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*Buyer's Conditions Video Transcript*

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Changes are being made to how buyer's conditions are addressed in the Agreement of Purchase and Sale. In this video, we will go over how buyer's conditions are currently handled and how they will be handled with the changes, effective January 3rd, 2022.

For example, when preparing an Agreement of Purchase and Sale in Nova Scotia, clause 4 highlights the buyer's conditions. It states that the agreement is "subject to the buyer, at the buyers expense, securing, conducting or reviewing the following" on or before X date. There is a checklist of conditional items, including: a property disclosure statement, restrictive covenants that may affect the property, an equipment schedule, financing, property inspections, insurance, and 'other'. The parties agree on a condition deadline for the items from the list that are checked. So the buyer now has a list of conditions they are responsible for satisfying, and a deadline they must meet.

The buyer's conditions are considered satisfactory unless the seller or seller's agent is notified to the contrary, in writing before the deadline has passed. So if the deadline arrives, and the buyer has not provided notice of dissatisfaction in writing, it is assumed everything is in order and the transaction can proceed. "No news is good news".

However, if there is an issue, for example, with the property inspection, the buyer or buyer's agent would notify the seller or seller's agent in writing of their dissatisfaction. At this point, either party is at liberty to terminate. If the buyer wishes to proceed with the agreement, they can propose an amendment. The seller can choose to accept the buyer's amendment, reject the buyer's amendment and all terms and conditions in the agreement remain in full force and effect, propose a different amendment, or terminate the agreement.

What constitutes notice of dissatisfaction has caused confusion in the industry for years. Buyers felt discouraged from providing notice for minor issues, fearing it would trigger a termination by the seller, which impacted their ability to negotiate. Alternatively, sellers had no written confirmation that the buyers had done what they were supposed to.

This confusion has been shared by both consumers and licensees. In response to this confusion, the Commission struck a task force who surveyed the industry, researched the issue of dissatisfaction and recommended changes to the Board. The Board approved the changes including an implementation plan.

A number of specific conditions in the Agreement of Purchase and Sale have changed. For these specific conditions, the buyer is now required to provide the seller or seller's agent with written confirmation that these specific conditions are satisfied. Further, the seller will no longer have the ability to terminate on these specific conditions.

Starting January 3rd, 2022, the following forms and conditions will change to reflect the new process:

- Form 400: Agreement of Purchase and Sale, clause 4.1
- Form 402: Resale Condominium Schedule, clause 2.2
- Form 403: Agreement of Purchase and Sale for New Construction, clause 4.1
- Form 404: Vacant Land Schedule, clause 2.3
- Form 406: Mini/Mobile Home Schedule, clause 3.2
- Form 407: Multi-Unit Residential Income Property Schedule, clause 2.1
- Form 431: Water and Septic Schedule, clause 2.1

What is not changing? The buyer's conditions will remain the same, the buyers still have a checklist of items they are responsible for, and a condition deadline.

What is changing? The new process will no longer be "no news is good news." Once a buyer has gone through their list of conditions and they are satisfied, they must provide the seller or seller's agent with written confirmation. The Commission has developed a new form for this purpose: Form 408: Buyer Waiver of Conditions. The revised Agreement of Purchase and Sale requires Form 408 to be provided to the seller or seller's agent on or before the condition deadline. Form 408 confirms that the buyer is satisfied with and waiving those conditions from the Agreement of Purchase and Sale. From here, the buyer and seller can proceed with the transaction.

The new process allows them to negotiate new terms to their agreement without the fear of the seller terminating when they propose an amendment. Under the new process, only the buyer may terminate before the specific condition deadline.

Sellers will be provided with a clear date as to when the buyer's conditions have been met with the receipt of Form 408. If Form 408 is not received per the terms of the agreement, the agreement is deemed terminated. If there is a deposit, it shall be returned to the buyer subject to the applicable NSREC By-laws. This can be done using Form 440: Termination of Agreement of Purchase and Sale and Release of Deposit. If there is no deposit, a termination form is not required.

Under the new process, if the deadline passes and the buyer has not completed Form 408 waiving specific buyer's conditions and submitted it to the seller or seller's agent, the agreement is deemed terminated. "No news, means you lose!"

What if in the process of completing their conditions, the buyer comes across an issue that leaves them dissatisfied? For example, the property inspection. Prior to the condition deadline, if the buyer is dissatisfied but wishes to proceed with the transaction, they can propose an amendment. The seller can choose to accept the buyer's amendment, reject the buyer's amendment and all terms and conditions in the agreement remain in full force and effect, or propose a different amendment. Again, this new process does not permit the seller to terminate. Regardless of what happens, if the buyers wants to proceed with either an amended agreement or with the original terms of the agreement, they must provide the completed Form 408 to the seller or seller's agent on or before the deadline.

If a buyer is dissatisfied with any of the specific conditions and no longer wants the property, they can terminate the agreement in advance of the condition deadline.

There are a number of conditions in the agreement that have not been impacted by this change. Examples are: lawyer review, title investigation and clause 2.4 of the condo schedule regarding the estoppel certificate.

Here are the key things to remember:

- The new process goes into effect January 3rd, 2022.
- Buyers still have their list of conditions and their deadline.
- There are specific conditions that are impacted by this process.
- Once the buyer is satisfied with specific conditions, they must complete and sign Form 408, and provide it to the seller or seller's agent before the condition deadline.
- This new form is required to waive the buyer's conditions from the Agreement of Purchase and Sale. Failure to provide notice now means the agreement shall be deemed terminated.

- The buyer has the ability to propose an amendment, without the seller being able to terminate the agreement.
- The buyer still has the ability to terminate the agreement prior to the specific buyer's condition deadline, however, the seller does not.
- Remember, No news means you lose!
- Lawyer review, title investigation and the estoppel certificate conditions have not changed.

For a copy of the transcript, please visit the Commission's website.