

IAR LEGAL HOTLINE



NEW FORMS – ESCALATION CLAUSE AND SIGNATURE PAGE ADDENDUM Q & A

On January 1, 2016 IAR made two new forms available to IAR members – the Addendum to Purchase Agreement Escalation Clause and the Signature Page Addendum. Here are some of the questions we have recently received concerning the new forms. Please remember that the Legal Hotline is available to assist managing brokers and their designated agents between the hours of 9 a.m. and 5 p.m., Monday through Friday.



Q: Why were these two forms developed?

A: Both new forms were introduced by IAR as a result of member questions and feedback on the IAR legal hotline. Because the real estate market has been more competitive recently, some buyers want to put in the strongest offer possible. Many brokers were attempting to write escalation type language into the Further Conditions section of the Purchase Agreement. IAR developed the Escalation Clause Addendum to keep brokers from the unauthorized practice of law as well as reducing a broker's risk for liability that can come with insufficiently written contract language. Escalation clauses have been used in other states as well.

The Signature Page Addendum was created after multiple brokers explained situations wherein they represented buyers and sellers comprised of multiple people (i.e. estates, corporations, etc.).

Q: I didn't hear about the forms until I received one from another broker in a transaction. Why haven't I had any advance notice about these changes?

A: Advance notice of information about the new forms changes was provided to all IAR members in the [November 23, 2015](#) and [December 22, 2015](#) issues of our e-newsletter, the Indiana REALTOR® Advocate. In addition, a PowerPoint presentation explaining the changes is available at www.indianarealtors.com under the Forms tab.

Q: When should these new forms be used?

A: The Escalation Clause Addendum may be submitted with a Purchase Agreement. It establishes that the buyer will pay an additional amount of money (amount to be specified in the agreement) over and above any other bona fide offer the seller may receive. The buyer may also specify a cap on the total purchase price he/she will pay, although it is not mandatory. In the event no cap is specified, there is no ceiling on the purchase price adjustment so the appraised value of the property may become an issue.

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Q: What happens if the seller receives two offers both containing identical escalation clauses?

A: It is likely that the other terms or provisions in the Purchase Agreement will not be identical (i.e. closing date, method of financing, inspection periods, closing costs, etc.). The seller can choose which offer is in his/her best interest and accept that offer or can reject both and request the same buyers reconsider their offer terms.



Q: When is the final purchase price determined when using an escalation clause?

A: When a seller agrees to accept a purchase price pursuant to the escalation clause, seller will submit to buyer a Counteroffer and a copy of the Escalation Clause Addendum, with the purchase price adjusted according to the escalation provisions contained in the Addendum. Once buyer signs the Counteroffer and delivers it back to the seller, the adjusted purchase price will be binding.

Q: How does a buyer know that the seller actually does have another bona fide offer?

A: As described in the Escalation Clause Addendum, in the event the other offer(s) cause the escalating factor to kick in, the seller will provide the buyer with sufficient documentation to justify the purchase price increase. Any information considered confidential and/or private may be redacted by seller prior to providing said documentation to the buyer.

If you have further questions, please call the IAR Legal Hotline. As a reminder, the IAR Legal Hotline is available to Managing Broker members and their designated agents between the hours of 9am and 5pm, Monday through Friday. Call 1-800-444-5472 or complete the [online form](#). MBs, need to designate an agent to use the Legal Hotline? [Do it online here](#).