

Removal of the Confirmation of Receipt Clause in the Contingency Removal and Notice to Buyer to Perform Forms

Background: In December 2020, changes were made to the C.A.R. Sale of Buyer's Property form (C.A.R. Form COP), which necessitated modifying both the Contingency Removal (C.A.R. Form CR) and Notice to Buyer to Perform (C.A.R. Form NBP) to reflect the references to the COP in those two forms. C.A.R.'s Standard Forms Advisory Committee advised C.A.R. to remove the Confirmation of Receipt clause in the CR and NBP at that same time.

What did the Confirmation of Receipt clause provide?

"(____)(____)(initials) **CONFIRMATION OF RECEIPT:** A copy of this signed Contingency Removal was personally received by Buyer Seller or authorized agent on _____ (date), at AM / PM." The Confirmation of Receipt in the NBP was similarly worded.

What was the purpose of the Confirmation of Receipt clause?

The Confirmation of Receipt clause evidenced delivery of the applicable form when properly completed and initialed.

Why is proof of delivery of the CR and NBP important?

Paragraph 14 of the C.A.R. Residential Purchase Agreement (C.A.R. Form RPA) requires contingencies to be removed in writing and delivered to the other party (RPA, paragraph 14B(3)). Similarly, notices to perform have to be delivered to the other party (RPA, paragraphs 14D and E). Paragraph 30 I of the RPA defines delivery as effective upon personal receipt by the other party or the individual agent for that party.

Is using the Confirmation of Receipt clause the only acceptable method to establish delivery?

No. Proof of delivery can be made by many other means, such as an email or text confirming receipt, an electronic record, a verbal confirmation, or testimony of the person making the delivery.

Is proof of delivery of the CR or NBP forms even necessary now that the Confirmation of Receipt clause has been removed?

The delivery requirement in the RPA has not changed. Therefore, having some form of evidence that delivery was accomplished is helpful in avoiding disputes.

Why was the Confirmation of Receipt clause removed?

The most common method of delivery of forms is through an electronic platform, such as C.A.R. member benefits Transactions (zipForm edition) and Glide. These platforms have a document delivery trail. Delivery of paper documents is considered by many to be anachronistic, and out of practice with modern standards. Further, the message that REALTORS® in the field have sent to C.A.R. is that many times the Confirmation of Receipt clause was not initialed, either because it was unnecessary or overlooked. Later in a transaction, when the missing initials were discovered, REALTORS®, their clients (and sometimes the attorney for those clients), could get involved in a dispute over the contractual and legal implications of the missing initials. When these disputes arose, at a minimum there could be an issue between two brokerage firms having different policies concerning the clause, or, even worse, an issue regarding contractual obligations of the principals. Focus on the ministerial step of initialing the Confirmation of Receipt would at times interfere with a transaction or strain a broker-to-broker relationship, so the C.A.R. Standard Forms Advisory Committee determined that the continued presence of the clause created more problems than it resolved.