In My Opinion

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Forming Opinions About the 2015 Forms
By Gary Taylor, CRB, GRI, CDPE, Summa Professionals Real Estate Group

I am so happy to be driving around in my Tesla S!!! What a car! No gas bills and VERY fast!!! That has absolutely nothing to do with real estate; but, it is a fun fact!

The 2015 Forms changes are here, and there are a couple of very significant changes. First, let me say that when you go into Zip Forms and use a form now, you are using the new version of the forms. So, if you have written a transaction since January 1st, you did so on the new forms.

The first major change is something that I can personally relate to. It is not unusual for me to get a call at 9 p.m. from an agent who is worried that the inspection period ends in three hours and they have not heard back from the listing agent regarding the repairs. It may be that they are waiting for the seller to agree to the repairs or to extend the inspection period to give a few more days to negotiate repairs. It is a problem because if the seller does not respond by midnight of the last day of the inspection period, the seller can say “Ha, ha! You are now buying my house with NO repairs!” Most buyers, for some reason don’t believe this, and are not very inclined to send the seller an “Unconditional Disapproval” of the home inspection, and terminate the transaction. The real sharp agents have said, “Don’t worry, we will write our own legal language,” and say that, “The buyer unconditionally disapproves of the home inspection unless the seller replaces the light switch in the garage.” Clever, isn’t it?

Wait, let’s go back to my 4th grade English class and break down that sentence. The part that says, “The buyer unconditionally disapproves of the home inspection…” is essentially a termination statement by the buyer. The part that says “…unless the seller replaces the light switch in the garage” is a CONDITION. How can an “Unconditional Disapproval” have a condition? “Oh, it really isn’t a condition,” some may say. “We will just call it a widget.”

Actually, that is the same way I am able to say I have a Tesla S. I just call my old Chrysler 300 a Tesla, and that makes it a Tesla. NOT! An unconditional disapproval can’t have a condition attached to it! I was really happy to see OREF Forms Committee legal counsel Phil Querin discuss this in his white paper on the forms changes!! Once again I have gotten my pet peeve into one of these articles!

Back to the point. The scenario outlined above about my 9 p.m. phone call is the same with the new forms, except that 9 p.m. now becomes 2 p.m. Much better! All the deadlines such as the inspection period now expire at 5 p.m. instead of midnight! Good move, Forms Committee! Another step forward in the Realtor®’s quest to be treated as a human being! The end of the “business day” makes a whole lot of sense!

Another, and related change, is that the beginning of these deadlines may have also moved. If you have a buyer who makes an offer, and the seller accepts, that was considered “mutual
acceptance” at the time at which the contract started, at least under the old forms. Now, we need to look at not the date when we have all the signatures, but the date of notification to the other party that the last signature has been obtained. For example, if a buyer makes an offer and the seller accepts, the clock does not start on the inspection period until the seller or listing agent has sent notification to the buyer or buyer’s agent that the seller has signed the sale agreement. That notification might be the buyer signing the buyer’s acknowledgement section of the sale agreement, or the listing agent e-mailing to the buyer’s agent (with proof of receipt), or Docusign sending a notice to the buyer or buyer’s agent that the seller signed. So, if the seller signed on Wednesday, but the buyer didn’t receive notification of the seller’s signature until Thursday, day number one of the inspection period would be on Friday instead of Thursday like it used to be.

Just a thought: I suggest that the listing agent and the buyer’s agent should contact each other as soon as possible to make sure that each is clear, and agree upon the starting and ending dates for all contingencies. There will undoubtedly be some confusion around this issue, and it is much better to get this worked out from the get-go rather than wait for a conflict to occur.

The Colorado Sale Agreement has a box that contains all the dates applicable to the transaction summarized, such as the dates for earnest money deposit, loan application and inspections. This also might be a good idea for our form to help prevent confusion.

There are several other changes in the forms, so be sure to check out the link to Phil Querin’s treatise on the subject on the first page of the Zip Forms website.

There are some things that I wish had been included in the forms change:

- The default period for the inspection period seems rather short, and I would suggest 15 business days to minimize the conflicts that seem to frequently appear when agents are trying to fit an inspection, bids from contractors and negotiations into that 10 business day timeframe. I feel that, more often than not, agents arbitrarily use the default time period when given a choice.

- There are some “inspections” that are more important than others. Radon exposure is the largest cause of lung cancer in children and second only to cigarette smoking as a cause of lung cancer in adults. It makes sense that the default in out Sale Agreement would call for a Radon test if one has not been performed in the last five years. It is not an expensive test, especially compared to the dire possible consequences of radon exposure.

- Another default inspection should be a sewer scope for those properties that are connected to a public sewer system. We already provide a special form for an onsite sewage system, so a default sewer scope is not that far from the norm. The problem is that it appears to me that a very high percentage of sewer scopes seem to detect problems. Those problems can cost an unwary buyer anywhere from $500 to $20,000. The higher end of that is a sum that goes way beyond the financial capability of most homebuyers.
As a corollary to that proposal, I would also be in favor of legislation that prevents a company that performs a sewer scope from doing repairs on the sewer line. This type of policy already prevents home inspectors from doing work on any home they have inspected for a year after the inspection.

As always, these are just my opinions. Sometimes I am right!

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