

CPAR – NEW MEMBER ORIENTATION

December 17, 2025



Author Credit

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INTRODUCTION

- New Member Orientation
- Objectives
 - Understanding the FAR/BAR “As-Is” contract
 - How to complete the FAR/BAR “As-Is” contract and avoiding issues.
 - Understanding of the basic closing process to help get deals closed

WHAT IS THE FAR/BAR “AS-IS” CONTRACT

- Residential real estate contract template jointly prepared by Florida Realtors and Florida Bar.
- It's the most common agreement but not the only agreement.
 - CRSP - Drafted by Florida Association of Realtors
- Check the bottom left of the contract to see which version and iteration.
- Set up in Sections --- Paragraphs ---- line numbers
- Look for the * - asterisk (FILL IT IN)
- Times are in calendar days.

INTRO SECTION & SECTION 1 - PROPERTY

- Parties:
 - Legal Names
 - Marital Status (married, unmarried, widow)
 - Type of ownership (joint tenants, tenants in common, etc.)
- Property Description
- Real Property – insert address, parcel ID and legal description.
- Personal Property: Included unless excluded.
 - Appliances and furnishings?
 - Property – Real Property and Personal Property

SECTION 2 – PURCHASE PRICE

- (a)/Line 28 – Deposit – Insert deposit.
- Three days after Effective Date is the default unless specified.
- Pursuant to FREC 61J2-14.008(2), real estate licensee using this form must specify name, address, and phone number of attorney or title company handling closing.
- Conditions to making the additional deposits.
- Financing – may be expressed as dollar amount or percentage of purchase price.
- Make sure your buyer (and sometimes seller) has readily available funds at closing.
- Select the Escrow Agent (usually is also Title Agent, but not always).

SECTION 3 - TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE

- Insert a date.
- Note that contract must be executed and delivered.
- A party's failure to promptly object to timely execution and delivery may constitute waiver.
- Contract assumes time for acceptance of counteroffer is two days unless specified.
- Offers and counters should be submitted in same way as initial offer.
- Effective Date is last date party signs or initials counteroffer.

SECTION 4 – CLOSING DATE

- Insert date
- Assure consistency with other time sensitive provisions.

SECTION 5 – EXTENSION OF CLOSING DATE

- Line 56 – If buyer is applying for a loan and funds are not available due to CD delivery requirements, and Loan Approval has been obtained and lender's underwriting is complete, closing date can be extended for up to seven (7) days.
- Line 61 – If delayed due to Force Majeure closing date may be extended for up to ten (10) days. This section then refers to Standard G. This standard explains that parties are now bound to the contract for a period of up to 30 days after the closing date.

SECTION 6 – OCCUPANCY AND POSSESSION

- Unless paragraph 6B is checked, seller is expressly required to deliver occupancy at closing.
- A checkbox is provided to indicate whether occupancy by seller or a tenant is to continue beyond closing. If so, disclosure of the terms of occupancy is required.
- You should note that there are several issues that could arise with pre-or post-closing occupancy. There are riders to address those situations.
- Pre and Post occupancy is not covered under the Landlord Tenant Act

SECTION 7 – ASSIGNABILITY

- This clause allows parties to determine if assignment is permitted and if so, whether a buyer would be released from liability under the contract.
- If no box is checked, then the contract may not be assigned.
- Generally speaking, a simple assignment by the buyer, even if consented to by seller, does not release the original buyer from liability.
- Avoid using a buyer or seller's name with "and/or assigns". This creates conflict potentially with this section.

SECTION 8 – FINANCING

- You must check the box of how your buyer will pay.
- Four Options:
 - 1) Cash (No financing contingency)
 - 2) Financing contingency
 - 3) Assumption of existing mortgage
 - 4) Seller Financing

SECTION 8 – FINANCING (CON’T)

- Section 8(a) – Cash. Meaning no contingency. Buyer brings cash or can get a loan (just not contingent on getting loan approval).
- Section 8(b) - Financing Contingency – Buyer has 30 days to obtain.
 - Mark what type of loan: FHA, VA, Conventional, other...
- The Loan Approval period is 30 days. In addition, the Loan Approval requires that Buyer's mortgage broker or lender has received an appraisal or alternative valuation of the Property satisfactory to lender.
 - (*note that an approval which requires Buyer to sell a property is not considered Loan Approval for purposes of this contract unless Rider V. SALE OF BUYER'S PROPERTY is used.”)

SECTION 8 – FINANCING (CON’T)

- If interest rate and term are not specified, the prevailing rate based upon buyer's credit worthiness is assumed and term of 30 years is assumed.
- Diligent Effort. Contract requires that diligent effort must be put forth when seeking loan approval. Diligent Effort requires that Buyer timely provide documents, information, and payment of fees and charges per lender requirements. Buyer's failure to use diligent effort constitutes a default. The challenge here is that whether buyer used good faith and diligent effort is a question of fact.
 - Example: Failure to timely provide copies of tax returns and therefore getting approved for an amount less the required under the contract may not be diligent effort.
 - Agent should monitor efforts of buyer.

SECTION 8 – FINANCING (CON’T)

- Section 8(b)(ii) - Authorizes closing agent to disclose to seller and broker both preliminary and fully executed closing disclosures and settlement statements.
- Section 8(b)(iii) - If loan approval is obtained, buyer is to provide written notice to seller in writing prior to expiration of the Loan Approval Period promptly. Section 8(b)(iv) - If the loan approval is not obtained, buyer may provide written notice to seller prior to expiration of the loan approval period. This notice may be given prior to expiration, as in several days prior to expiration. The buyer is not obligated to apply multiple times.
- What is required in the notice to be provided by buyer?
 - In buyer's notice that loan approval was not obtained, the buyer has two options: 1) terminate the contract or 2) waive loan approval. If buyer waives loan approval, he or she remains obligated to proceed pursuant to the terms of the contract.

SECTION 8 – FINANCING (CON’T)

- Section 8(b)(v) - So what happens if you do not provide written notice? The contract will go forward as if buyer obtained approval. This puts the deposit at risk if the buyer does not timely close. Exceptions to this include when the seller terminates the contract by giving buyer written notice no later than three (3) days after expiration of the loan approval period or failure to close due to matters set forth in section 8(b)(vii).
- As a practice point, why would seller want to terminate the pending contract within three (3) days after expiration of the loan approval period where buyer doesn't provide written notice? If seller has another serious potential buyer that is a better offer or back up offer or does not want to wait until closing to return the property to active status under MLS or is not interested in claiming an insignificant or small deposit.

SECTION 8 – FINANCING (CON’T)

- Section 8(d) - Seller Financing. Just note that there could be additional disclosures required under Dodd Frank Wall Street Reform Act.

SECTION 9 – CLOSING COSTS, FEES AND CHARGES

- Section 9(a): Costs to be paid by the seller.
- Section 9(b) Costs to be paid by buyer are shown.
- Section 9(c) Title evidence/insurance.
 - Be sure to check the box that indicates who will select the title agent and pay for title insurance. The seller can pay or the buyer can pay. This tends varies by geographic region/county by county.
- Survey - this is important. If you represent the buyer, the buyer must obtain a survey at least 5 days prior to Closiing.
- Not listed is who pays for resolving open permits!

SECTION 9 – CLOSING COSTS, FEES AND CHARGES (CON’T)

- If you represent the seller, note that if your seller has a survey, it must be furnished to the buyer within five days of the Effective Date.
- Home Warranty. The parties can negotiate whether a home warranty will be provided and if so, by which company and the cost that the charge should not exceed.
- Special assessments. Seller must disclose whether any special assessment liens imposed by a public body is pending or payable. If so, the parties must specify who will be responsible going forward. Important, – if this box is not checked, the default is that the seller is obligated to pay at closing. (this is not HOA/COA Special Assessments)

SECTION 10 – DISCLOSURES

- Section 10(b) Permit disclosure. Seller must disclose if aware of any unpermitted improvements or permits remain open that were not properly closed. This occurs where perhaps a final inspection has not taken place.
- Section 10(c) Mold. This mold disclosure places the buyer on notice that mold may cause health risks or damage to the property and that buyer should seek the help of a professional if they are concerned.
- Section 10(d) Flood zone/elevation certification – note that a buyer may terminate contract within 20 days of the effective date if the property is in a special flood hazard area. A buyer can terminate if flood insurance is not available through the national flood insurance program or private flood insurance.
- Section 10(g) Community Association - if your seller's property is within a community that is governed by a community association, an association disclosure must be provided.

SECTION 10 – DISCLOSURES (CON’T)

- Section 10(h) Property Tax Disclosure Summary -Disclosure that taxes may increase after closing is required to be given to buyers at or before the time of executing the contract.
- Section 10(i) Foreign Investment in Real Property Tax Act. FRPTA. The specifically provides that the parties are required to comply with FRPTA if the seller is a “foreign person” which is a defined term. It’s further covered in Standard 18. It basically specifies a buyer’s obligation to withhold a certain percentage of seller’s proceeds. This is the government’s way of making sure that taxes are still paid even if you’re foreign person.
- Section 10(j) Seller Disclosure. This is a confirmation that seller knows of no facts materially affecting the value of real property which are not readily observable, and which have not been disclosed to the buyer.
 - As of April 2017, a seller who has been notified by a governmental entity that there is currently uncorrected building, environmental, or safety code violations, must also disclose this in writing to the buyer. Note, this was also previously required, but not the written requirement part of it.
 - Use of “as is” contract or riders does not excuse the seller or licensee from obligation to disclose latent defects. (Latent = existing, but not yet developed; hidden; concealed)

SECTION 11 – PROPERTY MAINTENANCE; CONDITION, INSPECTIONS AND EXAMINATIONS

- Sellers are responsible for maintaining property in its current condition up until closing.

SECTION 12 - PROPERTY INSPECTION AND REPAIR.

- Default time for inspection is 15 days after Effective Date.
 - If buyer fails to timely conduct inspections and report results the buyer, buyer will have waived seller's obligation to repair, replace, treat or remedy.
- Walk-Through Inspection – confirm that all personal property is removed, and property is in appropriate condition.
- Major differences in the Residential Contract – We will go over later.

SECTION 13 - ESCROW AGENT AND BROKER

- This provision describes the duties and obligations of the closing agent or escrow agent receiving the funds.
 - Again, it's like the same as the title company, but not always.
- If contract cancels, good practice is to obtain a release and cancellation.

SECTION 14 – PROFESSIONAL ADVICE/BROKER LIABILITY

- This is an attempt to be a “cover your bottom” provision for you and your broker. It emphasizes the fact that, in most cases, a broker will not have any personal knowledge of the property and its condition except as relayed by the seller or public records.

SECTION 15 – DEFAULT AND DISPUTE RESOLUTION.

- Section 15(a) Buyer default.
 - If buyer defaults, the seller is first afforded the option of retaining the deposit as liquidated damages in satisfaction of all claims. If that option is not selected, then the seller may enforce equitable rights under the contract, subject to the dispute resolution pre-suit requirements provided for in paragraph 16.
- Section 15(b) Seller default.
 - If seller defaults for any reason other than failure to provide marketable title, then buyer is permitted to have to deposit returned, without waiving buyers right to sue for damages and or specific performance. This section is also subject to the dispute resolution pre-suit requirements.

SECTION 16 - DISPUTE RESOLUTION

- Parties are provided ten (10) days to attempt to resolve disputes amicably.
- Disputes unresolved after ten (10) days are submitted to mediation pursuant to Florida court rules. If you cannot resolve it through mediation, then you go to litigation.
- This quickly gets very expensive!!!

SECTION 17 – ATTORNEY’S FEES; COSTS

- Mediation costs are to be split.
- Prevailing party in the event of dispute and litigation is entitled to award of attorney’s fees.
 - Legal fees can quickly exceed amounts in dispute.

SECTION 18 - STANDARDS

- **Section 18 A (ii) Title examination** – If evidence of title is not delivered to buyer at least five (5) days prior to the stated closing date, buyer has the option of extending the closing date to permit completion of examination.
 - I do not see this used that often, but it exists.
 - If title defects are discovered, seller initially has thirty (30) days to use “diligent effort” to cure the defects.
 - If uncured, buyer has the election to either terminate the contract or extend the period for up to an additional 120 days at buyer’s option during which seller must attempt to cure.
 - Note that seller is not required to file a lawsuit to cure title defects.
- **Section 18 B Survey** - If buyer obtains a survey and prior to closing, reports encroachments or violations of restrictions, covenants or applicable governmental regulations to seller, such matters will constitute title defects.

SECTION 18 – STANDARDS (CON’T)

- **Section 18 E – Liens**
 - Requirement for Seller to submit affidavit that there are no unrecorded liens on the Property. There's also no pending repairs or construction lien issues.
- **Section 18 F – Time**
 - Calendar days are used in computing time period other than time for acceptance and effective date in paragraph three. Any time period that ends on Saturday Sunday or National legal holiday extends to 5 PM of the next business day.
- **Section G - Force Majeure**
 - Closing may be extended for up to (7) seven days once insurance becomes available and closing services are restored. This time period used to be three (3) days, but changed to seven (7). If Force Majeure events delay performance of the contract, the parties are now bound to the contract up to thirty (30) days after the closing date. Standard G provides the list of what constitutes Force Majeure. Government Shutdown may be added to this list.

SECTION 18 – STANDARDS (CON’T)

- **Section 18 H - Conveyance**
 - Default is to convey title via Statutory Warranty Deed (Special Warranty Deed or Quit Claim Deed)
- **Section 18 I - Closing Location**
 - The contract contemplates closing where the property is located, but the parties can agree otherwise. Many closings conducted nowadays are mailaways.
- **Section 18 K - Prorations**
 - All income and expenses of the property shall be prorated through the day prior to closing. Therefore, closing day expenses belong to buyer.
- **Section 18 O – Notices, etc.**
 - Recent changes confirm that written notices may be sent electronically by email or fax, but not by other electronic means like text messages or social media.

SECTION 18 – STANDARDS (CON’T)

- **Section 18 P** - Integration/Modification
 - This is the entire contract. No side agreements or oral promises. It all must be here. If changes, must be in writing.
- **Section 18 R** - Riders
 - Typewritten or handwritten provisions and addenda override printed provisions. However, it is still good practice to strike through printed provisions that are inconsistent with typewritten or handwritten provisions.

ADDENDA/ADDITIONAL TERMS/SIGNATURES

- **Addenda** – All riders are listed here so that you can check the box. They are listed in order of their most frequent use.
- **Additional terms** - Licensees should be aware that drafting of material contract provisions may constitute the unauthorized practice of law.
- **Counter offer/rejection** - You don't have to use the section, but it's provided for convenience.
- **Signatures** – Sign it! Power of Attorney may be used to sign. You can also sign electronically. **Note that each page should also be initialed. Purpose is to provide evidence or knowledge of the terms of the contract on that page and avoid fraudulent alteration.
- **Broker** – Fill this out if you want to get paid ☺

STANDARD RESIDENTIAL V. “AS IS”

- Inspection Period – Start With Section 12
 - General
 - WDO – Wood Destroying Organisms.
 - Permits
- Back to Section 9 - Closing Costs
 - Sets the limits for each category.
- Section 10(j) – Seller Disclosure
 - Residential Contract provides that Seller warrants the condition of the property. As is does not.
- Permits
- Waiver

FAR/BAR V. CRSP

- FAR/BAR revised every other year (latest is 2021). CRSP revised as needed (latest is 2015).
- Counting Time
 - FAR/BAR – Calendar Days / CRPS – Business Days
- Personal Property
 - FAR/BAR – includes ranges and ovens
 - CRPS – no ovens (why? Don't know), includes washer and dryer though.
- Financing Contingency
 - Failure to deliver notice to seller that buyer is unable to obtain loan is a complete waiver of the contingency.
- FIRPTA – address the withholding differently (Escrow company will address).

THANKS!!!!

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