

Contract & Forms Committee Minutes – February 22, 2016

- **Call or order: 1:00 p.m. on February 22, 2016**

Roll Call: Charley Sawyer (Chair) Mike Shepard (Counsel), Sandy Carroll (CEO), Lora Kozlowski, Franz Forster, Wendy Smith, Pam Roberts, Mark McIlquham, Maureen McFarland (Ex officio). Excused: Eric Steuernagle, Nate Girard. Absent: Steve Ray

- **Review RESPA / TILA Changes Requested by the Berkshire Bar**

Mike Shepard will review his notes from the meeting with the Berkshire Real Estate Bar and bring the issues to the committee for review, if any.

- **P&S Insurance Contingency Clause, para 6**

There were several proposals to define ‘satisfactory insurance’. Mike Suggested, “Unsatisfactory insurance is defined as the requirement to purchase flood insurance or declined coverage from a standard carrier due to property conditions.” After discussion, the committee found that doesn’t address issues with un-insurability for credit, excessive claims or proximity of fire services. The committee took no action, instead waiting until the next meeting for a full consideration after speaking with insurance agents about insurability issues. There was a consensus that, pending lender agreement, we would suggest a change in the closing timeline as follows: move the insurance contingency to the 15 day time line with inspection, instead of the 45 timeline for mortgage.

Mortgage and Insurance Application	7 days after termination date
Inspection Contingency	15 days after termination date
Insurance / Mortgage Contingency	45 days after termination date
Closing	60 days after termination date

- **Inspection Contingency: Confusion over “Licensed” Inspectors, para 7**

The consensus was to retain the current policy of allowing the buyer to have the home inspected by the person of their choice and to terminate the agreement within the inspection period for any reason. It is important to note that the committee reaffirms that there is NOT change in the standard of practice that buyer agents strongly encourage the use of a licensed home inspector (as required by Mass Law), and the use of licensed professionals in the inspection process. There was an additional consensus to educate the seller’s agents on the importance of keeping the inspection timeframe tight (within 15 days as suggested), unless the seller is aware of the potential ramifications. The committee asked staff to update the Waiver of Professional Inspection Form to strike language that reference the purchase and sale agreements old language. The committee strongly endorses the use of this waiver form for any buyer that does not chose to use a licensed home inspector.



And Multiple Listing Service, Inc.

- **P&S Risk of Loss Insurance Clause in Purchase and Sale para 26**

There are concerns that the language, as written, is no longer enforceable. (there are questions if insurance proceeds can be assignable, and if a property can close post-TRID without repair work being performed). The committee members and Board Legal Counsel are reaching out to various insurance agents to determine how best to adjust this clause to meet today's standards.

- **P&S Request to include Right to Farm in P&S Agreement**

There was a request we include the Right to Farm disclosure in the P&S, to avoid additional addendums. After a lengthy conversation, it was decided that the "disclosures" clause in paragraph 35 be amended to include a Right to Farm check off box, and that the staff educates on the proper handling of a RTF disclosure.

- **MAR P&S Clauses of Interest**

No action at this time. The committee will review the MAR P&S revised contract to see if there are any new clauses that we should consider.

- **P&S Contact Worksheet – To Add Buyer / Seller Phone and Email**

Despite members being conflicted about adding the buyer & seller contact information to the worksheet, the group decided to add the blank forms to the document so that the information is able to be included if desired. If the information is not included, the attorney / lender can reach out the agent for the information, and now at least they will have a space on the same form to include it.

- **Closing Cost Credit Flyer Updates needed**

Staff will update the Closing Cost Credit flyer to remove the references to the HUD-1 Settlement Statement. The committee received a request to reconsider excluding repair credits in the calculation of cooperative compensation. It was reported that seller's agents were typically collecting commission on the net to seller, and not calculating commission on any credits. This is contrary to our policy, and it was suggested we align our policy with the actual practice. It was determined that more research is needed to determine if/when repair credits are available post TRID. Attorney Mike Shepard will reach out to the TRID lenders to determine if repair credits are an issue any longer. He will report back at the next meeting.

- **Inclusion of MAR Facilitation form and NEW Seller's Statement of Property Condition**

There was a request that we add these 4 new forms to the MLS. The committee decided that the Seller's Statement of Property Condition be added to the "blank forms" so as to not incur a programming cost (and to reflect the fact that agents should NOT be completing these forms in any manner, but should be providing them to the sellers). Before recommending that the MLS board expend funds to add the 3 Facilitation forms, they asked staff to include it in the next poll to the members to see how widespread the use would be to justify the expenditure.



- **New FlexMLS Field Option Requests**

Staff sought input on the new field option requests: Exterior Siding – cement hardiboard; Roofing – standing seam metal; Lead Paint – N/A, built after 1978; Heat/Cool/Ventilation – Air Exchange System; Floor – Concrete. The committee agreed all were great ideas, so staff will update the system as usual.

It was noted that at the next meeting, the committee should also look at the “greening the MLS” options to properly recognize energy ratings and valuable green selling features.

- **Ziplogix**

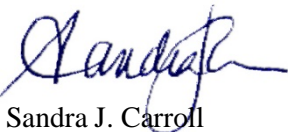
The committee received an update on Ziplogix MAR and NAR member benefits. The group was asked to go in and try the software and see if they find it valuable. The MLS Board of Directors is considering the level of our involvement in the software, given the cost of adding forms and connecting our MLS data. The following resources will allow the committee (or any member) to gain valuable information on this new member benefit:

Video 1: This is a How-to Video. Members will learn exactly how to set up a zipLogix account: <https://www.youtube.com/watch?v=96suVNTjiZY>

Video 2: This is an overview of the forms benefit—what’s been available and what is new: <https://www.youtube.com/watch?v=nwpbL2g6PwQ&feature=youtu.be>

Here is the link to MAR’s website which goes into details about the free forms: <https://www.marealtor.com/members/benefits-and-discounts/real-estate-forms>

Respectfully Submitted,



Sandra J. Carroll
Chief Executive Officer

