Roanoke Valley Association of REALTORS®

Presents a White Paper on the

2012 Purchase Agreement &
Inspection Addendum

PURPOSE

The purpose of this document is to detail revisions to the RVAR Purchase Agreement and Inspection Addendum. For comparison and simplicity throughout this document, different versions of these forms will be referred to by certain years of use and/or implementation. The Inspection Addendum was introduced and significant changes to the Purchase Agreement were implemented in mid 2010. Those documents will be referred to as the 2010 versions. The revisions that resulted in the 2010 Purchase Agreement were made to the document that henceforth will be referred to as the 2009 version. And finally, the forms that reflect the latest revisions will be referred to as the 2012 Purchase Agreement and 2012 Inspection Addendum. This white paper will compare and make reference to the 2009, 2010, and 2012 versions.
BACKGROUND

For years, RVAR has provided a standard form Purchase Agreement that has undergone various revisions from time to time by the Standard Forms Committee (the Committee). Many of the revisions have been driven by regulatory or statutory changes. Others are a result of changing market conditions, changing dynamics of the transaction, emerging needs of the real estate consumer, and founded in suggestions by RVAR members. Many members would agree that the most sweeping changes were introduced in the summer of 2010 when the scope and process of certain inspections changed significantly. It was then that the Inspection Addendum was launched and associated changes were made to the Purchase Agreement. The rationale of the changes was, for the most part, twofold. One had to do with the restrictive scope of the Home Inspection; and the other was an effort to better align with the inspection scope and process used by many members in Virginia through a standard form offered by the Virginia Association of REALTORS®. There were additional changes unrelated to the inspection process, but none rose to the level of attention and member feedback to that of the Inspection Addendum. RVAR offered extensive and quality training opportunities at multiple times and locations to accommodate our members’ needs. Questions were answered and comments and suggestions were taken under advisement. RVAR’s leadership solicited additional comments from brokers, managers, trainers, and, through a survey, rank and file members. All member input was presented to the Committee and each suggestion and comment scrutinized and categorized. The Committee considered each suggestion and comment and worked diligently to revise the 2010 version of the Purchase Agreement and Inspection Addendum. The revisions presented in this document were created by the Committee and have been approved by both legal counsel and the Board of Directors and are hereafter referred as the 2012 versions.

STRUCTURE

This document is organized by first examining the revisions to the 2012 version of the Purchase Agreement as compared to either the 2010 version or the 2009 version or, in some cases, both. Discussion of the revisions to paragraphs 14) INSPECTIONS, 15) EQUIPMENT CONDITION AND INSPECTIONS, and 17) SELLER’S AND PURCHASER’S OPTIONS will be deferred to later in the document and covered during the more complex presentation of the revisions to the 2012 Inspection Addendum. The revisions from the 2009 to the 2010 Purchase Agreement will not be discussed, as they were thoroughly covered in the 2010 training classes.
2012 PURCHASE AGREEMENT REVISIONS

Paragraph 13: LOAN APPLICATION

- Among the provisions of this paragraph in the 2010 and older versions was one that allowed the Purchaser, should they elect, to instruct the lender to wait until the home or radon inspection contingency was removed before ordering the appraisal. The Committee felt that this provision was Purchaser-friendly and did not have a place in the LOAN APPLICATION paragraph, further believing that, if anything, this was something that needed to meet with mutual agreement. The Committee will consider its inclusion when revising the Standard Clauses Addendum. Additionally, with many lenders using Appraisal Management Companies and the changing dynamics of the mortgage industry, our members’ (or the lenders) involvement or influence with appraisers has greatly diminished. The Purchaser is still compelled to meet the definition of loan application, which includes paying for the appraisal.

- Added the word “Virginia” prior to each occurrence of “licensed contractor”. This seller directive mandates that any repairs pursuant to lender requirements be done by a “Virginia licensed contractor”. This is a clarifying revision to ensure that any contractor is licensed and regulated by the Virginia Board for Contractors.

Paragraph 19: CHOICE OF SETTLEMENT AGENT

- While there were no changes to this paragraph, its position on the Purchase Agreement was moved to precede Paragraph 20: SETTLEMENT; POSSESSION. The Committee accepted this as an obvious and welcomed suggestion.

Paragraph 23: FACSIMILES

- Added the words “electronic or” to describe methods of receiving signed documents and provides that they are to be considered originals and enforceable. Many documents are sent via email transmission as attachments or by other electronic means and the Committee wanted to ensure their enforceability.

Bottom of Page 6 of 7: LISTING FIRM/AGENT; SELLING FIRM/AGENT

- These lines have been deleted. A court case came to the attention of the Committee that resulted in the deletion of these lines. The case was not successful in lower courts and was being appealed to the Virginia Supreme Court, the outcome of which is unknown at the time this document was created. The general fact pattern included a member’s signature on these lines and it was argued that by signing their name somehow formed an agency relationship where none existed with one of the disgruntled parties. It was believed that,
had the member electronically populated the lines, no action would have been pursued. The Committee assessed the value and need of these lines and weighed them against any potential exposure to risk for the member. While the risk seemed minimal, the Committee agreed that the value and need for these lines was less and deleted them.

STANDARD PROVISIONS

Paragraph E: TITLE

- In the 2010 and earlier versions, the sentence that read, “If the property does not abut a public road, title to the Property must include a recorded road maintenance agreement and a recorded easement providing adequate access thereto.” Excluded from that sentence in the 2012 version are the words, “…a recorded road maintenance agreement and…” The Committee agreed that obtaining a recorded road maintenance agreement was difficult or, in some cases, simply not possible. An easement to land-locked property is essential and a road maintenance agreement may be required by a lender or Purchaser, but the Committee felt that mandating it in this provision was over-burdensome on the Seller.

Paragraph F: EQUIPMENT CONDITION AT SETTLEMENT OR OCCUPANCY

- This paragraph appeared on the Standard Provisions page in the 2009 and earlier versions of the Purchase Agreement and contained, among many provisions, important Seller warranties regarding the condition of certain systems and components of the home. In the 2010 version, its provisions were interspersed in various paragraphs within the body of Paragraph 15 EQUIPMENT CONDITION AND INSPECTION and did not appear on the Standard Provisions page. As a result of member suggestions and in an effort to simplify and clarify, the Committee gathered several of its provisions and recreated language that it felt was more appropriate in Standard Provisions. Seller warranties, as well as other requirements, remain in Paragraph 15 of the 2012 version.

INSPECTIONS; EQUIPMENT CONDITION; AND SELLER/PURCHASER OPTIONS

This section will deal with paragraphs 14) INSPECTIONS, 15) EQUIPMENT CONDITION AND INSPECTIONS, and 17) SELLER’S AND PURCHASER’S OPTIONS and the Inspection Addendum and their relationship with each other.

Paragraph 14: INSPECTIONS

- This paragraph, new to the 2010 version, compels the Purchaser to choose whether or not the Contract is subject to certain inspections. The 2010 version included the language, “...subject to the Purchaser’s having one of more inspections.” The 2012 version deletes the words, “the Purchaser having”, due to the negotiable potential for the Seller conducting
certain inspections. An important footnote for this paragraph is in the event the Purchaser elects to include any inspection contingencies, the **Inspection Addendum must be used**. The Inspection Addendum will be discussed later in this document.

**Paragraph 15: EQUIPMENT CONDITION AND INSPECTION**

- 2010 version Paragraph (A) was moved in the 2012 version to the previously discussed Standard Provisions Paragraph F.
- 2010 version Paragraph (B) becomes 2012 version Paragraph (A) and remains unchanged.
- 2010 version Paragraph (C) becomes 2012 version Paragraph (B) and remains unchanged.
- 2010 version Paragraph (D) becomes 2012 version Paragraph (C) and remains unchanged.
- 2010 version Paragraph (E) becomes, in large part, Paragraph (D) in the 2012 version. The condition in which the Purchaser is entitled to receive and the Seller is compelled to deliver the Property was split from 2010 Paragraph (E) and moved to 2012 Standard Provisions Paragraph F and, by reference, is included in 2012 Paragraph (D). Additional changes to 2012 Paragraph (D) include adding the word “Virginia” immediately preceding the words “licensed contractor” (previously discussed) and add the words “unless otherwise agreed in writing by all parties.” This language requires any exception to repairs being performed by a Virginia licensed contractor to be mutually agreed upon. This language existed in the 2009 and earlier versions, but was missed due to oversight in the 2010 version.

**Paragraph 17: SELLER’S AND PURCHASER’S OPTIONS**

- Added the word “Title” after “Standard Provision E”; and added the words “Equipment Condition and Inspection” after “15” to ensure clarity as to the referenced paragraphs.
- The last sentence, “The Remediation Limit applies to all of Seller’s remediation obligations under this Contract, including all inspections under the Inspection Addendum”, was added for clarification purposes.
**Inspection Addendum**

As previously mentioned, the Inspection Addendum was introduced in mid 2010 and provided a significant shift in the scope, procedure, and outcome of applicable inspections. It also created the biggest learning curve and considerable member feedback. A major component of the addendum was the ability to negotiate which party to the contract conducted the inspections. The only exceptions were Paragraph (A) HOME INSPECTION and Paragraph (G) ADDITIONAL INSPECTIONS, which did not provide a choice. This did not change. The Purchaser is reasonably required to conduct the Home Inspection and any additional inspections pursuant to Paragraph (G). Most member comments had to do with the timeframes in which certain inspections had to be completed. The 2010 version required all inspections to be completed within a negotiated timeframe regardless of whether the Purchaser or Seller was responsible for conducting the inspection(s). This meant that those inspections that the Seller agreed to provide had to be completed within the timeframe without regard to the Purchaser’s loan status or other factors that could affect settlement. Members believed, and the Committee agreed, that the Seller needed to reach a level of comfort that the sale was going to consummate before spending money, time, or effort to conduct the inspections for which they agreed to be responsible. After much deliberation, the Committee amended the process and addressed this member concern. That change, along with all other revisions to the Inspection Addendum, is covered in the following discussion:

**Opening Paragraph**

- It is in this paragraph that the Purchaser and Seller inspection timeframes are separated. Any and all inspections “to be obtained by Purchaser” must be “completed” (formally “conducted”) within a mutually agreed upon timeframe measured in business days from full Contract ratification. “All inspections to be obtained by Seller shall be completed no later than five business days prior to settlement” was added to accommodate Seller concern regarding the Purchaser’s ability to close. The Seller could certainly conduct their inspections earlier than five business days prior to settlement but could not delay their completion any closer than five business days. The only other change in this paragraph was to add the requirement that any licensed contractor conducting the Home Inspection was to be licensed by Virginia.

**Paragraph (A) HOME INSPECTION**

- The purpose and scope of the Home Inspection was moved from the 2010 version RESULTS OF INSPECTION(S) paragraph and inserted in this paragraph. The Committee agreed that the RESULTS OF INSPECTION(S) paragraph encompassed all inspections and the “material defect” scope was only applicable to the Home Inspection and Additional Inspections. The
basic definition of “material defects” remains unchanged in the 2012 with one important addition. The sentence, “The fact that a structural element, system or subsystem is near, at, or beyond its normal useful life is not, by itself, a material defect”, was added to ensure that an aged system that is otherwise safe and functioning properly did not meet the definition of “material defect” and therefore not included in the scope of the Home Inspection.

Paragraphs (B) RADON INSPECTION; (F) INFLOW AND INFILTRATION INSPECTION; and (G) ADDITIONAL INSPECTIONS remain unchanged from the 2010 to the 2012 version.

Paragraphs (B) RADON INSPECTION; (C) WELL INSPECTION; (D) SEPTIC INSPECTION; (E) WOOD INFESTATION INSPECTION; and (F) INFLOW AND INFILTRATION INSPECTION; have one feature in common. They each have their own scope, purpose, and condition requirement and therefore fall outside the “material defect” definition. Further, any reference to the Seller meeting those condition requirements was removed and encompassed in the RESULTS OF INSPECTION(S) provisions. Finally, paragraph (E) WOOD INFESTATION INSPECTION paragraph was revised to require a report dated not more than 60 (previously 90) days prior to settlement.

RESULTS OF INSPECTION(S)

The opening paragraph in the 2010 version provided that a copy of inspection reports be provided to all parties within a negotiated number of business days from the completion of ALL inspections. The 2012 version compels the party conducting the inspection to provide EACH report to all parties within the prescribed number of business days from the completion of EACH inspection. This resulted, in part, from the bifurcation of Purchaser and Seller inspection timeframes.

The next paragraph, (1) Radon, Well, Septic, Wood infestation, and Inflow and Infiltration Inspections Reports, compels the Seller to correct all defects as defined in each associated paragraph. It also requires the Seller to perform in accordance with the underlying Purchase Agreement’s Paragraph 17 - SELLER’S AND PURCHASER’S OPTIONS which addresses Seller obligations and monetary limits (Remediation Limit) and outlines Seller options.

The last paragraph (2) Home and Additional Inspections was, by most accounts, a cumbersome paragraph that was lengthy and somewhat confusing. Most changes to this paragraph sought to address those shortcomings, resulting in a more compact, easier to read and understand paragraph. The definition of “material defects” was removed and is included by reference to Paragraph (A) HOME INSPECTION. The timeframe in which the Purchaser must provide the Seller a written amendment specifying which problems the Purchaser requests the Seller to correct was changed from a default 5 business days to one that must meet with mutual agreement. Further, the paragraph was revised to include the Seller obligation to “correct or credit up to the Remediation
Limit specified in Paragraph 17 of the Contract.” Lastly, a provision was added that addressed the outcome in the event the parties fail to agree to the scope of repairs or credit in lieu thereof.

**CONCLUSION**

The Standard Forms Committee and Board of Directors were committed to ensuring that all member comments be solicited, considered, and where appropriate, influential to the outcome. Since its inception, the Standard Forms Committee has been charged with keeping RVAR’s entire library of forms current and pertinent to the member and real estate consumer. In the days before buyer agency, it could be argued that the Purchase Agreement was a Seller-friendly document. With the ever-changing dynamics of the real estate market and enhanced consumer expectations, coupled with buyer agency being the norm rather than the exception, the movement toward a more neutral document has been a goal. A secondary goal of gaining more similarity with VAR’s forms and processes has also been desired. The 2012 version of the Purchase Agreement and Inspection Addendum achieves those goals and ensures our members will remain credible and pertinent to the real estate consumer and transaction. The Standard Forms Committee is always willing to receive constructive feedback, suggestions, and comment on all of RVAR created forms. The Committee meets regularly throughout the year and gives great consideration to member concerns.