

BIRMINGHAM ASSOCIATION OF REALTORS®

Contract Clauses

1. Addendum Form:

(Use when a printed addendum form is not available and it is necessary to add additional terms to the contract.)

DATE: _____

This Addendum is part of that certain Contract dated _____ between _____ (“Buyer”) and _____ (“Seller”) on the property located at _____ (the “Property”).
Buyer and Seller agree to the following: *(List Additional Terms)*.

All other terms and conditions of the Contract shall remain the same. The terms and conditions of this Addendum shall govern if they conflict with other terms and conditions of the Contract.

_____ Seller	_____ Date	_____ Buyer	_____ Date
_____ Seller	_____ Date	_____ Buyer	_____ Date

2. Agent Buying or Selling for Self:

The [indicate: Buyer(s) or Sellers(s)] recognize that *(your name)* is a licensed real estate agent in Alabama with *(firm name)* and is acting as a principal owner and/or investor for his/her own account, that *(firm name)*, having no ownership interest, shall not be held accountable or liable for any damages regarding the development, construction, or sale of this property.

3. Backup Contract Clause #1:

(Backup Contract remains in effect for period of time specified in this clause.)

All parties acknowledge that this Contract is in a secondary position to a previous contract (the “Previous Contract”) dated _____ between Seller and another party, _____, and that this Contract becomes the primary contract only upon the expiration or cancellation of the Previous Contract. In the event this Contract does not become the primary contract on or before _____ a.m./p.m. on _____ (date), this Contract shall be null and void and all earnest money shall be refunded to Buyer immediately upon the execution of a mutual release form, signed by all parties to the contract.

(NOTE: See clause #15 to provide Notice to Buyer that Secondary Contract becomes Primary)

4. Backup Contract Clause #2:

(Buyer may cancel Contract at any time upon written notice to Seller.)

All parties acknowledge that this Contract is in a secondary position to a previous contract (the “Previous Contract”) dated _____ between Seller and another party _____, and that this Contract becomes the primary contract only upon the expiration or cancellation of the Previous Contract. Buyer may cancel this Contract by written notice to Seller at any time prior to Buyer’s receipt of written notice that this Contract has become the primary contract. If Buyer exercises this right, all earnest money shall be refunded to Buyer immediately upon the execution of a mutual release form, signed by all parties to the contract.

(NOTE: See clause #15 to provide Notice to Buyer that Secondary Contract becomes Primary)

5. Break Clause:

Seller shall have the right to continue to offer Seller's Property for sale. If Seller receives another acceptable written offer, Buyer shall be granted _____ hours after notice to Buyer or Buyer's agent/transaction broker to remove the sale of property contingency. In the event Buyer fails to remove this contingency by written notice to Seller or Seller's agent before the end of said period, this contract shall be terminated and all earnest money refunded to Buyer immediately upon the execution of a mutual release form, signed by all parties to the contract.

If Buyer elects to remove the sale of property contingency, in no event shall this contract be contingent upon the sale of Buyer's property, even if this is a requirement of the lender. Accordingly, Buyer's removal of the sale of property contingency shall also be deemed a removal of any financing contingency set forth in this contract.

In the event Buyer elects to remove the sale of property contingency, Buyer agrees to immediately pay additional earnest money of \$_____ upon removal.

(NOTE: This Sale of Property Contingency Break Clause may be modified for other types of contingencies.)

6. Bridge Loan Approval:

In the event funds necessary to close this transaction by the closing date specified herein are not forthcoming from the sale of Buyer's present property located at **(address)**, Buyer agrees to secure interim financing in order to close according to the terms of this contract. It is further agreed that if both the Owner and Mortgagee's title policies are obtained at the time of closing, the total expense of procuring the two title policies will be divided equally between the Seller(s) and Buyer(s).

In no event shall this contract be contingent on the sale of Buyer(s)' existing property and if said sale is a requirement of the lender, the Buyer(s) agree to forfeit all earnest money unless they are able to close as stated in this Agreement of Sale.

7. Contingency - Approval of Spouse, etc.:

(NOTE: Occasionally, Buyers choose to establish certain conditions that must be met in order to complete a purchase, such as approval of a trailing spouse, approval of employer, approval of Buyer's attorney, etc. The condition(s) may be stated as a contingency with the following:)

This contract is contingent upon **(state condition in brief but specific language with a reasonable time frame)** by no later than _____ days after Seller's acceptance. If Buyer does not waive or satisfy this contingency by written notice to Seller before the end of the stated period, this Contract shall terminate and the Earnest Money shall be refunded to Buyer immediately upon the execution of a mutual release form.

(NOTE - Optional Seller's Language: Many sellers treat unusual contingencies similar to a sale of property contingency, adding a break clause and continuing to market the property. See "Break Clause" for an example of the type of language that may be appropriate.)

8. Contingency - Sale of Property:

(Should be included when Buyer is unable to perform without first selling and closing his/her current Property.)

This Contract is contingent upon Buyer selling and closing Buyer's property located at **(Address)**. Buyer agrees to market the property through all reasonable means.

(NOTE: "Break Clause" may be added.)

Buyer(s) agree to list **(address of property on which this sale is contingent)** no later than **(date)** with the most geographically appropriate area Multiple Listing Service (MLS) and make every effort to effect a sale of the property.

9. Delayed Deposit of Earnest Money:

(NOTE: The Alabama Real Estate Commission requires deposit of earnest money when the offer becomes a contract unless the parties have agreed on a different time. When a Buyer requests that Buyer's check be held for a period of time, Seller's written consent must be obtained.)

Seller and Buyer acknowledge and approve that the earnest money check will be held by Broker until _____, at which time it will be deposited by Broker.

10. Expiration of Offer/Counter-Offer:

This offer/counter-offer shall expire unless Seller/Buyer's written acceptance of this offer is delivered to Buyer/Seller or his/her agent by (time/a.m. or p.m.) (full date), time being of the essence.

11. Exterior Insulation Finish System – Synthetic Stucco (EIFS):

The residence on the Property may have an exterior finish of "synthetic" or "manufactured" stucco, generally known as an "exterior insulation finish system" or EIFS. Such systems may experience water, moisture and other problems under certain circumstances. Buyer is advised to have the system inspected by a professional with expertise in exterior insulation finish systems.

Understood and acknowledged: _____ (Buyer's initials)

12. Financing – Qualifying Buyer Within Specified Time Limit

A. Limiting interest rates and discount points:

NOTE: If the contract does not say "interest rate shall not exceed market and there is no provision for who will pay discount points if they exceed the limits set in the contract, you might consider using this clause. Be sure to include this on any contract that is not on your company's contract forms.

If the Buyer(s) choose to limit the interest rate and/or the discount points under which they will close, the Buyer(s) hereby agree to deliver to the Seller(s), within _____ days, a statement from the Buyer(s) lender stating that application has been made and interest rates and discount points have been tied down that satisfy the terms of this agreement. In the event that the Buyer(s) fail to do so, they agree to accept the loan and discount rate at the market rate at the time of closing.

B. Qualifying Buyer(s) within Specified Time Limit:

Buyer(s) agree to furnish to Seller(s) on or before (date) a written statement from a recognized mortgage lender reasonably acceptable to Seller(s) confirming Buyer(s)' credit pre-approval and Buyer(s)' application for the loan specified in the loan contingency. Should Buyer(s) fail to timely provide said statement, Seller(s) may terminate the contract and the earnest money shall be returned to Buyer(s) upon the execution of a mutual release form. Such statement shall also include any reference to the discount points which may be required and the specific statement from the lender that the rate is "tied down" for a designated time so stated in this written statement from lender.

C. Change of Lender:

In the event the Buyer(s) should change mortgage lender and/or type of loan (from that type stated on the body of the original contract) after the initial loan application is made without the written consent of the Seller(s), Buyer(s) and Seller(s) agree and acknowledge that the terms of the contract are in violation and that the Buyer(s) shall forfeit the earnest money to the Seller(s), at Seller(s)' option.

13. Lot Purchase Inspection Contingency:

This sale is contingent upon Buyer's verification that the Property is suitable for Buyer's intended purposes and that financing is available to Buyer. If Buyer is not able to verify such matters by (date and time am/pm), Buyer may terminate this Contract by written notice to Seller on or before the end of said date, in which event Seller agrees to refund earnest money immediately upon the execution of a mutual release form, and this Contract shall become null and void. If Buyer does not terminate this Contract by such date, this contingency shall be deemed to be satisfied or waived.

14. New Construction:

See "Real Estate Sales Contract for New Construction on Builder's Lot" as approved by the Birmingham Association of REALTORS®.

(NOTE: Some builders/developers' new construction contract forms do not include the required agency disclosure clause. Refer to the Association's approved sales contracts for the correct verbiage to add to such contract.)

15. New Construction – Selections/Allowances:

Buyer may select (specify each item which may be selected, such as carpets, bathroom tile, wallpaper, lighting fixtures, choice of appliances, etc.) within Builder's allowance and at Builder's suppliers, provided that such items have not already been purchased, ordered and/or provided for. If Buyer exceeds Builder's allowance or changes suppliers, Buyer shall pay all amounts in excess of such allowance and these charges must be paid upon selection.

16. Notice to Buyer that Secondary Contract becomes Primary:

Buyer, _____, is hereby notified that the primary contract on (property address) has terminated or expired and that Buyer's contract dated _____ has become the Primary Contract on the Property.

_____ Seller's Signature

17. Notices:

Any notices to be given under this Contract may be given in person or by telephone unless the notice is specified to be given in writing. Notice shall be deemed to have been given to Buyer if given to Buyer OR Licensee working with Buyer, _____. Notice shall be deemed to have been given to Seller if given to Seller OR Licensee working with Seller, _____.

_____ Buyer's Initials

_____ Seller's Initials

18. Personal Property to Remain:

Seller agrees to the following items that were physically on premises when viewed by Buyer shall remain with the Property: Seller(s) and Buyer(s) agree that these non-realty items have no additional value. (List all items which are to remain – examples are listed below)

andirons	freezers	sconces
attic or ceiling fans	electric garage door openers	sheers
basketball goals	and all remote sensors	shutters
birdbaths	gas barbecue grills	stereo speakers interior & exterior
blinds	gas lights	swing sets/playground equipment
bookcases	gas logs, keys and fireplace	tv antenna
carpeting that is not	enclosures and screens	trash compactor
wall-to-wall	ice makers	whole house vacuum system
ceiling fans	mail box	and attachments
chandeliers	pool equipment	window air conditioners/heating
clotheslines and poles	portable dishwasher	units
cornices	range	window treatments (including
firewood	refrigerator	curtains, draperies, valences,
fixed mirrors	rugs	rods and hardware)
fountains	satellite system for tv	

19. Purchase Money Mortgage (Owner Financing):

Seller agrees to accept a Purchase Money (First, Second, etc.) Mortgage and note in the principal sum of \$ _____ dollars payable in (insert number of payments – monthly, quarterly, semi-annual or annual) payments of \$ _____ dollars amortized over a period of ____ years at an annual interest rate of ____%. The mortgage and note shall contain other terms and conditions customary for such transactions and must be acceptable to Seller's attorney. Buyer shall provide yearly evidence to Seller of insurance sufficient to cover all mortgage obligations and naming Seller as a loss payee, and paid ad valorem tax receipt. This mortgage may not be assumed without written permission of the mortgagee and shall be "Due on Sale".

(NOTE: Seller may wish to request a credit report and Buyer may want to address whether there will be a privilege of prepayment without penalty and/or whether there may be an assumption of the mortgage (with or without written consent of the mortgagee).)

20. Purchase Money Mortgage with Balloon Payment:

(NOTE: If the purchase money mortgage involves a balloon payment, language such as the following should be inserted at the end of the first sentence in the clause above:)

There shall be one final balloon payment of the entire unpaid principal balance due at the end of the (# of months).

(NOTE: The principal balance should be stated as to the amount on the month due in advance by preparing an amortization schedule.)

21. Redemption, Outstanding Rights of:

Buyer understands there are outstanding rights of redemption on said property until (month, day & year) and, if exercised before closing of sale, this Contract shall become null and void. In that event, Seller agrees to refund all earnest money to Buyer upon the execution of a mutual release form.

The Buyer(s) understand there are outstanding rights of redemption on said property and:

- do not require legal counsel.
- do require legal counsel. Buyer(s) failure to terminate contract within _____ days (TIME IS OF THE ESSENCE) is Buyer(s)' election to proceed with closing.

22. Sinkhole Clause:

(Could be necessary whenever the subject property is located in an area where "sinkholes" may exist.)

NOTICE, ACKNOWLEDGMENT AND DISCLAIMER: Buyer hereby acknowledges notice from Seller that the Property is located in an area where sinkholes exist or where subsurface conditions which may result in sinkholes exist. Neither Seller, Broker or any salesagent makes any representations or warranties, expressed or implied, with respect to the surface or subsurface conditions of the Property.

23. Time is of the Essence:

(NOTE: Without stating "Time is of the essence", a contract is still enforceable for a "reasonable" period of time. This clause is to be used sparingly as in most cases it may not be in the parties interest to use it. Simply write the words "Time is of the essence" after the condition desired.)

24. Farm/Ranch Crop Contract Clause

Buyer and Seller hereby acknowledge that there are certain crops currently growing on the Property, specifically, the following crop(s) _____ (specify the crops Seller shall have the right to harvest) (the "Crop"). Seller shall have the right to reenter the Property and have all reasonable access at the natural harvest season of the Crop (but no later than _____, 20__) to harvest and remove the Crop from the Property. Seller hereby agrees to release Buyer from any and all claims whatsoever arising from the harvest, and agrees to indemnify and hold Buyer harmless for any injury or claim by any third party arising whatsoever from the harvesting of the Crop. Seller hereby agrees not to cause any damage to the Property whatsoever, except such damage as may be required in removal of the Crop.