the primary Agreement if necessary.

Paragraph 7: Seller Receives an Offer

If the Seller receives another offer for the Property which the Seller would like to accept, the Seller must promptly notify the Buyer of the situation. The Seller should not delay in this notification.

Subparagraph (A): Buyer's Response

The Buyer has an opportunity to provide certain information to the Seller to prove that the Buyer can move forward with the transaction. This is the Buyer's chance to show that the Buyer is likely to go to settlement for the Seller's Property. Fill in the blank with a certain period of time for the Buyer to submit this information. There are two methods that can be used by the Buyer to prove that the he or she can move forward in the transaction.

The first method is to provide financial proof of the Buyer's ability to buy the Seller's Property without the sale and settlement of the Buyer's property. This could come in the form of a commitment from a lender for a bridge loan, financial statements showing adequate assets, or a promise from another person or entity (often a family member) to provide the needed financial resources.

The second option is for the Buyer to show the Seller a copy of an executed contract for the Buyer's property. This shows the Buyer to be one step closer to being able to settle on the Seller's Property.

If the Buyer does not provide any information within the number of hours stated in this Paragraph to the Seller, then the Agreement of Sale between the Buyer and Seller is void and the deposit monies are to be returned to the Buyer. If this happens, the Seller may accept the additional offer that was being considered, since this Agreement of Sale is no longer in force.

If the Buyer does provide one or both types of information to the Seller within the time stated, then the Seller has two days to review it and reply to the Buyer. This right of review is provided to the Seller in order for the Seller to determine whether the financial proof and/or contract are legitimate and viable.

Note: For the most part, a Seller is reviewing this other contract to be sure that the terms appear to be reasonable and that the buyer of the property appears to be legitimate. This approval process is meant to avoid situations in which a Buyer might falsely claim to have a buyer for the property or those in which a sham contract is created just for the purpose of getting the Seller to take the property off the market. Note that Sellers are not to be passing judgment on the wisdom of the deal or the business decisions made by the Buyer; their sole purpose is just to be sure that the deal looks to be legitimate.

The second part of the review for Seller of the Buyer's contract is to make sure that the proceeds from the sale of Buyer's property will be enough to allow the Buyer to settle on the on the Seller's Property. The offer may be legitimate, as discussed above, but it might leave the Buyer far short of the financial threshold that needed to be reached. An offer that would leave the Buyer with less money to put towards the Seller's Property than previously expected may not be viable for the Buyer. In other words, the Buyer submitting an executed agreement of sale for the Buyer's property is not necessarily enough in its own right; its content does matter.

The same holds true with the Buyer's financial proof of the Buyer's ability to proceed without selling his or her property. The Seller has a chance to review the source of funding, its likelihood of coming through and its amount. A reputable lender that is willing to provide a bridge/swing loan to the Buyer for an amount large enough to move forward is an example of viable proof. A letter from the Buyer stating that the Buyer's great aunt will come up with the money, which provides no other proof, may be less reliable.

Within the two-day period, the Seller must review the Buyer's financial proof or the contract for Buyer's property and notify the Buyer whether the Seller accepts the Buyer's financial proof, accepts the contract for Buyer's property, or terminates the Agreement of Sale. If the Seller provides no response by the deadline, the Seller will be deemed to have accepted the proof and/or agreement of sale that the Buyer submitted.

Paragraph 8: Seller's Right to Market Ceases

Once the Seller has approved the Buyer's financial proof and/or contract for the Buyer's property, the Seller loses his right to continue marketing the Property. This approval can be confirmed by review the completed SRA form, described below.

Paragraph 9: Change to Mortgage Contingency

The Mortgage Contingency in the Agreement of Sale provides the Seller with the right to terminate the Agreement of Sale if the Buyer receives notice from the lender that the Buyer's mortgage is conditioned on the sale of other property. Since the Buyer has already informed the Seller by the use of this form that the contingency is necessary, this language overrides that portion of the Agreement and eliminates the Seller's ability to cancel based on a notice containing that sort of term.

Note: This language overrides **ONLY** that small portion of the Mortgage Contingency; all other aspects of the contingency are in full effect unless otherwise modified in writing.

Seller's Reply to Proposed Agreement of Sale for Buyer's Property or Buyer's Financial Ability to Proceed (Form SRA)

In the SSP, SSP-CM and SSP-TKO forms, the contingency requires that the Seller "approve" the terms of the Buyer's contract for his or her property. Forms SSP and SSP-TKO also gives the Seller the opportunity to approve the Buyer's financial proof to proceed without selling the Buyer's home. This is done to allow the Seller to judge whether the contract or financial proof are legitimate and likely to go to closing. If the Seller believes that the deal is not legitimate or not likely to close (for example, the potential buyer looks to be an extremely bad credit risk or the price for the property is clearly out of line with current market values), the Seller is not obligated to approve the other contract.

This form simply provides the Seller with the ability to confirm receipt of the other contract or financial proof and to indicate whether they do or do not accept the financial proof or the terms of the Buyer's contract (i.e., whether it is sufficient to move forward and waive rights they might have under the contingency language). The Seller is encouraged to refrain from attempting to renegotiate the terms of the Buyer's deal or to otherwise "micro-manage" the content of the Buyer's contract. In most transactions, the Seller's inquiry would be limited to whether the contract appears to be properly executed with a legitimate buyer and for terms that are reasonable in the circumstances.