

IMPROPER USE OF IAR FORMS



It has recently come to our attention at the IAR Legal Department that the IAR Forms (zipForms®) are, in some cases, being used or presented improperly by some brokers.

Here are a couple questions and answers which should be helpful in the event you are presented with a form, either from a party to the transaction or another broker, for your client to sign.

Q My seller (a bank) has taken a blank IAR Purchase Agreement and has made some changes to help the negotiation process go faster and eliminate the need for some counter-offers. This is OK isn't it?

A No. Because IAR forms are copyrighted material, an IAR form cannot be significantly altered and then presented as if it is still an IAR form. To do so would be a copyright violation. *See an example below.*

In addition, making substantial alterations to an otherwise properly prepared form would constitute the unauthorized practice of law by the person who makes the changes (unless, of course, that person is an attorney).

If your seller requires certain forms or specific wording in the form, then the seller will need to have their attorney prepare forms to be used.

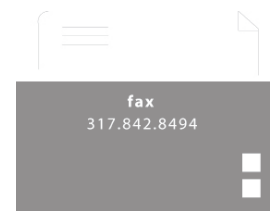
Q I have seen that some brokers have posted the IAR forms on their websites and therefore, the forms are made available to the public. Can they do that?

A IAR forms are produced by the IAR Legal Department as a member benefit and are to be used by IAR members only. When the forms are made available on a public website, our fear is that anyone (i.e. non-members) will use these copyrighted documents. Any illegal use of an IAR copyrighted form which was obtained through a broker's website may result in action being taken against the broker. Since the preparation of and revisions to the IAR forms is done on behalf of our dues-paying members, our preference would be that the forms were not made available to non-members.

Please remember that the Legal Hotline is available to assist principal or managing brokers and their designated agents between the hours of 9 a.m. and 5 p.m., Monday through Friday. □



1.800.444.5472



Listing Broker (Co.) _____ By _____ (office code) _____ (individual code)
Selling Broker (Co.) _____ By _____ (office code) _____ (individual code)

PURCHASE AGREEMENT (IMPROVED PROPERTY)

1. Date: _____
2. 1. BUYER: _____ ("Buyer")
agrees to buy the following property from the owner ("Seller") for the consideration and subject to the following terms, provisions, and conditions:
2. PROPERTY: The property ("Property") is known as _____ County, _____
in _____ Township, _____
Indiana, _____ (zip code) legally described as: _____
together with any existing permanent improvements _____
3. PRICE: Buyer will pay the total purchase price of (\$ _____) Dollars for the Property _____
4. EARNEST MONEY: Buyer submits \$ _____ as earnest money which shall be applied to the purchase price. The listing broker shall deposit earnest money received into its escrow account within two (2) banking days of acceptance of this Agreement and hold it until time of closing the transaction or termination of this Agreement. If Buyer fails for any reason to submit earnest money, Seller may terminate this Agreement. Earnest money shall be returned promptly in the event this offer is not accepted. If this offer is accepted and Buyer fails or refuses to close the transaction, without legal cause, the earnest money shall be retained by Seller for damages the Seller has or will incur, and Seller retains all rights to seek other legal and equitable remedies. The Broker holding any earnest money is absolved from any responsibility to make payment to the Seller or Buyer unless the parties enter into a Mutual Release or a Court issues an Order for payment, except as permitted in 876 IAC 1-1-23 (release of earnest money). Upon notification that Buyer or Seller intends not to perform, Broker holding the earnest money may release the earnest money as provided in this Agreement. If no provision is made in this Agreement, Broker may send to Buyer and Seller notice of the disbursement by certified mail. If neither Buyer nor Seller enters into a mutual release or initiates litigation within sixty (60) days of the mailing date of the certified letter, Broker may release the earnest money to the party identified in the certified letter. Buyer and Seller agree to hold the Broker harmless from any liability, including attorney's fees and costs, for good faith disbursement of earnest money in accordance with this Agreement and licensing regulations.
5. METHOD OF PAYMENT: (Check appropriate paragraph letter)
☐ A. CASH: The entire purchase price shall be paid in cash and no financing is required.
☐ B. NEW MORTGAGE: Completion of this transaction shall be contingent upon the Buyer's ability to obtain a
☐ Conventional ☐ Insured Conventional ☐ FHA ☐ VA ☐ Other: _____ first mortgage loan for _____ % of purchase price, payable in not less than _____ years, with an original rate of interest not to exceed _____ % per annum and not to exceed _____ points. Buyer shall pay all costs of obtaining financing, except _____

Property Address: _____
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Any inspections and charges which are required to be made and charged to Buyer _____ by the lender, FHA, VA, or mortgage insurer, shall be made and charged in accordance with their prevailing rules or regulations and shall supersede any provisions of this Agreement.

- ☐ C. ASSUMPTION: (Attach Financing Addendum)
☐ D. CONDITIONAL SALES CONTRACT: (Attach Financing Addendum)
☐ E. OTHER METHOD OF PAYMENT: (Attach Financing Addendum)

6. TIME FOR OBTAINING FINANCING: Buyer agrees to make written application for any financing necessary to complete this transaction or for approval to assume the unpaid balance of the existing mortgage within _____ days after the acceptance of this Agreement and to make a diligent effort to meet the lender's requirements and to obtain financing in cooperation with the Broker and Seller. No more than _____ days after acceptance of the Agreement shall be allowed for obtaining favorable written commitment(s) or mortgage assumption approval. If a commitment or approval is not obtained within the time specified above, this Agreement shall terminate unless an extension of time for this purpose is mutually agreed to in writing.

7. CLOSING: The closing of the sale (the "Closing Date") shall be on or before _____, or _____, whichever is later or this Agreement shall terminate unless an extension of time is mutually agreed to in writing. The closing fee charged by the title insurance company shall be paid by ☐ Buyer (included in allowance, if provided) _____

This Agreement: ☐ is not contingent upon the closing of another transaction; ☐ is contingent upon the closing of the pending transaction on the property located at _____

Notwithstanding terms to the contrary, the Parties agree that as a condition to closing, all funds delivered to the closing agent's escrow account be in such form that the closing agent shall be able to disburse in compliance with I.C. 27-07-3.7 et. seq. Therefore, all funds from a single source of \$10,000 or more shall be wired unconditionally to the closing agent's escrow account and all funds under \$10,000 from a single source shall be good funds as so defined by statute.

8. POSSESSION:
A. The possession of the Property shall be delivered to Buyer ☐ at closing ☐ within _____ days beginning the day after closing by ☐ a.m. ☐ p.m. ☐ noon or ☐ on or before _____ If closed, _____

B. Maintenance of Property: Seller shall maintain the Property in its present condition until its possession is delivered to Buyer, subject to repairs in response to any inspection. Buyer may inspect the Property prior to closing to determine whether Seller has complied with this paragraph. Seller shall remove all debris and personal property not included in the sale.

C. Casualty Losses: Risk of loss by damage or destruction to the Property prior to the closing shall be borne by Seller. In the event any damage or destruction is not fully repaired prior to closing, Buyer, at Buyer's option, may either (a) terminate this Agreement or (b) elect to close the transaction, in which event Seller's right to all real property insurance proceeds resulting from such damage or destruction shall be assigned in writing by Seller to Buyer.

D. Utilities/Municipal Services: Seller shall pay for all municipal services and public utility charges through the day of possession.

9. SURVEY: Buyer shall receive a (check one) ☐ SURVEYOR LOCATION REPORT, which is a survey where corner markers are not set; ☐ BOUNDARY SURVEY, which is a survey where corner markers of the Property are set prior to closing; ☐ WAIVED, no survey unless required by lender; at ☐ Buyer's expense _____

10. FLOOD AREA/OTHER: Buyer _____ may not terminate this Agreement if the Property requires flood insurance. Buyer _____ may not terminate this Agreement if the Property is subject to building or use limitations by reason of the location, which materially interfere with Buyer's intended use of the Property.

Property Address: _____
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12. ENVIRONMENTAL CONTAMINANTS ADVISORY/RELEASE: Buyer and Seller acknowledge that Listing Broker, Selling Broker and all salespersons associated with Brokers are NOT experts and have no special training, knowledge or experience with regard to the evaluation or existence of possible lead-based paint, radon, mold and other biological contaminants ("Environmental Contaminants") which might exist and affect the Property. Environmental Contaminants at harmful levels may cause property damage and serious illness, including but not limited to, allergic and/or respiratory problems, particularly in persons with immune system problems, young children and/or the elderly.

BEFORE MAKING OFFER

Buyer is STRONGLY ADVISED to obtain inspections (_____ to fully determine the condition of the Property and its environmental status. The ONLY way to determine if Environmental Contaminants are present at the Property at harmful levels is through inspections.

Buyer _____ agrees to consult with appropriate experts and accept all risks for Environmental Contaminants and release and hold harmless all Brokers, their companies and sales associates from any and all liability, including attorney's fees and costs, arising out of or related to any inspection, inspection result, repair, disclosed defect or deficiency affecting the Property, including Environmental Contaminants. This release shall survive the closing.

13. INSPECTIONS: (Check paragraph letter A or B)

Buyer has been made aware that independent inspections disclosing the condition of the property are available and has been afforded the opportunity to require such inspections as a condition of this Agreement.

☒ A. BUYER WAIVES THE RIGHT TO HAVE INDEPENDENT INSPECTIONS

Buyer WAIVES inspections and relies upon the condition of the Property based upon Buyer's own observation and releases the Seller, the Listing and Selling Brokers and all salespersons associated with Brokers from any and all liability relating to any defect or deficiency affecting the Property, which release shall survive the closing. Required FHA/VA or lender inspections are not included in this waiver.

☐ B. BUYER RESERVES THE RIGHT TO HAVE INDEPENDENT INSPECTIONS (including Lead-Based Paint)

Buyer reserves the right to have independent inspections in addition to any inspection required by FHA, VA or Buyer's lender(s). All inspections are at Buyer's expense (unless noted otherwise or required by order) by licensed independent inspectors or qualified independent contractors selected by Buyer with the following time periods. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's inspections.

INSPECTION RESPONSE PERIOD: Buyer shall order all independent inspections immediately after acceptance of the Purchase Agreement. Buyer shall have _____ days beginning the day following the date of acceptance of the Purchase Agreement to respond to the inspection report(s) in writing to Seller (see "Buyer's Inspection Response").

Inspections may include but are not limited to the condition of the following systems and components: heating, cooling, electrical, plumbing, roof, walls, ceilings, floors, foundation, basement, crawl space, well/septic, water, wood destroying insects and organisms, lead-based paint (note: intact lead-based paint that is in good condition is not necessarily a hazard), radon, mold and other biological contaminants and/or the following:

If the initial inspection report reveals the presence of lead-based paint, radon, mold and other biological contaminants, or any other condition that requires further examination or testing, then Buyer shall have _____ additional days to order, receive and respond in writing to any additional reports.

If the Buyer does not comply with any Inspection/Response Period or make a written objection to any problem revealed in a report within the applicable Inspection/Response Period, the Property shall be deemed to be acceptable. If one party fails to respond or request in writing an extension of time to respond to the other party's independent inspection Response, then that inspection response is accepted. A timely request for extension is not an acceptance of the inspection response, whether or not granted. A REASONABLE TIME PERIOD TO RESPOND IS REQUIRED TO PREVENT MISUSE OF THIS ACCEPTANCE PROVISION. Factors considered in determining reasonable time periods include, but are not limited to, availability of responding party to respond, type and expense of repairs requested and need of responding party to obtain additional opinions to facilitate a response.

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14. LIMITED HOME WARRANTY PROGRAM: Buyer acknowledges the availability of a LIMITED HOME WARRANTY PROGRAM with a deductible paid by Buyer which _____ will not be provided at a cost of \$ _____ charged to ☐ Buyer ☐ Seller. Buyer and Seller acknowledge this LIMITED HOME WARRANTY PROGRAM will not cover any pre-existing defects in the Property nor replace the need for an independent home inspection. Broker may receive a fee from the home warranty provider for each member year.

15. DISCLOSURES: (Check one)
1. Buyer ☐ has ☐ has not ☐ not applicable received and executed SELLER'S RESIDENTIAL REAL ESTATE SALES DISCLOSURE.
2. Buyer ☐ has ☐ has not ☐ not applicable received and executed a LEAD-BASED PAINT CERTIFICATION AND ACKNOWLEDGMENT.

16. TITLE APPROVAL: Prior to closing, Buyer shall be furnished with a title insurance commitment for the _____ price or _____ ALTA 2006 Title Insurance Policy _____ in the amount of the purchase price or _____ Seller must convey title free and clear of any encumbrances and title defects, with the exception of any mortgages assumed by Buyer and any restrictions or easements of record not materially interfering with Buyer's intended use of the Property. A title company, at Buyer's request, can provide information about availability of various additional title insurance coverages and endorsements and the associated costs.

Owner's Policy to be paid by ☐ Buyer (included in allowance, if provided) ☐ Seller ☐ Shared equally.

Lender's Policy, if applicable, to be paid by ☒ Buyer (included in allowance, if provided) ☐ Seller ☐ Shared equally ☐ Other _____

The parties agree that ☒ Seller ☐ Buyer will select a title insurance company to issue a title insurance policy and will order the commitment ☐ immediately or ☐ other: _____

Pursuant to Federal and State law, Seller cannot make Seller's selection of a title insurance provider a condition of this Agreement.

Seller agrees to pay the cost of obtaining all other documents necessary to perfect title (including the cost of the deed and vendor's affidavit), so that marketable title can be conveyed.

17. TAXES: (Check paragraph A, B or C)
☐ A. Buyer will assume and pay all taxes on the Property beginning with the taxes due and payable on _____, and all taxes due thereafter. At or before closing, Seller shall pay all taxes for the Property payable before that date.

☐ B. All taxes that have accrued for any prior calendar year that remain unpaid shall be paid by Seller either to the County Treasurer and/or the Buyer in the form of a credit at closing. All taxes that have accrued for the current calendar year shall be prorated on a calendar-year basis as of the day immediately prior to the Original Closing Date.

For purposes of paragraph A and B: For the purpose of determining the credit amount for accrued but unpaid taxes, taxes shall be assumed to be the same as the most recent year when taxes were billed based upon certified tax rates. This shall be a final settlement.

Buyer or recent construction or other tax documents. Seller shall provide to Buyer at closing. This shall be a final settlement.

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Blank Form