

NEW NTCAR COMMERCIAL CONTRACT FORM

By

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The North Texas Commercial Association of Realtors® ("NTCAR") has revised all of the NTCAR forms this year. If you are a Realtor member of NTCAR, you can access the forms by using the ZipForm software for free by going to www.texasrealestate.com.

If you are a Professional member of NTCAR, you can access the forms through the WinAIR software. There are small charges for using the WinAIR software when you finalize the forms and remove the "Draft" mark. An advantage of the WinAIR system is that you can add text to the form. We have been reluctant to allow the addition of text to NTCAR forms in the past, but we allow it now because the WinAIR system makes it obvious that the text was added.

Now even Non-Members may obtain the NTCAR contracts through WinAIR, but NTCAR members get to use the forms for half price. The link the NTCAR web site page about the forms is <http://ntcar.org/resources/commercial-real-estate-forms-contracts> If you have any questions about the new forms or software, you may contact NTCAR at **(214) 638-5525**.

The ZipForm software and the WinAIR software include all of NTCAR's commercial forms. The rest of this article is about the changes we made to the new form of Commercial Contract of Sale that replaces the previous version of the form. Look for a separate article about the new Commercial Lease Agreement form.

Some of the more substantive changes to the Commercial Contract of Sale form are:

Until now, the Inspection Period provisions were attached to the Contract as a separate Addendum (the old Addendum C). Because the terms of almost every commercial Contract in Texas include an Inspection Period, the NTCAR forms committee decided to move the Inspection Period provisions to the body of the Contract. Section 10 of the Contract was revised and expanded. You still have the option to choose to not have an Inspection Period.

Most of the provisions that used to be in an Improved Property Addendum (the old Addendum A) have also been moved to the body of the Contract. A new Section 11 was added to the Contract to provide for the delivery and review of documents pertaining to the Property, such as copies of leases, a rent roll, service contracts, property tax statements, and statements of income and expenses. A new Section 12 was added to the Contract to provide for the delivery of estoppel certificates executed by each of the tenants under the leases of the Property.

Addendum A to the Contract is now limited to provisions that allow the parties to list any personal property that will be included as part of the Property being sold. A new provision was added to Addendum A that allows the parties to list any items of personal property that will not be included with the Property.

There used to be a provision in the Addendum for the Inspection Period (the old Addendum C) relating to reimbursement of expenses incurred Purchaser if the Seller defaults. Since the Addendum was eliminated, that provision was moved to the section of the Contract that pertains to defaults and remedies of the parties. It says that if the Seller defaults and the Purchaser does not elect to enforce specific performance of the Contract, or the remedy of specific performance is not available, then the Seller shall reimburse the Purchaser for the Purchaser's actual, out-of-pocket expenses paid by the Purchaser to independent third parties in connection with the Contract, including reasonable fees for engineering assessments, environmental assessments, architectural plans, surveys and legal work (but excluding any indirect, punitive or consequential damages, such as a claim for lost profits) in an amount not to exceed a number in a blank to be completed. Although the concept is not new, moving the provision to the default section in the body of the Contract will probably cause it to be subject to greater scrutiny.

Some language in the Contract was modified to conform to the wording of the current statutory provisions pertaining to the situation where either Broker is acting as an intermediary in the transaction.

In the past, the forms committee has not wanted to have express language in the Contract that would allow for notices to be sent by e-mail. The concern was that an important notice, such as a notice to terminate the Contract within the Inspection Period, should be sent by a traditional method that can be proven. But the reality of modern communications convinced the forms committee that we should add options that can be checked to say that the Seller, Purchaser, or both consent the receive notices by e-mail.

In the previous form of the Contract, there was a provision that said that any representation or covenant contained in the Contract that is not discharged at the Closing will survive the Closing. That provision was removed. In some of the sections of the Contract there are statements that the provisions of the section will survive the Closing. The principles of common law should apply to determine whether the rest of the provisions of the Contract will survive.

There is a recent statute that was passed by the Texas legislature that pertains to certificates of mold remediation. We added a section that says that, if a certificate of mold remediation has been issued for the Property under Section 1958.154 of the Occupations Code within the preceding five years, the Seller is required to provide a copy of the certificate to the Purchaser.

Many other changes to the Commercial Contract of Sale form were made to clarify some language and make the form easier to read.

A number of brokers and attorneys provided valuable input and work on the new forms. Bill Roth is an attorney and a real estate professional who is Chairman of the NTCAR Forms Committee, and his insight and attention to detail were invaluable in connection with the revision of the NTCAR forms. Brian Jetty is the Executive Officer of NTCAR, and his support in the revision of the NTCAR forms is gratefully acknowledged.



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