

How COVID-19 Affects Residential Sales or Purchases Under the FAR BAR Contract

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It's still business as usual, albeit remotely, here at Becker and Association Title Services. Our team is diligently working to close each transaction in a timely manner utilizing the latest technology and our vast resources. Interest rates are lower than ever and it is a great time to buy or refinance (side note: ATS also handles

refinances!).

That being said, with increasing government mandates and shutdowns, closings for new contracts may experience delays. For example, if non-essential government offices are temporarily closed, it will be difficult to obtain municipal lien searches and the recording of closing documents may be delayed. The situation is fluid and we are constantly getting updates from our title underwriters. With regard to recordings, our underwriters will ensure the gap created by an initial or temporary inability to record.

Calendaring and monitoring contract deadlines is crucial now more than ever, especially for buyers, since you want to prevent defaults and protect the deposit. The FAR BAR "As Is" Contract does contain a Force Majeure section which excuses a party's non-performance of contract obligations in certain situations. However, **the definition of Force Majeure does not currently include pandemics and epidemics such as the Coronavirus (COVID-19).**

Force Majeure, which means superior force in Latin, is defined in Section 18G of the FAR BAR "As Is" Contract as 1) an act of God (such as hurricanes, floods, or fire); 2) unusual transportation delays; and 3) war or terrorism. The way the provision is written, if either party is unable to perform their obligations under the contract due to the Force Majeure (as defined) the non-performing party will not be held in default, or liable for damages, and all contract deadlines, including closing date, will be extended seven days after the delay due to the Force Majeure no longer preventing the performance under the contract. **It is important to note that under the Force Majeure provision, if the closing**

date is delayed more than 30 days due to the Force Majeure, either party may terminate the contract by giving written notice and the buyer's deposit shall be returned.

For buyers especially, it is our recommendation to amend the definition of Force Majeure in the contract to include the Coronavirus (COVID-19) and define exactly what delays may result from such Force Majeure - i.e. delays due to a party's quarantine, hospitalization, government shutdown, inability of a third party to perform and whose performance is essential to the contract (such as a vendor, attorney, title company or lender). This will make it easier to pinpoint the date from which to calculate the contract extensions. Furthermore, depending on the circumstances, we would suggest extending the time periods provided in the provision for extension and cancellation. For example, a seller may want the time period for cancellation of contract extended if they are signing a COVID-19 addendum.

If you have any questions regarding new or pending contracts or need help drafting an addendum regarding COVID-19, please do not hesitate to reach out to us at Association Title Services and Becker. We would love to work with you and guide you through this challenging time.

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