Major Changes to PAR Standard Agreement of Sale (Form ASR)

April 2014 Revision

The 2014 revision to the residential Agreement of Sale is more of a "freshening up" than a full scale rewrite of the form. This document will review those changes; please refer to the Guidelines for Preparation and Use for the full explanation of the entire form (currently under revision, to be released soon).

The "marked up" version of the form has text in 3 colors to help you see what's changed for 2014.

Black type is used for text that has not changed in this revision.
Blue type is used for text that is essentially the same, but has moved to a new location in the form.
Red type is used for text that is new or substantially altered in this revision.

To help answer your questions, we have an online question/suggestion form, available under the Standard Forms section of the PAR website. This form sends your questions (as well as suggestions for future changes) directly to PAR staff for a response. Many questions can also be answered by referencing the Guidelines for Preparation and Use.

Any references to a prior version of the Agreement are referring to the 2012 revision of the form.

General Format Change

With PAR Standard Forms moving to an all-electronic format in 2012 we've been trying to update our forms to make them function better within the software programs. As forms are being revised we're trying to remove all the "back of the page" Notices and include any important text in the body of the form. This version of the Agreement has eliminated the 8 pages of Notices and incorporated selected text into the body of the form. So while the text of the Agreement itself has gone from 11 to 13 pages, the overall content has dropped from 19 pages (11 front and 8 back) to just 13. Most of the blue text in this version of the form reflects former Notices that are now included in the body of the Agreement.

Broker Blocks

Added an extra line under Buyer and Seller name to allow for longer names or more buyers/sellers.

Property

Added "including postal city" on the line for Address. Though it's legally sufficient to identify the property by the tax ID number, deed book and page, or similar identifiers, in some transactions the buyer is specifically looking for a property within a certain mailing area. PAR has historically suggested that the parties should fill in this line with the mailing address of the property in the event the mailing address was specifically relevant to the transaction, but in some cases agents were simply putting the street number. The new language is intended to remind brokers and agents to include the mailing city in the listed address.

For example, "123 Main Street, Harrisburg PA" instead of just "123 Main Street"

Buyer/Seller Broker Blocks

Added "check only one" under the Broker and Licensee sides of the Broker Blocks to indicate that only one box under each section should be checked.

Under the Licensee side of the box, the first options used to read "Buyer Agent with Designated Agency" and "Buyer Agent without Designated Agency." The revised form says "Buyer Agent" and "Buyer Agent with Designated Agency." If you practice designated agency in your office and represent only the Buyer, you'd still select "Buyer Agent with Designated Agency" as the correct option – there is no change. If you don't practice designated agency in that circumstance you'd now select just the "Buyer Agent" box with no reference at all to designated agency.

Paragraph 2: PURCHASE PRICE AND DEPOSITS

The existing Agreement says that the buyer's initial deposit will be offered "at signing of this Agreement." Parties to the transaction would generally expect this to indicate that a buyer's deposit will be delivered along with Agreement when first transmitted to the seller or listing broker. But in today's marketplace, many Agreements are being transmitted by email or signed/delivered within various e-signature and transaction management platforms. In most cases, these forms will not actually be accompanied by the buyer's deposit check, and the check is mailed or hand delivered a day or two after the Agreement is received.

To accommodate this practice, the revision now states that the Initial Deposit will be delivered "within ___ days of Execution Date, if not included with this Agreement." If the buyer does submit a printed Agreement accompanied by a check, the buyer is covered. But if there will be a delay in delivering the check because the form is transmitted electronically, the buyer agent should fill in a reasonable time period (probably no more than 1-3 days) within which the deposit check will be delivered.

This paragraph also has a spot for an "Additional Deposit" to be delivered. Use this in markets where it's common to have multiple deposits. In markets accustomed to a single deposit this can be left blank or filled in with zeroes.

Paragraph 4: SETTLEMENT AND POSSESSION

Subparagraph (D) contains the tax proration language formerly included as a Notice.

Subparagraph (H) – new language notes that if the addendum language is checked the addendum is "made part of this Agreement." Similar provisions in the Agreement had slightly different language, so all have been unified to use the same words. This is not a substantive change.

Paragraph 5: DATES/TIME IS OF THE ESSENCE

Subparagraph (E), which states that pre-printed terms and time periods can be modified, now has an additional clause reminding agents that this is true "except where prohibited by law." For example, the laws covering condominiums and homeowner associations state that a buyer has 5 days after receiving a certificate of resale to terminate an Agreement with no penalty. The parties are free to make this time period longer if they wish, but by law they can't make it shorter. Also, several provisions in the Agreement are required by the license law or other statutes and regulations and cannot be altered.

Paragraph 6: ZONING

This paragraph is included because in certain circumstances the law gives buyers an automatic 'out' if a property's zoning classification is not stated in the Agreement. PAR continues to hear examples of agents using incorrect information to fill in this form - often because agents pull information from the MLS or county planning records. New language has been added to remind agents that the most accurate source for zoning information is the local zoning ordinance.

Paragraph 7: FIXTURES AND PERSONAL PROPERTY

Subparagraph (A) continues to be expanded to reflect common disputes over certain types of property that may be included in a sale. The newest inclusions are "pools, spas and hot tubs," "mounting brackets and hardware for television and sound equipment," and the "rods and brackets" for window covering hardware. Remember that this pre-printed list of included items is only the starting point for any negotiation – the parties can bargain to include or exclude any item on the list and many others. But if a party doesn't negotiate an item in/out as desired, the list rules.

Paragraph 8: MORTGAGE CONTINGENCY

Subparagraph (A): In the box of mortgage terms, it's now clarified that the Loan to Value ratio only applies for conventional loans.

Subparagraph (B): The Mortgage Commitment date has been moved higher in the paragraph (from (E) to (B) now).

Subparagraph (C): The Loan-to-Value ratio Notice has been moved from the back of the page. Note that it is critically important to understand the proper use of the LTV clause. See the Guidelines for more information, but if you don't feel you fully understand how that term should be utilized you would be better striking it.

Subparagraph (H): This section of the mortgage contingency covers any repairs that are requested by an insurer or lender as a condition of offering insurance or funding the mortgage. Existing language states that if the buyer does not respond to the seller's decision about repairs and doesn't terminate the Agreement, the buyer will be deemed to have accepted the property. The newly revised language clarifies that the buyer not only accepts the property, but is also deemed to have agreed to make any required improvements at his/her expense. This closes a potential loophole where a buyer might refuse to do repairs in the hopes that an insurer or lender might still reject the mortgage loan and give the buyer an escape.

Paragraph 9: CHANGE IS BUYER'S FINANCIAL STATUS

This paragraph was added to the form in 2011, and requires buyers to inform sellers if their financial status changes enough to jeopardize their ability to purchase the property. New language clarifies that this notice must be delivered in writing.

Paragraph 10: SELLER REPRESENTATIONS

Subparagraph (B)(2) now contains required notices under the Sewage Facilities Act.

Subparagraph (D) now includes the Conservations Reserve (Enhancement) Program - sometimes known as "CREP" - in the list of land use restrictions that might affect a transaction.

Subparagraph (E) is a shortened version of the prior Notice regarding the Seller Disclosure Law.

Subparagraph (F) has historically been meant to apply to various sorts of "notices and assessments" other than information regarding property tax assessments. By way of example, sellers would be expected to disclose a government notice of violations of zoning or property maintenance ordinances, or unexpected sewer or homeowner association assessments. But this text is not intended to require a seller to deliver a copy of each communication that states the assessed value of the property or the taxes charged on that assessed value. To clarify this point, new language states that the provision applies to notices and assessments "excluding assessed value."

Paragraph 12: BUYER'S DUE DILIGENCE/INSPECTIONS

New paragraph title, now incorporating the words "due diligence" along with Inspections.

Subparagraph (B) now explicitly states that any of the listed inspections must be done "in a non-invasive manner" unless the parties agree otherwise in writing. Though this may have already been the general rule, the language was added in part to account for the addition of "exterior building material" as a suggested inspection item under the **Home/Property Inspections and Environmental Hazards** inspection option. Specifically, with stucco installations becoming problematic in some areas, the best way to inspect for trapped moisture is to drill through the stucco and use a moisture probe. This would only be permissible if the seller first agrees to that invasive inspection in writing.

The **Radon** inspection option now contains language drawn from the prior Radon Notice.

The **Flood Insurance** inspection option contains additional language - added in October, 2013 – cautioning prospective buyers about possible increases in flood insurance premiums. Agents are advised to have their clients speak with one or more flood insurance specialists to ensure that any increased flood rates are correct.

Subparagraph (D) includes shortened versions of several environmental Notices previously on the back pages of the form.

Paragraph 13: INSPECTION CONTINGENCY

Subparagraph (A); deletion: The 2012 Agreement started this paragraph by defining a 10 day "Contingency Period" with the opportunity to include exceptions for inspections that would have a longer or shorter time periods. This revision eliminates those exception lines and anticipates that all inspections will be conducted under a single timeline. This should help encourage buyers and sellers to negotiate all inspection issues at once rather than having one or two inspection reports coming in well after most of the others have been addressed.

If buyers know that one or more inspections elected under this paragraph will take longer than the default time, the Contingency Period should be extended to the time necessary for the longest inspection. For example, assume the buyer knows that a stucco inspection will take 20 days, though all other inspections can be completed in 10 days. In that instance, the buyer should extend the time for all inspections in the Contingency Period to 20 days.

The inspection contingency language in **Subparagraph (B)(3)** has been changed in an effort to clarify how the inspection time periods should be counted.

This paragraph has three time periods (the default times are all listed here, though the parties can negotiate other time periods): (1) up to 10 days for the buyer to obtain inspections and present a written corrective proposal (if desired); (2) up to 5 days for the seller to respond to the proposal; and (3) another 2 days for the buyer to decide whether to move forward if the parties can't reach a mutually acceptable written agreement. The primary change is in the middle 5 day period.

In the 2012 version of the Agreement, the seller has up to 5 days to respond to the buyer's written corrective proposal, **but** that time period ends *as soon as the seller provides a written response that s/he is not willing to satisfy the entire proposal.* For example, if the buyer asks for 20 repairs, as soon as the seller states in writing that he's not willing to do all 20 repairs the buyer's final 2 day period begins. This is true whether the seller responds in writing on the first day or the fifth day of the time period – which lead members of the Agreement of Sale task force to refer to this as a 'floating' date in the Agreement. Many brokers and parties were apparently confused by this provision, and indicated they would prefer certainty in the counting of days

The revised language is written to fix the middle time period and provide for more effective negotiations. As now written, after the 10 day contingency period the parties will now have a firm 5 day "Negotiation Period." The language explicitly states that the parties can negotiate in whatever way works best for them (they may negotiate "by written or verbal communication"), but that the style of negotiations does not affect the ending of the Negotiation Period. Or to put it another way, even if the seller says "no" to every request immediately, the Agreement still provides that the parties would have 5 days to continue talking.

Importantly, regardless of how the negotiations occur, **any resolution must be in writing** – the parties will "negotiate, by written or verbal communication, another **mutually acceptable written agreement**…." Even if the parties believe they have reached a verbal agreement, it may not be recognized as binding until reduced to writing and signed by the parties.

Finally, additional language further clarifies that "ongoing negotiations do not automatically extend the Negotiation Period." If the parties are still discussing possible resolutions on Day 5 of the Negotiation Period and wish to continue the discussion they should extend the time using a Change of Terms Addendum (Form CTA) or some other addendum to the Agreement; failure to do so will start the buyer's final two day period automatically.

Paragraph 14: REAL ESTATE TAXES AND ASSESSED VALUE

This text was previously found in the Notices section of the Agreement.

Paragraph 15: NOTICES, ASSESSMENTS AND MUNICIPAL REQUIREMENTS

Language in **Subparagraph (A)** has been changed to be similar to Paragraph 10(F) – excluding 'notices' related to the assessed value of the property.

Paragraph 17: TITLES, SURVEYS AND COSTS

Subparagraph (C): In some areas of the state it is common for the buyer to provide a copy of the title abstract to the seller/listing broker. Depending on the circumstances, this may be done to identify title issues that the seller needs to clean up, or it may simply be done to confirm that there are no title issues that are expected to hold up the transaction. This subparagraph has been added to ensure that sellers are entitled to a copy of the title abstract if they ask for it.

Subparagraph (E) requires sellers to notify buyers if there is a material change that will affect the seller's ability to transfer clear title. For example, notice would be required if a seller is aware of a new lien being filed, or if the seller becomes unable to satisfy existing liens. This clause mirrors Paragraph 9, which requires similar notifications from a buyer whose financial status has changed significantly.

Paragraph 18: MAINTENANCE AND RISK OF LOSS

In the 2012 Agreement Subparagraph (A) requires the seller to maintain the "Property, grounds, fixtures and personal property specifically listed in this Agreement" but Subparagraph (B) only asked sellers to repair/replace/credit if a "system or appliance included in the sale of the Property fails before settlement." Though the intent was that anything maintained in (A) would be potentially fixed or credited for in (B), in some transactions it was argued that the repair/replace/credit language covered only a small subset of those things that interpreted those clauses to cover different elements of the property. For example, a seller might argue that he didn't have to respond to a broken window because it wasn't a "system or appliance included in the sale of the Property" but was actually part of the Property itself.

Revised language is intended to resolve that potential discrepancy. **Subparagraph (A)** now states that the seller will "maintain the Property (including, but not limited to, structures, grounds, fixtures, appliances and personal property), and **Subparagraph (B)** states that the repair/replace/credit obligation kicks in when any "part of the Property" (which by definition includes structures, grounds, etc.) fails prior to settlement.

Paragraph 23: FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT OF 1980 (FIRPTA)

In certain transactions involving foreign (non-US citizens or corporations) sellers, a buyer may be required to withhold taxes on behalf of that seller. This FIRPTA notice, formerly on the back of the form, briefly explains the requirements, though brokers should send buyers to a qualified attorney and/or accountant if there are questions as to how the law applies.

Paragraph 24: NOTICE REGARDING CONVICTED SEX OFFENDERS

This text was previously found in the Notices section of the Agreement.

Paragraph 26: DEFAULT, TERMINATION AND RETURN OF DEPOSITS

The only substantive change in this paragraph is found in **Subparagraph (C).** Prior versions of the Agreement had a default time of 365 days before the broker holding escrow funds could return deposit monies to a buyer. The revised language now sets that default time period at 180 days, unless otherwise agreed upon by the parties.

Remember that the rest of the stated procedures still stay the same. A buyer who wants the deposit returned still must make a written request for the money, and there must be no litigation, arbitration or mediation in process when the request is made. Once those criteria are met, the broker has 30 days to return the money.

Paragraph 31: HEADINGS

This language was added to clarify that paragraph and/or section headings do not affect the interpretation of the substantive text of the Agreement.

Signature Lines - DELETIONS

For both buyers and sellers, acknowledgments of reading and understanding the Notices have been removed now that there are no longer Notices on the reverse sides of the pages. In addition, the buyer's acknowledgment of receiving a seller's disclosure form has been removed.