

The Multi-Board Residential Real Estate Contract 8.0 is the most widely used contract in Northern Illinois. I had the pleasure of representing the DuPage County Bar Association on the drafting committee which consisted of representatives of all the major boards of Realtors and Bar Associations in Will, Cook, DuPage, Kane, McHenry and Lake County. This explanation is not intended for attorneys but is rather intended for Brokers, Buyers and Sellers. I suggest that you have a copy of the contract for reference as you read this explanation. The paragraph numbers in this explanation are the same that appear in the Contract.

Throughout this contract you will read “Business Days” and “Date of Acceptance”. The Date of Acceptance is found on page 14 above the Seller’s signature and is the start date for all of the time frames. Business Days is defined in paragraph 25 as Monday through Friday except Federal Holidays.

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Paragraph 1. The Parties

Paragraph one identifies the Buyer and the Seller. Please avoid using “owner of record” or “OOR” as a Seller. If either the Buyer or the Seller is a trust, identify the trustee. At line 4 of paragraph 1 is a disclosure of dual agency. This is to comply with state regulations. If dual agency exists, it requests that Paragraph 30 be completed.

Paragraph 2. The Real Estate

This paragraph identifies the property being purchased in this contract. List all information available and the property index number. At line 12, designated parking spaces should be disclosed. At line 14, designated storage spaces should be disclosed. Additionally, include, if possible and applicable, the property index number for the parking space and storage unit. This information can be obtained from the prior deed or title insurance policy.

Paragraph 3. Purchase Price and Payment

Paragraph three deals with price and payment. Line 16 shows the purchase price. Line 19 describes any credits the Buyer will receive at closing, since this has an impact on the purchase price. Line 22 identifies the amount of the earnest money, when it will be deposited, and if any additional earnest money is to be deposited at a later date. Line 26 provides that if the contract is declared null and void or terminated, the earnest money is to be dispersed pursuant to paragraph 27. At line 28, there is a provision that the balance of the purchase price is paid at closing. Please note, Illinois closings are “Table Funding” closings. That is, the funds must be available and paid to the parties at closing, unlike some other states, notably California, where closings are escrows. Line 30 provides if a home warranty is being provided, complete paragraph 33.

Paragraph 4. Seller Contribution to Buyer Brokerage Compensation

Prior to this contract, the law in Illinois permitted the listing Broker to compensate the Buyer's Broker in accordance with the multiple listing rules and regulations. A lawsuit was filed, which was ultimately settled, wherein the National Association of Realtors agreed that the issue of the Buyer's Broker compensation is a separate item. Therefore, we drafted paragraph 4 to address the issue of whether the Seller agrees to pay Buyer's Brokerage fees. At line 33, subparagraph 4(a) is an agreement for the Seller to pay either a percentage of the purchase price or a specified dollar amount. At line 35, there is a provision that the Seller will not pay any portion of the Broker's compensation. This should be carefully calculated, as this will impact the amount of money the Buyers will need to complete the transaction.

Paragraph 5. Closing

Identifies the date the closing will occur, and the location of the closing.

Paragraph 6. Fixtures and Personal Property at no Added Value

The list of personal property was significantly expanded to account for the features that are frequently included in homes today, such as security systems, reverse osmosis systems, smart thermostats, video doorbells, and home theaters. The Buyer should carefully review this paragraph to verify that all of the things the Buyer expects to be included are checked. The Seller should review to verify the Seller is not agreeing to sell something that doesn't exist. At line 61, we address solar panels and request optional paragraph 34 be completed. Lines 62-64 provide space for additional items included or not included. Please note, at line 65 and 66, all of the personal property fixtures are to be in operating condition.

Paragraph 7. Possession

Possession is typically delivered at closing, unless paragraph 35, post-closing possession, is used.

Paragraph 8. Financing

Most Buyers will require a loan to complete the purchase. Paragraph 8(a) is the financing contingency that makes the contract contingent upon the Buyers securing a loan within 45 days after the date of acceptance, or five business days prior to the date of closing, and then describes the type of loan the Buyer is attempting to secure. This is virtually unchanged from the prior contract. Paragraph 8(b) provides for cash transactions with no financing. In this paragraph, the Buyer should have the funds currently available to secure and complete the transaction. Paragraph 8(c) is a cash transaction, financing allowed. This seems to be contradictory, but what it means is that the Buyer is applying for a loan and is certain that the loan will be approved but needs to have a mortgage appraisal performed. Please note, if the financing is not approved, the Buyer is still obligated to close on this transaction.

Paragraph 9. Homeowner Insurance

This makes the contract contingent on the Buyer being able to secure insurance at standard rates. The Buyer can communicate with his insurance agent, and if acceptable insurance is not available within 10 business days, the Buyer can cancel the contract.

Paragraph 10. Flood Insurance

This is similar to homeowner insurance. The requirement of flood insurance is typically determined by the lender, if any, and paragraph 10 provides that.

Paragraph 11. Statutory Disclosures

This is a list of documents the Buyer should receive at the time the contract is submitted.

Paragraph 12. Prorations

In many transactions, there are prorations to be made, such as real estate taxes, rents, special assessments, and utilities. Paragraph 12 lists those items to be prorated. Paragraph 12(a) specifically addresses the issue of real estate taxes. The Buyer should be aware that real estate taxes are paid in arrears and therefore the usual and customary proration percentage at line 147 is 110% in Cook County and 105% in all others. Your attorney or Broker can explain this anomaly. Paragraph 12(b) deals with the tax proration in the event of new construction or significant improvement to an existing home. Paragraph 12(c) discloses homeowner/condominium association fees.

Paragraph 13. Attorney Review

This provision allows the Buyer or Seller's attorney to approve this contract, disapprove the contract, except as to purchase price, or propose modifications. Any actions to propose modifications are deemed a counteroffer, unless there is a specific referral to paragraph 13(d). If the parties cannot agree on the modifications after 10 business days, either party may terminate the contract.

Paragraph 14. As-Is Condition – No Representations or Warranties of the Physical Condition of the Real Estate

Is an “as-is” provision. This provision provides that the Seller is not making any representation regarding the condition of the property, including anything stated in paragraph 7. Buyer acknowledges that no representation with respect to the condition of the property has been made. Under the “as-is” clause, the Buyer waives any inspection unless paragraph 15(b) or (c) is initialed.

Paragraph 15. Inspections

This is the major inspection provision of the contract. Paragraph 15 (a) permits a waiver of the inspection by the Buyer. This would apply if the property was to be a tear-down.

Under subparagraph 15(b), the Buyer has the right to do an inspection and to serve notice of requested repairs within 5 business days of the date of acceptance. The Buyer is not to send any copies of the inspection report. Subparagraph 15(b)(3) provides that if the condition of the property is totally unacceptable to the Buyer, the Buyer may terminate the contract by serving notices within 5 business days of the date of acceptance. Paragraph 15(c) allows the Buyer to make an inspection, but the Buyer agrees not to request any repairs or credits. The Buyer may elect to terminate the contract within 5 business days of the date of acceptance if the results of the inspection were unacceptable to the Buyer.

Paragraph 16. Additional Inspections

Here, the contract permits a termite inspection and a well and septic inspection, regardless of the use of paragraphs 14 and 15 above.

Paragraph 17. Condominium Interest Associations

This paragraph applies if the property is a condominium and/or a common interest association. When a condominium is purchased, the title is subject to the covenants and conditions and rules and regulations. Under the terms of this paragraph, the Buyer has the option to review those regulations. Typically, with a condominium, there are also fees and dues which are paid on a monthly basis; that amount should be acceptable to the Buyer.

Paragraph 18. The Deed

This paragraph simply describes the nature of the deed to be provided at closing.

Paragraph 19. Municipal Ordinance, Transfer Tax, and Governmental Compliance

This paragraph requires the parties to comply with the terms of any applicable municipal inspection requirement, transfer tax, or other municipal rules.

Paragraph 20. Title

This paragraph requires the Seller, at the Seller's expense, to provide a title commitment. This is an examination of the status of the title to determine if any liens, mortgages, etc., apply to this property. The Seller's attorney typically will order this title and will provide the Buyer's attorney with a copy; the Buyer may be obligated to pay for the lender's policy, if any.

Paragraph 21. Plat of Survey

It is usual and customary in northern Illinois to obtain a survey of the property. The survey will show the boundary lines and all of the improvements. The survey needs to be dated not more than six (6) months prior to the date of closing and must conform to the Illinois minimum standards for a boundary survey. This survey is to be staked.

Paragraph 22. Damage to Real Estate or Condemnation Prior to Closing

In the event the property is damaged between the date of the contract and the date of closing, the Buyer shall have the option to terminate the contract or to receive compensation for the damage. The receipt of compensation is rarely invoked.

Paragraph 23. Condition of Real Estate and Inspection

Here, the Seller is agreeing to leave the property in “broom clean” condition and to remove any property not included in the contract. The Buyer shall have the right to inspect the property to verify the condition to be substantially the same as of the date of contract.

Paragraph 24. Seller Representations Regarding Notifications and Knowledge

This paragraph contains a list of representations that the Seller is making to the Buyer. It is important that the Seller reviews each of these items to be sure these representations are accurate. The issues that have usually arisen regarding this paragraph deal with code violations and improvements where permits were not applied for or acquired.

Paragraph 25. Business Days/Hours

This paragraph defines a business day as Monday through Friday, excluding federal holidays. Business hours are 8am to 6pm Chicago time.

Paragraph 26. Electronic or Digital Signatures

This permits the contract to be executed by electronic or digital signatures.

Paragraph 27. Direction to Escrowee

The Escrowee is the entity that holds the earnest money. It can be a Brokerage, one of the attorneys, or a title company. This provision outlines the options the escrowee would have in the event of a dispute.

Paragraph 28. Notice

This paragraph defines how notice may be served on the parties. There are five options. The most frequent is option D, which provides for email communication.

Paragraph 29. Performance

This specifies that the dates and time limitations contained in this contract are to be strictly adhered to, unless the parties agree otherwise.

The following paragraphs are optional, and unless initialed by both the Seller and the Buyer, these paragraphs do not apply.

Paragraph 30. Dual Agency

This is used when the Broker is a dual agent.

Paragraph 31. Sale of Buyer's Real Estate

The sale of the Buyer's real estate is probably the most confusing paragraph in this contract. This optional paragraph is used when a condition of the Buyer's obligation to purchase is conditioned upon the Buyer selling the present residence. Paragraph (a) identifies information about the property, its location, whether the property is listed, and the status of the sale, if any. Paragraph (b) contains a provision that a contract be obtained for the sale of the Buyer's property by the date specified in (b)(1). Paragraph (b)(2) is the date by which the sale of the Buyer's property must occur. This is typically the day before or the day of the closing date specified in Paragraph 5. Paragraph (c) is frequently referred to as the "kick-out" clause. This allows the Seller to continue to market the Seller's property and to notify the Buyer if another offer is presented. The Buyer will then have a number of hours, as specified in (c)(1), to waive the contingency of paragraph 31 or to terminate the contract.

Paragraph 32. Cancellation of Prior Real Estate Contract

This provision applies if the Seller has already entered into a contract and wishes to accept this contract because it contains more favorable terms, etc. This would then allow the Seller to have an opportunity to cancel the prior contract, and if the prior contract is not canceled, this second "backup" contract is null and void. This provision would be used if a prior contract included paragraph 31.

Paragraph 33. Home Warranty Policy

This specifies if the Seller is providing a home warranty to the Buyer.

Paragraph 34. Alternative Energy

This paragraph deals with the issue of solar panels or other forms of alternative energy. Solar panels, for example, are frequently owned by the Seller, rented by the Seller, or some combination of the two. This paragraph requires that all such contracts be disclosed, so the Buyer will understand the status and costs.

Paragraph. 35. Possession After Closing

This is used if the Seller needs to close but cannot deliver possession until after the date of closing. This paragraph provides for a "security deposit" and a daily occupancy fee.

Paragraph. 36. Specified Party Approval

This is used if the Buyer needs to have the property approved. This would apply for example to a house hunting trip conducted by one of the spouses.

Paragraph. 37. Contract Addendums

This is a list of addendums that are available. Your Broker would be able to supply them.

Paragraph. 38. Miscellaneous Provisions

This is the miscellaneous provisions that provides for alternative language or a modification to the nature of this transaction. Please consult with your Broker or your attorney if any of these are to be used.

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Finally, we arrive at the signature page. The usual protocol is for the Buyer to complete this contract in the nature of an offer. That is why the date of offer above the Buyers signature is not a significant date. The parties within go back and forth negotiating the various terms and when agreement is reached, the Seller will sign the contract and will insert the date of acceptance which is the start date for all of the timeframes contained in the contract.