

## MAR's Standard Forms Undergo Massive Revisions

In an attempt to create a set of forms that can remain static for some years, MAR's Standard Forms Task Force worked tirelessly the last half of the year to revise, clean up and clarify clauses in almost all 30 forms. New forms will be launched in late December that will have January 2008 revision dates.

Before paraphrasing the revisions to each form comment should be made on the frequent questions that come into the MAR staff related to previous changes.

*The Commercial forms have been disabled? Where are they?*

Hours of discussion have taken place over MAR's decision to make a commercial purchase agreement and listing agreement part of the *Standard* Forms library. Any commercial broker will tell you that no commercial transaction is *standard* and most don't use MAR's forms. However, for the brokers in the state that chose to use a standard form, MAR made an effort to create them. The forms that were available, however have undergone thorough review by MAR's attorney and several commercial brokers in the state and it was determined that the forms were fraught with inconsistencies, and therefore, the forms were taken down in the summer of 2007. MAR's attorney and some commercial brokers are in consultation now determining whether or not our members are being adequately served by making available something called a "standard" commercial purchase agreement and listing agreement. If it is determined that new forms will be written, that will be done and the forms provided to members in the first quarter of 2008.

*Where is the mandatory arbitration clause?*

In 2006 the arbitration clause in the purchase agreements were removed and placed on a separate Mandatory Arbitration Addendum. For arbitration to be binding in Mississippi, the arbitration agreement must be signed by the parties. Since the brokers in the transaction do not *sign* the purchase agreements as *parties*, having arbitration as a Clause rendered it unbinding. A remedy was created by placing the option of Arbitration on a separate addendum which signature lines for the parties to that agreement. It should be understood that MAR's Mandatory Arbitration agreement is created to provide arbitration between the consumers and the brokers in a transaction, not between the buyer and sellers when they have issues with each other.

*Where is the Mold Disclosure?*

The Mold Disclosure was eliminated in early 2007. Having a waiver/disclosure for only one type of environmental hazard might give a court the impression that MAR felt mold was more significant than any other environmental hazard. We did not have similar disclosures for radon, asbestos, etc. Mold, however was added to the list of potential environmental hazards itemized in Clause 2 of the Property Issues Addendum (Hazardous Waste and Toxic Substances. The Property Issues Addendum is a valuable document that serves as a checklist for potential hazards of which a consumer should be aware and schedule inspections when desired.

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*Where are the blanks for buyer/seller initials that use to be on the bottom of each page of the purchase agreement?*

Nothing caused more confusion than the blanks for parties' to initial on the bottom of each page. Brokers across the state were instructing their agents to have their clients initial the pages at all different times. Some had their clients initial the pages at the time they submitted the offer; others had their clients initial only after all terms of a particular page had been completely agreed upon by both parties. To eliminate that confusion, the initial blanks were removed.

*Why was the seller's requirement to have heating, cooling, plumbing, electrical systems be in good working order eliminated from the contract?*

Several reasons. First, MAR's goal is to make the forms as consumer neutral as possible....not being heavily weighted to either the buyer or the seller. That clause tipped the scale a bit far on the buyer side. Second, and probably more important, was the contradiction the clause created if a buyer was choosing to buy a property AS IS checking the AS IS box in the DISCLOSURES AND INSPECTIONS clause. When a buyer chooses to buy a property in its "as is" condition waiving his right to inspections, the inclusion of the mechanical systems in the contract was a contradiction. Most buyers are buying with the aid of a home inspection where issues with the mechanical systems are itemized in the inspection report. Subsequently, when a buyer is choosing to buy "as is" there is not the expectation that the seller should warrant the mechanical systems.

Now, to the other revisions you will see to the forms in 2008.

All forms (other than the MREC forms or HUD forms) will have a new disclaimer at the top clearly indicating to consumers that the forms are provided as a courtesy, may not fit their needs or goals, and that MAR or its members shall not be held liable for use and content.

**CONTRACT FOR THE PURCHASE OF REAL ESTATE.** The DISCLOSURES and INSPECTIONS clauses were rewritten in total for clarity, the Lead-Based Paint Disclosure was added as required by Federal law, and the words acceptance, countered, and rejected in signature blocks on the last page were emphasized for clarity.

**CONTRACT FOR THE PURCHASE AND SALE OF LOTS AND LAND.** This form and the residential purchase agreement include many of the same clauses, but with different verbiage. For consistency where possible the language in both will now be the same. The TITLE AND CONVEYANCE clause was rewritten for clarity and more appropriate items were listed in the COSTS OF SALE

**LEASE AGREEMENT**

Content was added to provide a fee for a dishonored check and the Lead-Based Paint clause was added.

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## EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT.

Additional lines were added for legal description and address of property; a Homestead Exemption clause was added; and language from the **Working With a Real Estate Broker** disclosure was duplicated in the BROKER ACKNOWLEDGEMENT clause to itemize the broker's fiduciary duties.

## AGREEMENT TO SHOW UNLISTED PROPERTY.

An additional line was added for ADDRESS, a line was added for Tax Parcel # and content was added describing notification will be made to the parties.

## HOME INSPECTION ADDENDUM

The clause was revised indicating the options the buyer has if deficiencies are revealed by the Home Inspection Report.

## BUYER AGENCY CONTRACT

The form was basically rewritten to clarify the conditions that the Client and Broker are agreeing to and how compensation will be paid. A clause was added to indicate a price range. A clause was added to assist buyer reps in their obligation under the Code of Ethics to explain to buyers that terms and conditions of offers may not be kept as confidential and that the client acknowledges that the agent may represent multiple buyers.

## DECLARATION OF ACCEPTANCE

A hold-harmless clause was added as was a clause indicating that the form shall not operate to void or negate any warranties made by a builder of new construction.

## BUYER AUTHORIZATION TO MAKE REPAIRS

The form was rewritten for clarity.

## UNIMPROVED PROPERTY DISCLOSURE STATEMENT

The Wetlands item was reworded for clarity.