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## Legal Updates: PRDS & Contract Changes

### PRDS and C.A.R. Revise Their Purchase Contracts: What's In, What's Out

*by David Hamerslough*



PRDS and C.A.R. are releasing revisions to their respective purchase contracts. In this article, I will begin identifying some of the significant revisions; I will discuss these and other changes in more detail in subsequent articles. These articles are not intended to identify every revision and are not a substitute for reviewing both contracts and attending a seminar explaining the revisions in detail.

Portions of the C.A.R. contract have been restructured, bringing it more in line with the format of the PRDS contract. In the new C.A.R. contract, the paragraph identifying the Addenda and Advisories and Other Terms has been moved up into the first portion of the contract. Like the PRDS contract, this version's first pages include many of the important contract terms and conditions (price, financing terms, fixtures, fittings, what property is included in or excluded from the sale, close of escrow, etc. and any additional terms or addenda), so such terms cannot be overlooked.

In terms of significant deletions, the C.A.R. contract has now removed the option for the buyer to remove its loan contingency upon funding by the lender. While this contingency has not been utilized in this geographic area or under our market conditions, it was always a distinguishing feature of the C.A.R. contract.

Both contracts still provide for removal of a loan contingency, assuming there is one, within a specified time. The C.A.R. contract now separates the removal of the appraisal contingency from the removal of the loan contingency, meaning that removing one contingency does not automatically remove the other one. In addition, the default time frames for removal of these contingencies are no longer linked; the appraisal contingency is now to be removed 17 days after acceptance, while the loan contingency is to be removed 21 days after acceptance unless otherwise modified.

The separation of the two contingencies illustrates one philosophical difference between the contracts. This occurs when a buyer waives or removes the appraisal contingency but still has a financing contingency in place. C.A.R.'s approach is that if there is no appraisal contingency and the buyer qualifies for the loan but the property does not appraise, then the buyer cannot use the financing contingency to terminate the purchase contract. Under the PRDS contract, if there is a loan contingency but a written lender commitment for the loan specified in the contract cannot be obtained because the property does not appraise, the buyer has the right to cancel the contract even though the buyer is otherwise qualified for the loan. These philosophical differences can have an impact on deposit disputes between the buyer and seller (though there may be other factors affecting the outcome of such a dispute).

Another significant elimination from the C.A.R. contract is the Wood Destroying Pest Inspection Allocation of Cost Addendum (WPA); pest inspections are now included as part of the buyer's investigation of the property. The general property condition paragraph in the existing PRDS contract addresses this issue by giving a buyer the right to evaluate structural pest control issues. A buyer can rely on this paragraph where structural pest control provisions have been eliminated from the contract. Differences in how the two contracts address this issue will be the subject of a later article.



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Laurie and I had two very challenging real estate rights issues that we were advised were going to be difficult to prevail on. The RHRC team engaged with us and helped us understand our rights and prevailing position. RHRC were thoughtful advocates for us from the beginning to conclusion of our cases. We feel fortunate to know we will always be able to call on the firm in the future and that they are

our legal counsel.

*Albert "Rocky" and Laurie Pimental, President of Global Markets and Customers, Seagate Technology*

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