

What Can Be Found in Standard R, The Miscellaneous Section of the NABOR® Contract?

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Let's face it, contracts for the purchase and sale of real estate are long, complex legal documents that most people neither read nor completely understand before signing. However, every provision is there for a reason, even those near the end. This article identifies the fourteen miscellaneous provisions found at the end of the NABOR® contract in Standard R, the "Miscellaneous" section. They apply to the entire contract!

(1) "The parties have agreed to deal in good faith with respect to all provisions of this Contract."

Good faith is not an independent term within the contract. It is a covenant (a promise) that applies to all contracts, regardless of whether it is expressly stated. Fla. Stat. § 671.203 (2016). This provision is included to eliminate any doubt and put the parties on notice that every term in the contract is significant and the parties must act in good faith to

comply with ALL contract terms.

(2) "The singular case or tense shall include the plural case or tense."

This provision speaks for itself. One equals two and two equals one, unless otherwise stated.

(3) "This Contract may only be modified in writing signed by the parties."

Simply put, do not assume that an oral agreement is enforceable UNLESS it is memorialized and signed by all parties.

(4) "Except as otherwise specifically provided, all references to days shall mean calendar days."

In other words, time periods are not measured by "business" days, unless specifically stated, such as in number five below.

(5) "Except as otherwise specifically provided, all deadlines shall expire at 11:59 p.m. Eastern Time . . . [and] if any deadline falls on a Saturday, Sunday, or federal legal holiday, said deadline shall be extended to the following business day."

There is no "if," "and," or "but" about it.

(6) "The terms 'real estate broker' or 'broker' shall include all real estate brokers, brokerage corporations or business entities, and their respective licensees involved in this transaction."

For instance, Standard Q can be rewritten as follows: "... all notices and disclosures required or permitted under this Contract shall be effective when given by a party or that party's broker [and their respective licensees] or attorney to the other party or said other party's broker [and their respective licensees] or attorney. Delivery of homeowners' or condominium documents required under Standards H and I respectively to BUYER's broker [and their respective licensees] or attorney shall not constitute delivery to the BUYER.

(7) "All title evidence, condominium documents and other documents provided to BUYER by or on behalf of SELLER are the property of SELLER until closing and shall be immediately returned to SELLER if this Contract is terminated."

This is generally not an issue because the seller generally provides copies of such documents, however, it is important to know that the Buyer has a duty to return certain documents to the seller if and when a contract is terminated.

(8) "If either [party] is permitted to terminate this Contract, said party shall do so

by giving notice of said termination to the other party, whereupon all deposits made by BUYER shall be promptly returned to BUYER, this Contract shall be of no further force and effect, and the parties shall have no further liability to one another hereunder except as set forth herein.”

Enough said; or is it?

(9) “The headings used in this Contract are for convenience of reference only and shall not be used for interpreting the meaning of any provisions of this Contract.”

Headings are not part of the terms of the contract, they are merely there to identify the various provisions. So for instance, the heading for Standard N that says “Quick Closing” cannot be used against either party.

(10) “All provisions of this Contract which by their nature or context require performance or provide rights after the Closing Date, including without limitation the provisions of Standard P, shall survive closing.

When the deed is executed and delivered to the buyer, the contract is no longer effective,

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unless either party is contractually obligated to take action after the closing. Standard P provides the standard for litigation, attorneys fees and costs: “In connection with any litigation concerning this Contract, venue shall be in the county where the Property is located, and the prevailing party shall be entitled to recover reasonable attorneys fees and court costs, including on any appeals, from the non-prevailing party.”

(11) “Signatures and initials communicated by electronic or facsimile transmission shall be binding.”

With the prevalence of email today, this should come as no surprise.

(12) “A facsimile or electronic . . . copy of this Contract and any electronic signatures

hereon shall be considered . . . originals.”

Indeed, e-signatures have now become common practice.

(13) “This Contract and any addenda and amendments hereto may be signed in counterparts, and said counterparts shall collectively constitute the entire agreement of the parties.”

Addenda are generally attached to the contract, but amendments modify the entire contract and can be executed weeks after the effective date.

(14) “Upon reasonable notice, SELLER shall provide access to the Property to appraiser(s) and surveyor(s) retained by BUYER.”

Many of these provisions are common sense, and others are in the contract because of a common dispute or need for clarity. Real Estate professionals must be familiar with all of them. If you have any further questions about the NABOR® contract, contact one of your fellow NABOR® members on the legal resources committee.

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