

EXPLANATORY NOTES ACCOMPANYING REVISIONS
TO STANDARD FORM CONDO CONTRACT

The revised standard form Condominium Contract is not being presented in a “black-lined” version referring back to the original, because the changes in form and substance were too extensive to accommodate any easy reference. These revisions are primarily intended to accomplish the following goals:

- I. *To update the form Contract and make it easier to comprehend for parties and practitioners;*
- II. *To incorporate provisions frequently added to the form Contract through rider provisions;*
- III. *To make the form Contract more like the standard form Coop Contract;*
- IV. *To provide protection to parties and to practitioners who may be unfamiliar with the form Contract and/or with the law applicable to condominiums.*

¶ 1: This paragraph is intended to essentially mirror the look, feel and content of ¶ 1 of the standard form Coop Contract. This paragraph incorporates information that was previously included in ¶¶ 1, 2, 3 and 4 of the existing form contract.

¶ 1.3: Title Company was added to reflect the fact that some law firms prefer not to act as Escrowee.

¶ 1.17.1: The term “Downpayment” that was used in the prior form Contract has been changed to “Contract Deposit”, in order to avoid common confusion between this amount and the amount not being financed.

¶ 2.1: Second sentence is new and reflects representations made if the Seller is an entity.

¶ 2.2: The main reason for the inclusion of the “understatement” credit is that Seller should be able to state the amount of the monthly common charges that it pays, so Seller should bear a burden for its misstatement. The last sentence was added to recognize that certain Sellers may have specific knowledge even in the absence of a written notice, and that knowledge should be shared with the Purchaser. This also mirrors the language of ¶ 4.1.5 of the coop contract.

¶ 2.3: Designee was added.

¶ 2.4: The language about plumbing, heating and electric and the limiting language at the end were added to reflect provisions almost universally included in riders.

¶ 2.5: The second sentence was added.

- ¶ 2.7: This provision was added to reflect added protection offered to Purchasers regarding alterations.
- ¶ 2.8: Same as ¶ 2.7, but also reflects the fact that a prior owner may have made an alteration that could have an effect on all subsequent owners.
- ¶ 2.9: This provision was added to reflect provisions almost universally included in riders. Other time frames were considered (12 months, 18 months) but 24 months was deemed to be most proper.
- ¶ 2.10: This provision was added to reflect provisions almost universally included in riders. Other time frames were considered (12 months, 18 months) but 24 months was deemed to be most proper.
- ¶ 2.11: This provision was added.
- ¶ 2.12: This provision was added to reflect provisions almost universally included in riders. Other time frames were considered (12 months, 18 months) but 24 months was deemed to be most proper. The topic of Seller's knowledge of bedbug infestation building-wide was also raised, but it was concluded that this information could be obtained from the Managing Agent.
- ¶ 2.13: This provides protection against a Seller who might be "under water".
- ¶ 2.15: The survival clause was the subject of a great deal of debate, particularly whether ¶¶ 2.7 and 2.8 should be carved out. It was determined that all provisions, including ¶¶ 2.7 and 2.8, would survive Closing. This is a variation from paragraph 4.1.6 of the 2001 Coop Contract, which provides that the provision about alterations does not survive Closing.
- ¶ 3.1.2: This expands on ¶ 6(ii) of the existing Contract in that it includes entities other than corporations, and acknowledges that the determination of the Title Company controls.
- ¶ 3.1.3: This new language hopes to clarify the waiver process.
- ¶ 3.1.5: Everything after the mailbox is added language, reflecting other locks and opening devices.
- ¶ 3.1.7: Reference to IT-2663 was added to reflect situations where Seller is subject to a nonresident income tax.
- ¶ 3.1.8: This recognizes the Mansion Tax as well as sponsor sales, where the burden of payment of transfer taxes is often shifted to Purchaser. Reference to IT-2663 was added.

- ¶ 3.1.10: Adds reference to carbon monoxide detector.
- ¶ 3.1.11: See notes to ¶¶ 2.7 and 2.8 above.
- ¶ 3.3.1: The provision at the end of the subparagraph regarding non-inclusion of notices which are the obligation of the Condominium is new.
- ¶ 3.4: This provision was added.
- ¶ 4.3: The 6-month limitation was added to reflect provision frequently found in Riders.
- ¶ 5.3: This provision was added to give Seller and Purchaser the right to cancel a contract where a Board of Managers is essentially holding the parties “hostage” and not issuing the waiver, and the title company will not insure, even though the by-laws may include a provision that provides that the right of first refusal is deemed waived where the Board fails or refuses to specifically act. We spoke with Mike Berey of First American who confirmed that he would likely not insure in the absence of a written waiver.
- ¶ 6.4: Added reference to working capital contribution.
- ¶ 6.5: Rather than a blanket imposition of fees on Seller, this paragraph specifically states that the determination of the Condominium/Managing Agent controls, and in cases of uncertainty, it is fair for the parties to split the fees evenly.
- ¶ 7.1: Removes the statement that Purchaser is “satisfied with” the documents.
- ¶ 7.1.5: This paragraph places an increased responsibility on Purchaser to ask the Managing Agent to see these documents in advance of the execution of the contract. That way, Purchaser has no basis to complain that the application and/or alteration documents are overly burdensome.
- ¶ 7.2: The reference to square footage addresses a common situation, because actual measurements typically differ from the measurements set forth in the offering plan.
- ¶ 8: The provision regarding touch-up plaster, spackle or similar material or touch-up paint was added to reflect a provision almost universally included in riders.
- ¶ 11: Electronic notification was discussed, and it was determined that each of these methods could lead to a claim of non-receipt which could neither be proven nor disproven. The Parties are free to add any of these means to a rider if they agree to do so.

- ¶ 13.2: The provision about indemnification of Escrowee including legal services rendered by Escrowee to itself was added.
- ¶ 13.5: This is a new provision providing notice regarding deposits exceeding FDIC limits. The amount was not specified, as the FDIC could change the maximum amount for which insurance is provided.
- ¶ 14: This paragraph was adapted from ¶ 25 of the Coop Contract, with the provisions that Seller pay costs and expenses being added.
- ¶ 15.1: The 10 business day/3 business day time provisions were added to provide greater specificity.
- ¶ 15.2: Reference in the middle of the paragraph was changed from Institutional Lender to “Purchaser’s lender”, because Institutional Lender refers only to the lender where there is a financing contingency. The penultimate sentence was added to clarify that, since these costs are the result of Seller’s actions or inactions, they should be Seller’s responsibility. The survival clause was added.
- ¶ 15.3: This is a change in that the lender’s requirements are only relevant where the Contract is contingent on financing.
- ¶ 16.1: For purposes of the “Risk of Loss” paragraph only, the definition of “Unit” is expanded to include those limited Common Elements that are appurtenant to the Unit.
- ¶ 17: The designation of specified parties was added to reflect standard practice.
- ¶ 19: This paragraph is largely adapted from ¶ 18 of the Coop Contract. No reference is made to ¶ 1.21.2, because this ¶ 19 only applies where the Contract is contingent.
- ¶ 19.3.3: These items were modified to adapt to condos rather than coops.
- ¶ 19.4: The “(as same may be adjourned)” language was added to protect Purchasers where the lender withdraws the commitment for reasons that do not concern Purchaser subsequent to the Scheduled Closing Date.
- ¶ 20: This was added as a separate paragraph to recognize the commonly encountered situation where the lender makes certain requests for information from the Condominium or Managing Agent and Purchaser needs to get Seller’s cooperation.
- ¶ 21: Adjusted to be more gender neutral.
- ¶ 24: Adapted from ¶ 23 of the Coop Contract.

- ¶ 26: Adapted in part from ¶ 14.2 of the Coop Contract.
- ¶ 27.2: Accepting digital, electronic or scanned copies recognizes realities of practice and clauses frequently included in riders.
- ¶ 27.3: Accepting counterpart signatures recognizes realities of practice and clauses frequently included in riders.
- ¶ 27.4: Covers the frequent occasion of Escrow Agent forgetting to sign the Contract.
- ¶ 29: A prevailing party legal fee provision was inserted as an optional Rider provision.
- ¶ 30: Added as an optional Rider provision to reflect common practice regarding abatements and corresponding assessments.