

COVID-19 EVENT ADDENDUM TO PURCHASE AGREEMENT

The purpose of MR's COVID-19 Addendum is to enable a buyer and seller to agree, at the time the purchase agreement is signed, about what will happen if there is some COVID-19 event that delays the transaction. Examples of such a COVID-19 event would include the situation where a register of deeds is not accepting recordings or where a title company is suspending loan closings. Without such an addendum, if a COVID-19 event delays the transaction, there will be a great deal of uncertainty as to whether the contract is still binding, and if so, for how long. We thought it might be helpful to address some of the questions that have come up in connection with the new form.

QUESTION: Why is the COVID-19 extension limited to 30 days?

ANSWER: A binding contract must have an end date. The COVID-19 Addendum has a 30-day limit – which for whatever reason seems to be the standard length of time that is being used in similar addendums from around the country. There is nothing magical about the 30 days, and parties can certainly agree to a longer or shorter extension period.

QUESTION: What if the COVID-19 event that is preventing the closing from happening continues after 30 days? What if the parties want to continue beyond the 30-day deadline?

ANSWER: If the buyer and seller both agree, as the 30-day deadline approaches, they could sign an amendment to the purchase agreement stating that “the extension period set forth in the COVID-19 Addendum shall be extended to [insert date].”

QUESTION: Why does the contract require notice as to the COVID-19 event?

ANSWER: In an effort to limit uncertainty, we included a mechanism that is intended to make it clear to both parties when the extension period starts (and thus when it expires).

QUESTION: Why must the notice describe the event?

ANSWER: Unless the parties identify the specific COVID-19 event, the parties will not necessarily agree as to when that event no longer exists. For example, if the event is that the register of deeds is closed and the register of deeds reopens, the parties can calculate the length of the extension period.

QUESTION: In the event of a quarantine, should the seller or buyer be required to provide confirmation from his or her doctor?

ANSWER: NO. Under no circumstances should anyone be asked to disclose medical information. Moreover, the question asks only about a quarantine. A person who is quarantined may or may not have Coronavirus.

QUESTION: Does that mean that we have to take someone's word that they are quarantined?

ANSWER: Yes. It seems unlikely that buyers and sellers will always be able to prove that they are quarantined. That being said, the extension is limited in time which hopefully would limit any misuse.

QUESTION: If the purchase agreement terminates pursuant to the COVID-19 Addendum, do I need to get a mutual release of the EMD signed?

ANSWER: The COVID-19 Addendum was set up so that brokers could handle the release of the EMD in accordance with their ordinary practice. Some brokers require a mutual release in all instances; others require a mutual release only where there has been a dispute. Brokers can follow their own policies when a purchase agreement terminates pursuant to the COVID-19 Addendum. (And, of course, the Occupational Code provision still applies. That is, a broker cannot release the EMD if the seller objects even if the buyer is clearly entitled to the EMD under the terms of the COVID-19 Addendum.)

QUESTION: What if I don't want to use the MR COVID-19 Addendum? My franchisor has language that I would prefer to use.

ANSWER: Obviously, no one is required to use MR's COVID-19 Addendum. There are any number of different addendums out there, and Realtors® are free to use any of those or draft their own.

Moreover, Realtors® may modify the MR COVID-19 Addendum as desired for their own use if they remove the MR identification information. Of course, Realtors® should always consult with their own attorney about new forms.

QUESTION: What if I don't want to include any type of COVID-19 provision in my purchase agreements?

ANSWER: COVID-19 addendums are certainly not required. A Realtor® may recommend that the parties simply provide a longer period of time to perform in the first place. Or a Realtor® may decide that the better practice is to deal with a COVID-19 event on a case-by-case basis when and if a problem arises. And, of course, individual sellers and buyers will have their own preferences.