



How should I document a second amendment to an Offer to Purchase and Contract?

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QUESTION: One of my clients recently signed a contract to purchase a new home. After conducting a home inspection, my client asked that the seller-paid expenses be increased by \$1,000.00. The seller agreed and the parties signed an Agreement to Amend Contract (Standard Form 4-T) reflecting the change. My client and the seller have now agreed to a delay in the settlement date. Should the parties sign a second Form 4-T to reflect that agreement? Or should they just revise the Form 4-T that they already signed?

ANSWER: The fact is that there are advantages and disadvantages to each method. The good news is that either alternative can be used, and both would be equally effective. Keep in mind that paragraph 20 of the standard Offer to Purchase and Contract requires that all changes, additions or deletions to the contract “be in writing and signed by all parties.” As long as the parties comply with this provision, there is no limit on the number of times a contract can be changed, and there is no requirement that all changes happen at the same time.

One advantage to signing a second Form 4-T is convenience. With the increasing use of electronically distributed and signed contracts, getting a new, “clean” form signed by the parties is likely easier than trying to revise, circulate, initial and date a revised version of the original Form 4-T. Another advantage is that, reportedly, some lenders will not accept forms that include mark-ups or changes, even if they have been dated and initialed by the parties. A second, clean form avoids this pitfall. If a second amendment form is used, agents should be sure that all signatures on that form are dated and that at the top of the first page under the name of the Form, it indicates “Amendment #2.” That way, there is confirmation that a first amendment exists. Also, if multiple changes are made to the same provision of the contract, the last-signed amendment will control.

Alternatively, there are a few advantages to using the same amendment form to make a second change to the contract. One is that it reduces the number of documents that the parties need to keep up with. It also avoids a point of potential confusion, namely whether a second amendment form would somehow negate the first amendment. The fact is that a second amendment will not trump the first, unless both amendments relate to the same provision in the contract.

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