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New and Existing Addendums to Offers Regarding Coronavirus

As you know, real estate brokers in Wisconsin are required to use state-mandated forms for their contracts. The Wisconsin Realtors Association has created three documents for Brokers to use in their transactions to deal with coronavirus related issues. Although buyers, sellers, and attorneys are not required to use these specific forms, they are generally accepted in the real estate community. Here is a brief explanation of those documents and then a caution about using them in complicated transactions.

Addendum CV. The new “Addendum CV” was created a few days ago, to provide options if an inspection, government approval, loan closing or real estate closing, or similar provider, was closed because of coronavirus, allowing one party to unilaterally choose to delay certain deadlines in the deal, including for the “duration of the closure,” up to a stated limit of days. Another paragraph automatically terminates the offer, if the closure continues for more than 30 days. Both of these paragraphs are triggered if one of the parties determines its performance is “impossible.” A third and fourth paragraph allow delays if one of the necessary parties, including the buyer, seller, or a needed inspector, is unavailable, including if they are in quarantine. Lastly, it holds the brokerage firm harmless for any damages related to coronavirus, including during inspections, or the availability of the premises for inspection.

Showings and Inspections Safety Commitment. This document is intended to be signed by a seller, and a party entering into the premises for inspection or showing, to say that the buyer or inspector is entering at their own risk of infection, and for all parties to take on the responsibility for following CDC recommendations to protect against COVID-19 exposure. It also releases both brokers from liability related to inspections and showings.

Commercial Addendum. The new Commercial Addendum lists three options the parties can choose from, one extending all deadlines (including the closing) for a “reasonable time,”

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one limiting that “reasonable time” to a specific date, and a third option allowing a party to unilaterally terminate the offer if they are “unable” to perform under the offer.

Careful! These documents are very helpful to provide a framework for parties in simple transactions to put their wishes on paper. The rights under these documents explain they are triggered if the action is “impossible,” or if the delay is “due to” coronavirus and “beyond the control” of the party triggering it. However, in a complex commercial transaction, be careful with any extensions because words like “impossibility,” “equitable extension,” and “unable to perform” are legal terms that have case law interpretations, but are not otherwise defined in these documents.

Almost all offers have a provision that “Time is of the essence,” which means, the deadlines listed, including for waiver of contingencies and closing, mean what they say. If the deadlines or closing can be extended for a “reasonable time,” we would all need to end up in court to determine when that would be. Secondly, in this strange time, facts change weekly regarding which offices are “open” or “closed,” and we are all finding different ways to work. For example, many Register of Deeds’ offices are physically closed, but documents can still be recorded electronically without delay. Larger documents like Certified Survey Maps and Condo Plats may need to be sent via overnight express courier to be accepted; however, we understand the Milwaukee County Register of Deeds is investigating a way to expand that electronic recording, so even “unable” or “impossible” can change from week to week. Title Company offices may be physically “closed,” but they are steadfastly performing “drive in” closings, where the participants stay in their cars but still sign documents and have them notarized.

Third, the point of an offer is to set obligations on both sides. If one party can unilaterally extend those dates or deadlines, or terminate an offer based on their own interpretation of what is impossible or delayed, or secure a return of their earnest money even after contingency periods have run, then the offer becomes less of a contract and more of an option.

We encourage you to work with your attorney on any complicated deals, to arrive at terms and deadlines that make sense for your particular situation.

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