



Community of Practice

January 2023 Standard Forms Launch
A New Form, Regulatory and
Non-Regulatory Form Revisions

NOVEMBER 16, 2022

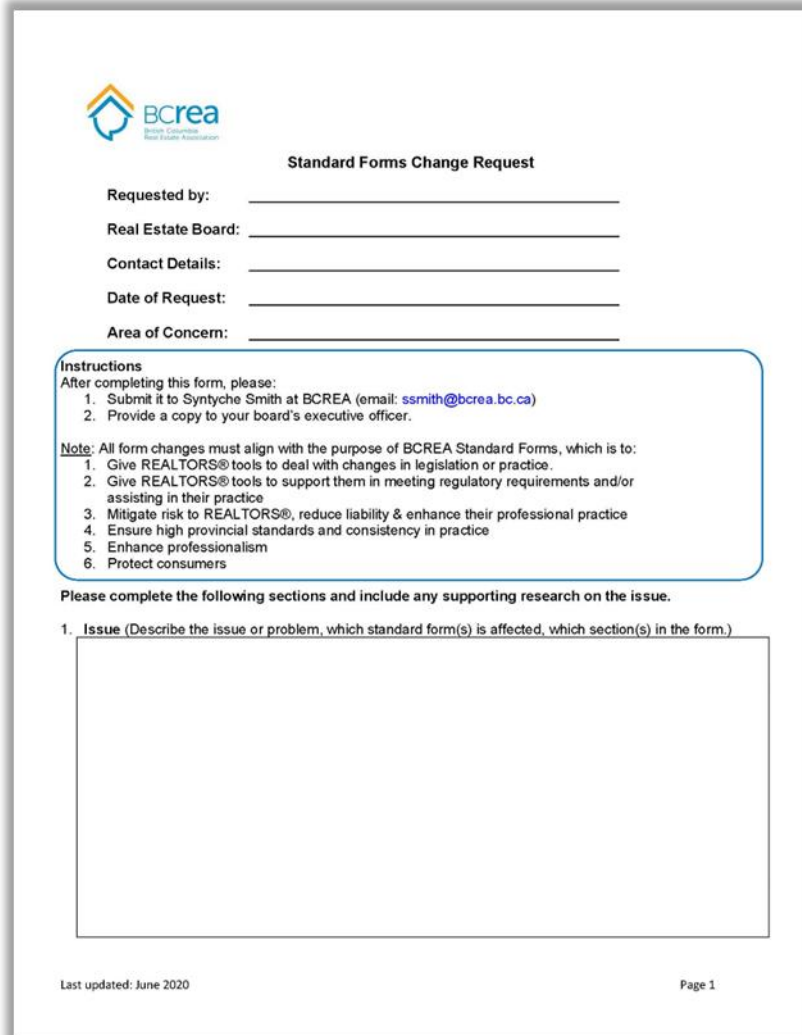
Agenda

- Provide a brief overview on how form changes are made
- Review the forms in the 2023 Launch Package
- Answer your questions :
 - one new form
 - Regulatory form revisions
 - Non-regulatory form revisions


Background

- BCREA creates forms that have provincial applications to help ensure consistency.
- As of the January 2023 launch, there will be 75 Standard Forms and more than 50 clauses available for BC REALTORS®.
- Several of the forms, such as the Contract of Purchase and Sale, are jointly owned by BCREA and the Canadian Bar Association, BC Branch.
- BCREA Standard Forms are available for REALTORS®' use through CREA's WEBForms®. The new forms and form revisions we are discussing today will be available for use on January 1, 2023.

Form Revisions & Creation



The image shows a 'Standard Forms Change Request' form from BCREA. At the top left is the BCREA logo. The title 'Standard Forms Change Request' is centered. Below it are five fields: 'Requested by:', 'Real Estate Board:', 'Contact Details:', 'Date of Request:', and 'Area of Concern:', each followed by a horizontal line. A blue-bordered box contains 'Instructions' and a 'Note'. The instructions ask to submit the form to Syntyche Smith at BCREA (email: ssmith@bcrea.bc.ca) and provide a copy to the board's executive officer. The note states that all form changes must align with the purpose of BCREA Standard Forms, which is to: 1. Give REALTORS® tools to deal with changes in legislation or practice, 2. Give REALTORS® tools to support them in meeting regulatory requirements and/or assisting in their practice, 3. Mitigate risk to REALTORS®, reduce liability & enhance their professional practice, 4. Ensure high provincial standards and consistency in practice, 5. Enhance professionalism, and 6. Protect consumers. Below the note, it says 'Please complete the following sections and include any supporting research on the issue.' and lists '1. Issue (Describe the issue or problem, which standard form(s) is affected, which section(s) in the form.)' followed by a large empty rectangular box. At the bottom left, it says 'Last updated: June 2020' and at the bottom right, 'Page 1'.

 **BCREA**
British Columbia
Real Estate Association

Standard Forms Change Request

Requested by: _____

Real Estate Board: _____

Contact Details: _____

Date of Request: _____

Area of Concern: _____

Instructions
After completing this form, please:

1. Submit it to Syntyche Smith at BCREA (email: ssmith@bcrea.bc.ca)
2. Provide a copy to your board's executive officer.

Note: All form changes must align with the purpose of BCREA Standard Forms, which is to:

1. Give REALTORS® tools to deal with changes in legislation or practice.
2. Give REALTORS® tools to support them in meeting regulatory requirements and/or assisting in their practice
3. Mitigate risk to REALTORS®, reduce liability & enhance their professional practice
4. Ensure high provincial standards and consistency in practice
5. Enhance professionalism
6. Protect consumers

Please complete the following sections and include any supporting research on the issue.

1. **Issue** (Describe the issue or problem, which standard form(s) is affected, which section(s) in the form.)

Last updated: June 2020 Page 1

Suggestions for changes or new forms and clauses can be submitted using the **Change Request Form** found in BCREA's [Standard Forms Resource Centre](#), or by emailing BCREA Standard Forms at standardforms@bcrea.bc.ca.

All requests are considered for submission to the Standard Forms Committee.

Standard Forms Committee

The Standard Forms Committee meets three times a year and is made up of a diverse group of people including:

- REALTORS®
- Managing Brokers
- Real Estate Board Staff
- Representative from Canadian Bar Association BC Branch
- Representatives from BCFSA
- Representative from REEOIC
- An informed consumer

A close-up, shallow depth-of-field photograph of a person's hand holding a pen, poised to write on an open book. The book's pages are white and slightly aged. The background is a warm, out-of-focus orange-brown. An orange arrow-shaped banner points from the left edge towards the center, containing the text 'LAUNCH OVERVIEW' in white, bold, sans-serif capital letters.

LAUNCH OVERVIEW


Overview

- **1 New Form** – Notice of Rescission
- **62 Revised Forms**
 - Regulatory Changes to 10 Standard Forms
 - Non-Regulatory formatting improvements and revisions to enhance professionalism and useability of Standard Forms.
- **Significant changes to the Contract of Purchase and Sale Residential and its enforceability**
- **Contract language pertaining to Irrevocable Acceptance of contracts**

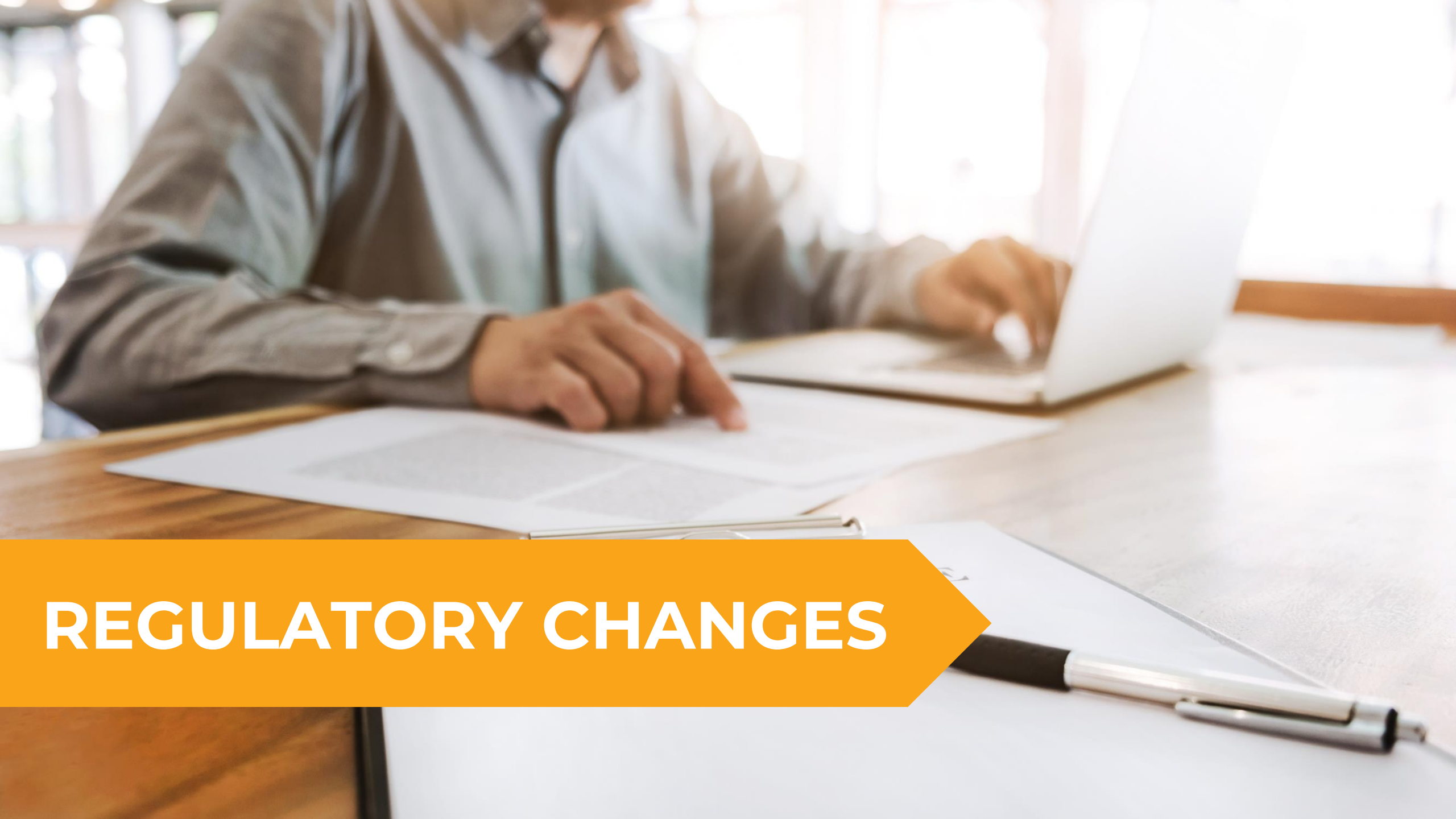


NEW FORM

Notice of Rescission Residential Real Estate Property

NOTICE OF RESCISSION RESIDENTIAL REAL PROPERTY					
TO:	AND:				
(“SELLER”)	(“LISTING BROKERAGE”)				
(“SELLER”)	(“ADDRESS”)				
(“SELLER”)					
(“ADDRESS”)	(“FAX NUMBER”)				
	(“EMAIL”)				
(“FAX NUMBER”)					
(“EMAIL”)					
FROM:					
(“BUYER”)	(“BUYER”)				
(“BUYER”)					
Further to the Contract of Purchase and Sale (the “CPS”) dated _____ between the Buyer and the Seller in respect of the purchase and sale of:					
UNIT NO.	ADDRESS OF PROPERTY				
CITY/TOWN/MUNICIPALITY	POSTAL CODE				
PID					
LEGAL DESCRIPTION					
The Buyer hereby exercises their right to rescind the CPS pursuant to Section 42 of the <i>Property Law Act</i> (British Columbia).					
Pursuant to Section 6 of the <i>Home Buyer Rescission Period Regulation</i> (British Columbia) (the “Regulation”) the Buyer must pay the Seller an amount equal to 0.25% of the purchase price for the Property set out in the CPS (the “Rescission Amount”) within the time required by the Regulation and as may have been agreed by the Buyer and the Seller in the CPS. The Buyer acknowledges that if a deposit has been received by or on behalf of the Seller under the CPS, the Rescission Amount will be paid first from such deposit and the remainder of the deposit (if any) will be promptly paid to the Buyer and the person holding such deposit is authorized to release such funds in accordance with the Regulation.					
<table><tr><td></td><td></td><td></td></tr></table> BUYER'S INITIALS					
BC200x REV. JAN 2023 © 2023 British Columbia Real Estate Association (“BCREA”). All rights reserved. This form was developed by BCREA for the use and reproduction by BC REALTORS® and other parties authorized in writing by BCREA. Any other use or reproduction is prohibited except with prior written consent of BCREA. This form is not to be altered when printing or reproducing the standard pre-set portion. BCREA bears no liability for your use of this form.					

This new form can be used where a buyer wants to exercise their right of rescission from the Contract of Purchase and Sale within the specified period of time after an offer is accepted pursuant to Section 42 of the *Property Law Act*.



REGULATORY CHANGES

Listing Brokerage's Remuneration

Provides an exception to the requirement where the seller pays the Listing Brokerage a gross commission, specifically where the buyer has exercised their right of rescission as set out in Section 42 of the *Property Law Act*.

except, in the case of (i) or (ii), if the Property is "residential real property" (as defined in the *Home Buyer Rescission Period Regulation*) that is not exempt and the buyer has exercised their right of rescission set out in Section 42 of the *Property Law Act* within the prescribed period and in the prescribed manner for doing so in which case no remuneration will be payable by the Seller; or

Forms this Rider appears in: **Multiple Listing Contract, Exclusive Listing Contract, Co-Listing Agreement and the Fee Agreements**

Contract of Purchase and Sale Residential

Contract of Purchase and Sale - Residential:

Section 1. Purchase Price. New wording has been added, where a property defined as residential real property, under the HBRP that is not exempt, sets out the rescission amount in dollars which will be payable by the buyer to the seller promptly and in any event within 14 days after the buyer exercises the rescission right . This amount will need to be recalculated and changed in the event of a counter offer(s).

Section 2. Deposit. A new paragraph, has been added indicating that if a buyer exercises their right of rescission within the prescribed period and in the prescribed manner, and if a deposit has been paid by the buyer, the rescission fee to be paid by the buyer will be paid to the seller first from the deposit, with the balance of the deposit being paid to the buyer. The paragraph further indicates that if the deposit is less than the prescribed rescission fee, the buyer must promptly pay the shortfall to the seller.

Contract of Purchase and Sale Residential

Contract of Purchase and Sale – Residential (Continued)

Section 23. Disclosure of Buyer's Rescission Right. A new section relating to the disclosure of the buyer's right of rescission has been added to the contract. This includes various acknowledgements as it relates to the buyer's rights to rescind the contract, as set out in subparagraph: .

"A" sets out that the rescission rights are not waivable by the buyer.

"B" sets out the provisions of the notice that it can only be given within three (3) business days after final acceptance, and includes what constitutes a business day.

"C" indicates the rescission amount, as set out in Section 1 Purchase Price should the buyer exercise their rescission right.

"D" indicates that the rescission amount is to be paid from the deposit, and for the balance of the deposit, if any, to be paid to the buyer, without any further direction or agreement of the parties. Additionally, if the deposit is less than the rescission amount, the buyer is required to pay the shortfall to the seller.

"E" lists the types of properties that are exempt from the rescission right. Finally, the parties are required to initial in the space provided to confirm that disclosure pursuant to Section 57.1 of the Real Estate Services Rules has been made.

Contract of Purchase and Sale Residential

Contract of Purchase and Sale – Residential (Continued)

Section 26. Acceptance. Additional language has been built into this section to include the Notice of the Buyer's Recission Right allowing parties to provide addresses for serving notice under the HBRP. Additionally, this section indicates that notice given by delivery will be deemed (assumed) to have been given on the day of actual delivery, except in the case of a notice of rescission under Section 42 of the *Property Law Act*, which is deemed (assumed) to be delivered on the date it is sent. Furthermore, notice given by email is deemed (assumed) to be given on the day it is sent, but is only effective if the party that sends the notice, requests a read receipt.

Additional space has been provided for the final acceptance date and the date by which the buyer must exercise their rescission right, if applicable, has been provided. The party who does the final acceptance will need to complete this section, and calculate the recission period of three clear business days (not including Saturdays, Sundays or statutory holidays) after the final acceptance date.

Why the Changes?

Contract of Purchase and Sale – Residential (Continued)

The majority of changes to the Contract of Purchase and Sale reflect the new Home Buyer Rescission Period (HBRP) regulations, which allows buyers to walk away from an offer within a prescribed period and in a prescribed manner.

In addition, a new **Section 22, Acceptance Irrevocable**, has been added as a result of a recent court decision, which will be discussed further momentarily.

What Are the Implications of the Changes?

If the buyer has entered into a Contract of Purchase and Sale for property that is eligible for the right of rescission, the parties must understand their rights and obligations under Section 42 of the *Property Law Act*.

Clients and their REALTORS® must understand when the notice period to rescind (cancel) the Contract of Purchase and Sale begins and ends, as the right to exercise rescission is only valid within this specified period.



NON-REGULATORY FORM CHANGES

Contract of Purchase and Sale Residential

Contract of Purchase and Sale – Residential (Continued)

Section 22. Acceptance Irrevocable. A new section dealing with the enforceability of the contract. The seller and the buyer specifically confirm that the Contract of Purchase and Sale, whether executed and sealed by hand or by digital or electronic signature and seal, or otherwise, is hereby executed under seal, which is evidenced by both the buyer and the seller making the deliberate, intentional and conscious act of inserting their initials (whether by hand or electronically in the appropriate space provided).

The parties intend that the act of inserting their initials as set out above is to have the same effect as if this Contract of Purchase and Sale had been physically sealed by wax, stamp, embossing, sticker or any other manner. It is agreed and understood that, without limiting the foregoing, the seller's acceptance is irrevocable including without limitation, during the period prior to the date specified for the buyer to either:

- A. fulfill or waive the terms and conditions herein contained; and/or
- B. exercise any option(s) herein contained.

Why the Changes?

A recent court decision *POONI V STORSLEY*, 2022 BCSC 1011 [*POONI*] found a CPS containing two subject clauses to be unenforceable because those subject clauses were deemed “excessively discretionary without consideration flowing to the defendants”.

In addition, the court found that Clause 22 and the digitally pre-applied “seal” did not act to cure the lack of consideration as the court did not construe the CPS as being formed under seal.

Therefore, a new Clause was added whereby the parties would initial to confirm their intent to execute the contract under seal.

What Are the Implications of the Changes?

By requiring the parties to take the physical action of providing initials confirming their agreement to 'affix' a seal to the document (albeit a digital seal that is already printed on the page), this solution addresses the issue that some jurisprudence had with standard-form contracts, in that a seal was pre-affixed and thereby required no 'deliberate and conscious' action by the parties to affix a seal.

In addition, this solution likely eliminates the issue that parties signing a CPS may not intend for it to be executed under seal, as placing one's initials would evidence that intent.

Standard Forms Affected

- Assignment of CPS – New Development
- Assignment of CPS – Non-Developer
- CPS Residential
- CPS Leasehold First Nations Reserve Lands (Third Party Approval Required)
- CPS Leasehold First Nations Reserve Lands (Third Party Approval Not Required)
- CPS Business Assets
- CPS Commercial Real Estate
- CPS Manufactured Home On A Rental Site
- Offer to Lease

Radon & Property Disclosure Statement

BC Real Estate Association, on a recommendation from the Standard Form Committee, worked with the BC Lung Foundation on modifying questions related to radon on the Property Disclosure Statements (multiple forms) to provide greater clarity on whether the testing was a short-term or long-term test. The question on the PDS now reads as follows:

V. To the best of your knowledge, has the premises been tested for Radon? (i) If yes, was the most recent test: <input type="checkbox"/> short term or <input type="checkbox"/> long term (more than 90 days) Level: _____ <input type="checkbox"/> bq/m ³ <input type="checkbox"/> pCi/L on _____ date of test (DD/MM/YYYY)				
W. Is there a radon mitigation system on the Premises?				
(i) If yes, are you aware of any problems or deficiencies with the radon mitigation system?				

Standard Forms Affected

- PDS First Nations Leasehold Properties
- Homeowner's Association (HOA) Schedule to Property Disclosure Statement – First Nations Leasehold Properties
- Property Disclosure Statement Strata Title Properties – Bare Land Strata
- Property Disclosure Statement Strata Title Properties (Non-Bare Land Strata)
- Property Disclosure Statement Residential
- Property Disclosure Statement Rural Premises – Land and Building
- Property Disclosure Statement Rural Premises – Addendum, Land and Building

Standard Forms Housekeeping Improvements

- Where applicable signature boxes and initials have been changed to accommodate three parties, to provide greater clarity on the parties, to provide for witness for each individual signature
- Signature blocks were changed to a horizontal orientation
- Additional initial boxes were added under Agency Disclosure
- Third initial box added for Resident or Non-Resident of Canada

Home Buyer Rescission Period: Landing Page



Stay up-to-date on the 2023 Regulatory Changes and Standards Forms page by bookmarking the bcrea.bc.ca/forms2023 landing page!

This page contains:

- background information on the launch,
- information and resources to help REALTORS® and managing and associate brokers prepare for use of the new and revised forms,
- updates on professional development, and
- quick links to other relevant resources.



Home Buyer Rescission Period: Calculators



BCREA has created **two** Home Buyer Rescission Period Calculators to support REALTORS® when you are calculating the rescission amount and timeframe a buyer has to exercise the right of rescission.

The calculators should only be used on transactions where the Home Buyer Rescission Period regulations apply.

A link to the calculators will also be sent in the follow-up email!



Updated Standard Forms Toolkits



Features:

- Form Introduction
- Videos
- How to Complete Form
- Annotated Forms
- Frequently Asked Questions
- Professional Development Opportunities

www.bcrea.bc.ca/sfresources

The Home Buyer Rescission Period: What REALTORS® Need to Know



New accredited self-paced online course!

The course will cover the specifics of the new legislation and equip REALTORS® with a strong foundation required to address the needs of their clients.

REALTORS® taking this course will find particularly useful various scenarios that walk through the process of exercising the right of rescission.

Launch: December 1, 2022

Where: Available on BCREA's Hub

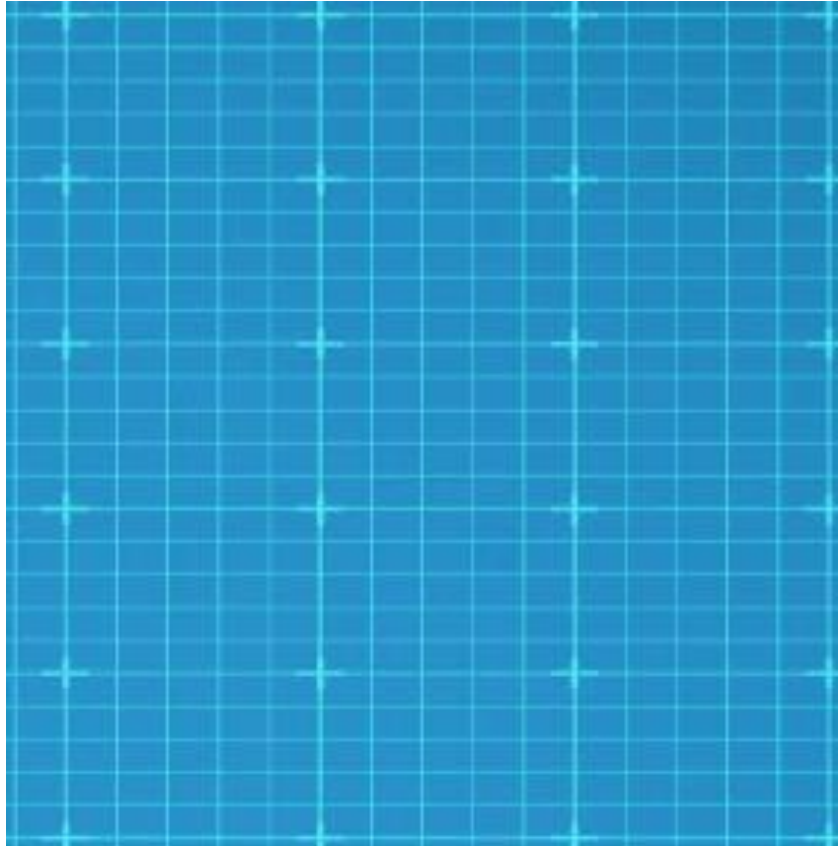
Price: \$30

Accreditation: 1 PDP hour

Availability: 1 year (expires Nov 30, 2023)



Questions



Please put your questions in the Q&A section or in the Chat!

Any questions we don't have time for today, BCREA will strive to get you an answer in the coming days.

Thank you!

