

Using the *Notice to Remove Conditions Form* Correctly

The *Notice to Remove Conditions on Residential Contract of Purchase and Sale* is a mandatory form that is to be used by a buyer or seller to remove a condition that he or she has placed on the sale of a property. Recently, the Commission has become aware of *Notice to Remove Conditions* forms that:

- (1) make the removal of conditions subject to an additional condition, or
- (2) include an additional term to be incorporated into the contract of purchase and sale.

These uses of the form are inappropriate. The Commission reminds all registrants that *Notice to Remove Conditions* forms must be unequivocal. **They cannot be made subject to additional qualifications.** In Hearing Committee decision #200902, the Hearing Committee noted that conditions in a trade in real estate must be clear and verifiable.

Improper use of the *Notice to Remove Conditions* form can jeopardize the clarity regarding which conditions are in place and which have been removed.

What NOT to do:

For instance, imagine that your client has signed a contract of purchase and sale which includes a condition of a satisfactory home inspection. The home inspection is completed, and reveals that several items require repair. In this case, it is **not** appropriate for the *Notice to Remove Conditions* form to state that, “the home inspection condition is removed pending the buyer and seller negotiating and agreeing to a holdback of a portion of the purchase price”.

In the same scenario mentioned above, imagine that the home inspection is completed, and reveals that the water heater needs to be replaced. It is **not** appropriate for the *Notice to Remove Conditions* form to state that, “the conditions are removed”, and then go on to state that, “the seller will replace the water heater prior to the buyer taking possession of the property”.

What to do:

An Amendment to Contract of Purchase and Sale form must be used whenever your client wants to add additional terms or conditions to the contract. In the scenarios above, the *Amendment to Contract of Purchase and Sale* form would be used to add a new term to the *Contract of Purchase and Sale* to hold back a portion of the purchase price, or to add the term of a new water heater installed prior to possession.

The *Notice to Remove Conditions* form can *only* be used to remove conditions, and *never* to add new conditions and terms to a *Contract of Purchase and Sale*.