



# RESIDENTIAL REAL ESTATE AGREEMENT STANDARD FORMS UPDATE

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# Background & Scope

- ▶ Standard forms prescribed by NSREC for use by licensees
- ▶ Updates required as practice and environment changes
- ▶ Focus today - **Residential Agreement of Purchase and Sale and Related Forms**
- ▶ Group of forms approved by NSREC Board December 14, 2017
- ▶ In use by NS licensees since July 1, 2018

## Forms Revision Process

- ▶ NSREC Mandatory Forms Committee (licensees plus lawyers)
- ▶ Forms are reviewed, changed, developed, drafted by this committee
- ▶ Drafts are shared with focus groups of licensees, consumers, and RELANS
- ▶ Final focus group is the NSREC Board of Commissioners
- ▶ Final versions approved by NSREC Board of Commissioners

## Scope: Updated Forms Approved Dec 2017

- ▶ 400 - Agreement of Purchase and Sale
- ▶ 210 – Equipment Schedule
- ▶ 402 - Resale Condominium Schedule
- ▶ 404 - Vacant Land Schedule
- ▶ 406 - Mini/Mobile Home Schedule
- ▶ 407 – Multi-Unit Res. Inc. Property Schedule
- ▶ 410 - Counter Offer
- ▶ 420 - Addendum Schedule “\_\_\_”
- ▶ 421 - Amendment to the APS
- ▶ 430A – SOBP Schedule
- ▶ 430B – SOBP Seller Notice to Buyer
- ▶ 430C – SOBP Buyer Notice to Seller
- ▶ 431 - Water and Septic Schedule
- ▶ 440 - Termination of APS & Release of Deposit

# APS Forms System

## Old System - Two Part Agreement of Purchase and Sale

- ▶ Part 1 APS – Form 400 Basic APS clauses
- ▶ Part 2 APS – One of Forms 401, 402, 404, 405, 406, 407  
(Specific groups of clauses depending on type of property)
- ▶ Needed a Part 2 to be complete
- ▶ Schedules – 420 (general), 430A (SOBP), 431 (water & septic)

# APS Forms System

## **New System** – One Part Agreement of Purchase and Sale

- APS – Form 400 Agreement of Purchase and Sale
- **No Part 2** – 400 complete as is unless schedule(s) needed
- **Specific Property Type clauses now in Schedules**
- Schedules – 402 (Condo), 404 (Vacant), 406 (Mini), 407 (Multi)
- Schedules – 420 (general), 430A (SOBP), 431 (water & septic)

# Agreement of Purchase and Sale (Form 400)

- ▶ For use with all types of residential properties
- ▶ Form 400 used to be Part One of Agreement of Purchase & Sale
- ▶ Many clauses from old Part Two forms are now included in Form 400
- ▶ Much more streamlined, concise, less repetition
- ▶ Minimum number of pages used to 5 (3 pg. Part 1 + 2 pg. Part 2)
- ▶ Minimum now 3 pg. (i.e. resale house with no leased equipment on municipal services, with no other schedules needed)

# Agreement of Purchase and Sale (Form 400)

- ▶ Indicate which of eight (8) Schedules attached by ticking boxes at top of APS

- Equipment
- Mini/Mobile Home
- Multi-Unit Res. incl. Properties
- Resale Condominium
- Vacant Land
- Sale of Buyer's Property (SOBP)
- Water & Septic
- Other \_\_\_\_\_

- ▶ Form 420 Addendum Schedule to be cross-referenced with  Other

- ▶ If  Other is ticked, blank will read "Addendum Schedule A", Addendum Schedule B", etc.



# Number of Pages

- ▶ Highlighted in pink box
- ▶ Refers to number of pages in the Offer document
- ▶ **NOT** to be left blank or completed inaccurately
- ▶ Minimum will be three (3) (if no schedules)
- ▶ Reduces risk of pages being missed by various parties
- ▶ Helps prevent mortgage fraud and/or accusations of attempts thereof

## Intro Section: other changes/highlights

- ▶ Reference to listing brokerage and co-operating brokerage removed
- ▶ Will contain both civic address and lot number, if applicable
- ▶ PID(s) is definitive identifier (unless mobile/mini on leased pad)
- ▶ Include all PIDs, if more than one
- ▶ If mobile/mini on leased pad - civic address and Serial # of unit will identify
- ▶ MLS# not used here

# Deposit

- ▶ Deleted reference to cash or cheque
- ▶ Deleted reference to Seller Brokerage, **entity to hold deposit will now be explicitly named**
- ▶ Norm will be to see name of the Seller Brokerage in space provided
- ▶ If No Seller Brokerage, may see Buyer Brokerage named to hold deposit
- ▶ Includes reference to “In-Trust”
- ▶ Includes reference to “subject to the terms of Commission Bylaw”

# Deposit

- ▶ New clause 1.3
- ▶ Addresses release of “excess deposit” to Seller’s lawyer before closing
- ▶ Parties agreeing to this up front – avoids amendment later
- ▶ Applicable only when amount of deposit is greater than the TOTAL remuneration including HST
- ▶ If not applicable, this will NOT be struck, just won’t apply
- ▶ If it is applicable, ensure Buyer is comfortable with this advance approval

# Closing and Conveyance

- ▶ Simplifies and streamlines
- ▶ Organizes like clauses together
- ▶ Replaces old clauses
  - ▶ 4. Closing Date & Possession (now 2.1 and 2.2)
  - ▶ 7. Damage Prior to Closing (now 2.3)
  - ▶ 8. Adjustments (now 2.4)
  - ▶ 5. Conveyance (now 2.5)

# Closing and Conveyance

- ▶ Pre-close requirement used to say “empty”
- ▶ Now says “clean and vacant”
- ▶ What does clean mean? This could be an issue
- ▶ Buyer’s agents advised to include detailed clauses as required
- ▶ Still says “on or before” but expectation is amendment to be done if closing moved up earlier

# Closing and Conveyance

- ▶ Changes from old 7. to new 2.3 re: Seller's Insurance
- ▶ 2.3. All lands, buildings, fixtures and all other property being purchased hereby shall remain at the risk of the Seller. **The Seller shall be responsible to keep the Property insured until closing.** In the event of damage to the Property, the Buyer, **having been advised of the insurance policy details,** may either agree to accept the proceeds of the insurance and complete the purchase, or may terminate this Agreement and the deposit shall be returned to the Buyer (not applicable to Resale Condominium Schedule – see clause 4 of the Schedule).

# Closing and Conveyance

- Changes from old 7. to new 2.3 re: Seller's Insurance
- New version requires seller to “keep” the property insured
- Seller will need to **counter this clause if property not insured at time of responding to offer**
- Buyer has right to see insurance claim details before deciding whether to proceed if damaged



# Closing and Conveyance

- No changes from old 8. to new 2.4 re: adjustments
- Minor changes from old 5. to new 2.5 re: conveyance
- “enjoyment of the property” replaced with “enjoyment and use” of the property
- “subject to clause 12. Additional Terms and Conditions” removed
- Added “(not applicable to Resale Condominium Schedule – see clause 3. of the Schedule)” to the “free from encumbrances” section to acknowledge and accept that there are additional restrictions inherent in condominium ownership

## Offer Date and Initials

- Offer date still at bottom of each page
- Only the transacting parties buyer(s) and seller(s) initial each page at the bottom only
- No longer spaces for initials of the licensee as a witness
- Spaces for transacting parties to initial certain specific clauses is gone
- Streamlines the form & emphasizes that **all clauses are important**

# Seller's Obligations

Documents that Buyer is requesting from Seller are listed in a single clause with one date

- Property Disclosure Statement (PDS)
- Any restrictive covenants that may affect the property
- Equipment Schedule, if not attached, and all related contracts
- Location certificate and/or survey, if available, without representations or warranties
- Other: \_\_\_\_\_

## Seller's Obligations

- ▶ No reference here to PDS being current but covered in PDS form
- ▶ Other could include property taxes, utilities costs, etc.
- ▶ Clause 7. (or an Addendum Schedule) if require more
- ▶ Water & septic documents **NOT** to be listed here, use Schedule 431

## Buyer's Conditions

- ▶ Buyers' "due diligence conditions" grouped in one clause with deemed satisfaction by a single specified date
- ▶ **This is an overall "big picture" change made throughout the APS and related forms,** more similar to commercial agreements
- ▶ Buyers have many options for getting out of the agreement and do not have to "prove" anything (less hassle to walk away)
- ▶ Important to ensure Sellers understand this up front – do not think of property as being sold until all conditions dates have passed

## Buyer's Conditions

- ▶ No longer any specific terms re: financing
- ▶ No longer any requirement for Buyer to provide copy of pertinent section of inspection report if terminating on inspection
- ▶ These changes add more risk to Seller - may tighten in counter offer

## Buyer's Conditions

- ▶ New clause added requiring Seller to provide reasonable assistance and access
- ▶ 4.2. The Seller agrees to **provide all reasonable assistance and access** to the Buyer to allow completion of the above investigations and inspection(s) outlined in clause 4.1 and any schedule(s) attached to this Agreement
- ▶ May be ambiguous - Seller may want to limit, Buyer may want to specify to make this clearer

# Harmonized Sales Tax (HST)

- ▶ New clause 5. replaces old clause 9. re: HST
- ▶ Clearly places responsibility with Seller for determining applicability of HST
- ▶ First part of clause is less detailed, instead refers directly to the Excise Tax Act
- ▶ 5.1 Allows for five (5) possibilities versus three (3)  
(previously didn't address partially subject to HST)
- ▶ Content of 5.2 and 5.3 unchanged from content of old 9.(b) and (c)



## Fixtures & Chattels

- ▶ 6.1 states **ALL fixtures to remain** so need a separate clause if any to be excluded
- ▶ 6.2 **specifically identifies chattels** to be included
- ▶ If none to be included, 6.2 to be struck and initialled
- ▶ States owned by seller and in good working order so may need additional clause in offer or counter offer if not true

# Additional Conditions

- ▶ Blank space for extra clauses
- ▶ To be used only if adequate space (clearly worded and complete)
- ▶ Otherwise use an Addendum Schedule 420

# Lawyer Review

- ▶ New 8. Lawyer **Review** replaces old 8. Lawyer **Approval**
- ▶ Otherwise, no change from the previous clause
- ▶ Acceptability by lawyers is deemed unless notice to contrary in writing before date specified
- ▶ Either party at liberty to terminate, if such notice given

# Property Migration

- ▶ New 9. replaces migration part of old 5. of APS Part 2
- ▶ Migration kept separate from title investigation
- ▶ Much more concise
- ▶ Appropriate box to be checked, no initials required
- ▶ Migration must be done at least seven (7) business days prior to closing
- ▶ If known issues indicate could take longer, Seller may counter

# Title Investigation

- New 10. replaces title investigation part of old 5. of APS Part 2
- Standard clause allows ten (10) business days for PID(s) to be provided to Buyer's lawyer by Seller's lawyer
- Standard clause allows five (5) business days after the later of migration completion and PID(s) received for Buyer's lawyer to investigate title
- Licensees to keep these time frames in mind when parties agreeing to a closing date
- Licensees to consult with Seller's lawyer as required

# Miscellaneous Provisions

- ▶ New 11. Miscellaneous Provisions replaces old 10. General of APS Part 1
- ▶ 11.1 Electronic transfer added as an option of payment method
- ▶ 11.2 old wording “warranties and representations” replaced with new wording “representations given by the Seller”
- ▶ 11.3 Time of the essence clause added “Failure to act within the time required constitutes a breach of the contract”

## Miscellaneous Provisions (continued)

- ▶ 11.4 Bound by electronic transmissions clause updated to include electronic signatures to be treated as originals
- ▶ 11.5 “No amendment to the terms of this agreement shall be effective unless it is in writing and signed by all parties” is a new clause that replaces the old “this agreement shall constitute the entire agreement” – clearer and more specific
- ▶ 11.6 New clause saying added provisions supersede standard provisions

## Miscellaneous Provisions (continued)

- ▶ 11.7 Changes of number and gender clause unchanged (new forms use singular of Buyer and Seller, this clause covers for plural)
- ▶ 11.8 New clause saying agreement governed by laws and courts of NS
- ▶ 11.9 agreement is to be “binding upon heirs, etc.” now a separate clause, but wording unchanged
- ▶ 11.10 New clause **defines business days as Monday-Friday, excluding statutory, provincial and civic holidays in the province of NS**



# Agency Relationship

- ▶ This section confirms what was already addressed in the brokerage agency agreement or customer acknowledgement, as applicable
- ▶ Alerts the lawyers as to which brokerages and licensees are involved and in which type of relationship
- ▶ **12.1 (Seller)** and **12.2 (Buyer)** will be completed unless parties are in a transaction brokerage relationship
- ▶ The “**do**” have agency is ticked for a **Client**
- ▶ The “**do not**” have agency is ticked for a **Customer**

# Agency Relationship

- ▶ If parties are in a **transaction brokerage relationship**, complete **12.3 only**
- ▶ Nothing in 12.1 or 12.2 if 12.3 is completed
- ▶ Will be only one brokerage identified by complete name
- ▶ If the brokerage is Common Law Agency, may be one or more representatives involved, see individual name(s) of licensees
- ▶ If the brokerage is Designated Agency, will see name of single individual licensee

## Time for Seller's Response

- ▶ “Open until ” blanks of time, day, month and year will be completed with “am” or “pm” circled/selected
- ▶ **Specifies Atlantic Time** (covers AST or ADT, whichever in effect)
- ▶ Offer date blanks of day, month and year completed
- ▶ All named Buyer(s) will sign
- ▶ More lines will be added if more than two (2) Buyers
- ▶ Lenders may require witnesses

## Seller's Response

- Seller to choose Accept, Reject or Counter
- Acceptance must be before offer "open until" time in clause 13.
- Seller response blanks of time, day, month and year will be completed with "am" or "pm" circled/selected
- All Seller(s) will sign
- More lines will be added if more than two (2) Sellers
- Lenders may require witnesses

# Water and Septic Schedule (Form 431)

- ▶ Replaces old form 431 - Schedule \_\_\_ re: Water and Septic
- ▶ Reference to date of agreement removed
- ▶ References Buyer, Seller and Property Address
- ▶ Content is reorganized to group Seller's obligations in clause 1. and Buyer's conditions in clause 2.
- ▶ A blank clause 3. is available for additional conditions

# Water and Septic - Seller's Obligations

- ▶ 1.1 Provide documents
  - ▶ Provide documents by specified date (not date from APS clause 3.)
  - ▶ Refers to “all reports and certificates in the seller's possession”
  
- ▶ 1.2 Mark & Make Accessible
  - ▶ Well(s)
  - ▶ Septic cover(s)
  - ▶ By date in clause 3 of APS page 1 (same as date for general documents)
  
- ▶ 1.3 Provide proof septic pumped
  - ▶ Within time specified (number and whether months, years, etc.)

# Water and Septic - Buyer's Conditions

- ▶ 2.1 Conduct tests/inspections at Buyer's expense to determine
  - a) **Water Quality** – “including meeting NS health standards” not limited to this
  - b) **Water Quantity** – sufficient for Buyer's needs
  - c) **Septic System** – condition & function
  
- ▶ Acceptance deemed by specified date unless written notice to contrary
  
- ▶ If written notice, either party may terminate

# Amendment to Agreement of Purchase and Sale (Form 421)

- ▶ Simplified from old form to remove Notice section at top
- ▶ Old form tried to be both Notice and Amendment, problematic when no notice was being given
- ▶ Amendment does not necessarily constitute Notice of Dissatisfaction with a condition
- ▶ Some amendments simply suggest a change which can be accepted or rejected



# Termination of Agreement of Purchase and Sale and Release of Deposit (Form 440)

- ▶ Streamlined compared to old version – two distinct parts
- ▶ Termination can be effected by either party as long as party is “at liberty to terminate” per the terms of the agreement
- ▶ Terminating party signs clause 1.
- ▶ If no deposit, only clause 1. used, no response needed
- ▶ If deposit, terminating party completes and signs clause 2. as well
- ▶ Only need other party's signature for release of deposit

# Termination of Agreement of Purchase and Sale and Release of Deposit (Form 440)

- ▶ Old termination form had a section to indemnify
- ▶ New version no longer indemnifies parties (or brokerages)
- ▶ If party wants indemnification, will require lawyer's involvement

# Property Type Schedules

- ▶ **None required** for a resale single unit house
- ▶ **402** - Resale Condominium Schedule
- ▶ **404** - Vacant Land Schedule
- ▶ **406** - Mini/Mobile Home Schedule
- ▶ **407** – Multi-Unit Residential Income Property Schedule

# Questions?