

**PRICE ESCALATION ADDENDUM
TO PURCHASE AND SALE AGREEMENT**

GENERAL COMMENTS:

- A. USE OF THIS ADDENDUM.** When Buyer wants to submit an offer on a property for which there may be competing offers, Buyer may want to provide for an escalation of the offer price in order to compete against other offers. Include this form in your offer in order to establish the terms by which Buyer's offer will escalate, including the maximum price your Buyer is willing to pay for the Property.
- B. EXERCISE EXTREME DILIGENCE.** No matter who you represent, use of this form is risky and requires utmost care and diligence in order to protect your client. NWMLS does not recommend the use of escalation provisions, and this form is provided merely as a courtesy to our members who have been seeking a standard form for consistency.
- C. ADVICE ON USE OF THE FORM.** Because of the risks inherent in the use of escalation provisions, you and your clients are strongly encouraged to seek the advice of your designated broker/branch manager or legal counsel when drafting or responding to an offer containing this Addendum.
- D. ADVICE TO SELLING BROKERS.** When you include an escalation addendum in the offer, remember that it is binding on no one because you have not yet reached mutual acceptance. It does not become binding until the offer containing it is fully executed, the competing offer is provided, and mutual acceptance has occurred. Until that time, Seller is free to negotiate with your client and any other competing buyers, may disclose the terms of your client's offer to others, may make a counter-offer (often at the maximum price established by the escalation agreement), or may reject all of the offers and demand that all interested parties make their highest and best offers without escalation provisions.
- E. ADVICE TO LISTING BROKERS.** The presence of an escalation provision is a challenge for Seller and the Listing Broker as well. Escalation provisions create negotiation pitfalls for Seller, and the desire to maximize the sale price can alienate some buyers (sometimes resulting in the revocation of offers). Listing Broker must remember that he/she have an obligation to ensure that the price paid by Buyer with whom Seller reaches mutual acceptance is correctly calculated and is properly gauged against the competing offers, especially if the competing offers also contain escalation provisions.
- F. TERMS OF COMPETING OFFER.** The competing offer can contain almost any terms, with few exceptions. For example, it may contain an inspection contingency, a buyer's pending sale contingency (NWMLS Form 22Q), or even a financing contingency (NWMLS Form 22A). However, in order to fall within the definition of "competing offer," it must close within the time set forth in paragraph 2. In addition, it may not contain a buyer's sale of property contingency (NWMLS Form 22B), and if it does, it may not be used to escalate your client's offer. Finally, the language that requires "all cash at closing" only prevents using as a competing offer one in which Seller is going to finance a portion of the purchase price. It does not prevent the use of a financing contingency if the financing used will result in payment in full to Seller at closing.
- G. COPY OF THE COMPETING OFFER.** If Seller is using a competing offer to escalate your client's offer, Seller must provide a copy of the competing offer in its entirety, including all addenda and any escalation provision contained in the competing offer.

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H. CALCULATION OF PURCHASE PRICE. Often, lenders and the Closing Agent require the final purchase price to be stated in the Agreement. They do not want to have any liability for an incorrect calculation of the purchase price, particularly where competing offers and escalation provisions are involved. Therefore, the form contains a section that will help Buyer and Seller to calculate the final purchase price. The calculation section, however, **is not part of the Agreement.** Therefore, it does not have to be completed or accurate in order to have mutual acceptance. In fact, if the calculation is at odds with paragraphs 1 through 3 of the Escalation Addendum, the paragraphs control.

ASSISTANCE FILLING IN THE BLANKS: The following numbers refer to the numbers on the sample form shown in this Manual:

1. **Date of Purchase and Sale Agreement.** Insert the same date that is at the top of the first page of the Purchase and Sale Agreement.
2. **Buyer.** Insert Buyer's name(s) as on the Purchase and Sale Agreement.
3. **Seller.** Insert Seller's name(s) as on the Purchase and Sale Agreement.
4. **Property.** Insert the Property address as on the Purchase and Sale Agreement.
5. **Escalation Amount.** Enter the amount by which Buyer is willing to exceed a competing offer. This is not the maximum price that Buyer is willing to pay. It is merely the amount by which Buyer is willing to "beat" a competing offer.
6. **Maximum Price.** Enter the maximum price Buyer will pay for the Property. Often, the process of escalation ends up forcing Buyer to pay at or very near this maximum price, and Buyer must ensure that he or she has the ability to pay such a price or to obtain financing for the purchase. As a result, Buyer is strongly encouraged to include a financing contingency (Form 22A) so that he or she will have a legal excuse for terminating the Agreement if he or she cannot obtain financing.
7. **Closing of Competing Offer.** In order to constitute a competing offer, the other offer must close within the number of days entered into this space. If the closing date of the competing offer exceeds this period of time, it cannot be used to escalate the purchase price of your Buyer's offer.
8. **Competing Offer.** Enter the amount of the competing offer. If the competing offer contains an escalation provision, then enter the maximum amount the competing buyer is willing to pay.
9. **Concessions.** Enter the amount of any concessions Seller would provide to the competing buyer under the terms of the competing offer. Under the terms of the competing offer, concessions include price adjustments or credits to Buyer.
10. **Net Competing Offer.** Subtract the concessions from the competing offer, and enter the amount here.
11. **Escalation Amount.** Enter the escalation amount that your Buyer is willing to pay, as set forth in paragraph 1 of this Form.
12. **Final Purchase Price.** Add the escalation amount to the net competing offer and enter the amount here. This is the amount Buyer will pay upon mutual acceptance. Remember to

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verify that this amount will not exceed the maximum price Buyer is willing to pay, as also set forth in paragraph 1 of this Form.

13. **Initials and Date.** Buyer(s) and Seller(s) should initial and date this Addendum. Insert the date each person initialed, not the date on the Purchase and Sale Agreement. [Why would we have signature, as proposed on the form, when none of the other NWMLS forms have sigs?]

**ESCALATION ADDENDUM TO
 PURCHASE AND SALE AGREEMENT**

The following is part of the Purchase and Sale Agreement dated _____ 1
 between _____ ("Buyer") 2
 and _____ ("Seller") 3
 concerning _____ (the "Property"). 4

NOTICE TO BUYER: This Addendum offers to have your final purchase price determined by comparing your offer to 5
 another buyer's offer (the "Competing Offer"). It does not assure you that the other offer used to establish the final 6
 purchase price is in all ways comparable to yours. You are cautioned to offer no more than what you are willing to pay 7
 for the home. You are further advised that Seller or Seller's broker(s) may disclose the terms of your offer to others. 8

1. **PURCHASE PRICE.** If Seller has received a Competing Offer for the Property prior to accepting this offer, 9
 with a Net Price greater than the Net Price of this offer, then the purchase price of this offer shall be 10
 increased to an amount \$_____ more than the Net Price of the competing offer up to a maximum price 11
 of \$_____. The Net Price of a Competing Offer is the stated purchase price (or the maximum 12
 price if the Competing Offer contains a price escalation clause) less any seller credits or other price adjustments 13
 such as credits for buyer's closing costs. 14
2. **COMPETING OFFER.** The Competing Offer shall be a bona fide, arm's length, written offer on NWMLS or similar 15
 forms, containing all the material terms necessary for an enforceable agreement which a) requires the full 16
 purchase price to be paid in cash at closing; b) provides for closing no later than _____ days (60 days if not 17
 filled in) from the date of this offer; and c) is not contingent on the sale of the Buyer's property (i.e., no NWMLS 18
 Form 22B or equivalent). A Competing Offer may have other conditions, including a buyer's pending sale of 19
 property contingency (i.e., NWMLS Form 22Q or equivalent). 20
3. **SELLER'S ACCEPTANCE.** Seller's acceptance of this offer shall not be effective unless it is accompanied by a 21
 true and complete copy of any Competing Offer, including the escalation provision, used to increase the amount 22
 of the purchase price offered by Buyer herein. 23

CALCULATION OF PURCHASE PRICE 24

Lenders and the Closing Agent may require the final purchase price to be stated, together with any credits from Seller 25
 to Buyer. The following calculation is included for this purpose. Its accuracy or completeness shall not render this 26
 Agreement unenforceable, and to the extent the following calculations are inconsistent with the escalation provisions 27
 above, the escalation provisions shall control. 28

| | | |
|-------------------------------------|--|----|
| Competing Offer | \$ _____ (or the maximum amount of the | 29 |
| | Competing Offer if it contains a price escalation provision) | 30 |
| Less Credits from Seller to | | 31 |
| Competing Buyer | \$ _____ | 32 |
| Net Price | \$ _____ | 33 |
| Plus Escalation Amount (this offer) | \$ _____ | 34 |
| Final Purchase Price | \$ _____ | 35 |

Initials: BUYER: _____ Date: _____ SELLER: _____ Date: _____
 BUYER: _____ Date: _____ SELLER: _____ Date: _____