

**BUYER'S SALE OF PROPERTY CONTINGENCY ADDENDUM
TO PURCHASE AND SALE AGREEMENT**

GENERAL COMMENTS:

- A. **Use.** This Addendum is to be attached to a Purchase and Sale Agreement when the sale is “contingent” on sale of the Buyer’s property. Attach a copy to every copy of the Purchase and Sale Agreement. Do not use this form if Buyer has already entered into an agreement to sell Buyer’s property (instead use NWMLS Form 22Q (Buyer’s Pending Sale of Property Contingency Addendum),)
- B. **Property Remains on the Market.** When the sale is contingent on the sale of the Buyer's property, the Seller's property remains on the market. The Seller may "bump" the Buyer. See the General Comments for NWMLS Form No. 44 (Remove Contingency Notice) and NWMLS Form No. 46 (Contingent Buyer Notice). Also, read the NWMLS bulletins explaining contingencies.
- C. **“Contingency” or “Condition”?** There is no **legal** difference between a “contingency,” “condition” or “subject to.” However, in residential real estate practice the term “contingency” means the property remains on the market until the Seller “bumps” the Buyer (or the Purchase and Sale Agreement terminates).
- D. **Failure to List the Buyer’s Property.** If Buyer fails to list the Contingency Property for sale on a multiple listing service in the area servicing the Contingency Property with a licensed real estate agent within 5 days after mutual acceptance of the Agreement, the Buyer waives this contingency. Note: When the Buyer waives this contingency, the Buyer waives every other contingency in the Purchase and Sale Agreement (including financing and inspection) and the closing date may be accelerated as well. See comment F below.
- E. **Failure to Sell or Waive.** If either the Buyer fails to sell the Contingency Property, or the Buyer fails to waive this contingency by the expiration of the Contingency Period, then the Purchase and Sale Agreement terminates and the Buyer is entitled to a refund of the Earnest Money.
- F. **Waiver of Contingency.** If the Buyer waives this contingency, unless the sale involves new construction, then the Buyer must close within 3 days after closing of the sale of the Contingency Property or within 30 days of the waiver, whichever is earlier. (If the sale involves new construction, the Buyer must close within a certain number of days from the issuance of a certificate of occupancy). This could have the effect of accelerating the Closing Date, because the closing provisions of this form control over the Purchase and Sale Agreement (see paragraph 8). Moreover, the Buyer will have to close whether or not the Buyer can obtain financing. **In other words, when the Buyer waives this contingency, the Buyer waives all other contingencies in the Agreement.** Therefore, if the Buyer gets a bump notice and has not sold the Contingency Property yet, the Buyer must think very carefully about the consequences of waiving the contingency.
- G. **Buyer’s Notice of Sale Fail.** If the sale of the Contingency Property fails through no fault of Buyer before expiration of the contingency period, the contingency shall be reinstated and Buyer has the opportunity to find another buyer for the Contingency Property. In addition, if the sale of the Contingency Property fails to close through no fault of the Buyer after expiration of the contingency period, then the transaction can be terminated and the Earnest Money refunded to the Buyer. However, if the sale of the Contingency Property fails, then the Buyer must notify the Seller within 12 hours if possible (24 hours at the latest), or the Buyer will be in default. This provision is for the protection of the Seller, who should not

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have to wait until Closing to find out that the transaction has been terminated due to failure of the sale of the Contingency Property.

- H. **Closing Date of Contingency Property.** The Buyer must obtain the Seller's written consent to any offer on the Contingency Property that is itself contingent on the sale of the second property or that requires closing less than 30 or more than 45 days after mutual acceptance of the offer on the Contingency Property. If Buyer accepts either of these types of offers without getting the Seller's written consent, then the transaction between Buyer and Seller terminates and the Buyer will forfeit the Earnest Money.

ASSISTANCE FILLING IN THE BLANKS: The following numbers refer to the numbers on the sample form shown in this Manual.

1. **Date of Purchase and Sale Agreement.** Insert the same date that is at the top of the first page of the Purchase and Sale Agreement.
2. **Buyer.** Insert the Buyer's name(s) as on the Purchase and Sale Agreement.
3. **Seller.** Insert the Seller's name(s) as on the Purchase and Sale Agreement.
4. **Property.** Insert the Property address as on the Purchase and Sale Agreement.
5. **Address of Contingency Property.** Insert the street address, city and state of the Contingency Property.
6. **Deadline for Sale of the Contingency Property.** Insert the date that will be the deadline for the Buyer to sell the **Contingency Property** (the "Contingency Period"). If the Contingency Property is not sold before the end of the Contingency Period, the Purchase and Sale Agreement terminates and the Buyer is entitled to a refund of the Earnest Money.
7. **Closing Date - Contingency Property.** Read paragraph 2 carefully. It requires Buyer to obtain the Seller's written consent to any offer on the Contingency Property that is itself contingent on the sale of the second property or that requires closing less than 30 or more than 45 days after mutual acceptance of the offer on the Contingency Property. If Buyer accepts either of these types of offers without getting the Seller's written consent, then the transaction between Buyer and Seller terminates and the Buyer will forfeit the Earnest Money.
8. **Bump Period.** Insert the number of days Buyer has to respond after receiving a Bump Notice from Seller (stating that Seller intends to accept a new offer). Remember that NWMLS Rule 123(c) prohibits the Buyer or the selling licensee from increasing the five-day time limit without prior consent from the listing office. If Seller gives a Bump Notice right before expiration of the contingency, Buyer must respond in the number of days specified here or by the expiration of the contingency period, whichever occurs earlier. The period of time in which Buyer has to respond is called the "Bump Period."
9. **New Construction.** If this is new construction, insert the number of days after Buyer receives a Certificate of Occupancy that Closing must occur.
10. **Other.** This space is provided for any other agreements concerning the contingency. It will rarely be used.
11. **Initials and Date.** Buyer(s) and Seller(s) should initial and date this Addendum. Insert the date each person initialed, not the date on the Purchase and Sale Agreement.

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The following is part of the Purchase and Sale Agreement dated 1, 2001 1
between 2 ("Buyer") 2
and 3 ("Seller") 3
concerning 4 ("the Property") 4

1. **CONTINGENT ON SALE OF BUYER'S PROPERTY.** This Agreement is contingent on Buyer selling Buyer's 5
property at 5 6
City of 5, State of 5 (The "Contingency Property") 7
on or before 6 (if not filled in, 45 days after mutual acceptance of this Agreement) (the 8
"Contingency Period"). Buyer agrees to list the Contingency Property for sale on a multiple listing service in the 9
area serving the property with a licensed real estate agent within 5 days after mutual acceptance of this Agreement. 10
If Buyer fails to do so, this contingency shall be deemed waived and paragraph 6 below will apply. If Buyer has not 11
sold the Contingency Property or given written notice waiving this contingency by the end of the Contingency Period, 12
then this Agreement shall terminate and the Earnest Money shall be refunded to Buyer. 13

2. **WHEN SELLER'S CONSENT IS REQUIRED ON SALE OF THE CONTINGENCY PROPERTY.** Buyer must obtain 14
7 Seller's written consent before Buyer accepts any offer for the sale of the Contingency Property that: 15
(a) is contingent on the sale of that (second) buyer's property; and/or 16
(b) has a closing date less than 30 or more than 45 days from the date of mutual acceptance of the offer on the 17
Contingency Property. 18

If Buyer accepts any such offer without Seller's written consent, this Agreement shall terminate and the Earnest 19
Money shall be forfeited to the Seller. 20

3. **EARNEST MONEY-RETURN.** If the sale of the Contingency Property fails to close through no fault of Buyer before 21
expiration of the Contingency Period in paragraph 1, then this contingency shall be reinstated until the Contingency 22
Period has expired. If the sale of the Contingency Property fails to close through no fault of the Buyer after expiration 23
of the Contingency Period, then this Agreement shall terminate and the Earnest Money shall be refunded to Buyer; 24
provided, however, that the Buyer shall have the sole privilege and option of proceeding with the consummation of 25
this Agreement without regard to the failure of the sale of the Contingency Property to close and provided further that 26
if Buyer chooses to proceed with this Agreement without having sold the Contingency Property, then paragraph 6 27
below shall apply (and in the case of new construction, paragraph 7 shall apply). Notwithstanding the computation of 28
time and manner of giving notice set forth in this Purchase and Sale Agreement, Buyer must give notice to Seller 29
within 12 hours of learning that the sale of the Contingency Property has failed or as soon thereafter as reasonably 30
practicable, but in no event later than 24 hours. Such notice must be given regardless of whether Buyer chooses to 31
proceed with this Agreement. Such notice may be given by telephone to Listing Agent or to Seller, or by such other 32
method by which notice will be received within 12 hours, including, but not limited to, facsimile or electronic 33
transmission. If Buyer does not give such notice within the foregoing time limit, then Buyer shall be in default and the 34
Default and Attorneys' Fees clauses in the Agreement shall apply. For the purposes of this Addendum, the terms 35
"sell," "selling" and "sold" shall mean that Buyer has entered into a valid and enforceable agreement for the purchase 36
and sale of the Contingency Property. 37

Initials: BUYER: _____ DATE: _____ SELLER: _____ DATE: _____ 38
11 BUYER: _____ DATE: _____ SELLER: _____ DATE: _____ 39

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(continued)

4. **PROPERTY REMAINS ON MARKET.** It is agreed that Seller will keep the Property on the market and continue to show it until Seller has received notice that Buyer has entered into an agreement to sell the Contingency Property or Buyer waives this contingency. If prior to that time, Seller receives another acceptable offer to purchase the Property, Seller shall give written notice of Seller's intent to accept the new offer within 8 days (5 days if not filled in) or by the expiration of the contingency in paragraph 1, whichever is earlier (the "Bump Period"). Seller's notice shall be on NWMLS Form No. 44, Bump Notice, or otherwise meet the requirements of this Addendum. 40-46

5. **CONTINGENCY MET OR WAIVED.** Buyer must give notice to Seller within 2 days of entering into an agreement to sell the Contingency Property. If Buyer gives written notice to Selling Licensee that Buyer has entered into an agreement to sell the Contingency Property or that Buyer waives this contingency before expiration of the Bump Period, Buyer shall have the continued right and obligation to purchase the Property (see paragraph 6 below). Buyer's notice shall be on NWMLS Form No. 46, Bump Reply. In the event no notice is received from Buyer within the Bump Period and Buyer has not otherwise waived the contingency, this Agreement shall terminate and the Earnest Money shall be refunded to Buyer. 47-53

IF THE CONTINGENCY PROPERTY HAS BEEN SOLD, BUYER'S NOTICE SHALL BE VOID UNLESS ACCOMPANIED BY A COPY OF THE PURCHASE AND SALE AGREEMENT FOR SALE OF THE CONTINGENCY PROPERTY. 54-56

6. **NEW CLOSING DATE; BUYER'S WAIVER.** The sale of the Property shall be closed 3 days after the closing of the sale of the Contingency Property or 30 days after Buyer's waiver of this contingency, whichever date occurs earlier. IF BUYER WAIVES THIS CONTINGENCY AND THEREAFTER FAILS TO CLOSE THIS SALE WITHIN 30 DAYS FOR ANY REASON, INCLUDING, WITHOUT LIMITATION, BUYER'S FAILURE TO OBTAIN FINANCING, WHETHER OR NOT THE FAILURE TO OBTAIN FINANCING RESULTS FROM BUYER'S FAILURE TO SELL THE CONTINGENCY PROPERTY OR TO MEET ANY OTHER CONDITION IN THE PURCHASE AND SALE AGREEMENT, BUYER SHALL BE IN DEFAULT AND THE DEFAULT AND ATTORNEY'S FEES CLAUSES IN THE AGREEMENT SHALL APPLY. 57-64

7. **CLOSING DATE FOR NEW CONSTRUCTION.** If the Buyer waives the above condition without having sold the Contingency Property, and, at the time of the waiver, the Property which is the subject of this Purchase and Sale Agreement is not completed with a Certificate of Occupancy (CO) or its equivalent has not been issued by the applicable government authority, then Buyer agrees to close within 9 days (5 days if not filled in), of notice from Seller to Buyer that a Certificate of Occupancy, or equivalent, has been issued. 65-69

8. **CLOSING DATE.** The Closing Date set forth in this Addendum shall supersede the Closing Date set forth in the Agreement. 70-71

9. **OTHER.** 10 72-73

Initials: BUYER: _____ DATE: _____ SELLER: _____ DATE: _____ 80
11 BUYER: _____ DATE: _____ SELLER: _____ DATE: _____ 81