

Assigning Contracts

Sometimes during the course of the transaction, a buyer may need to assign all or a portion of their interest in the contract. This could mean swapping out one buyer for another (a total assignment) or it could mean adding an additional buyer to the existing one (a partial assignment) or it could mean deleting a buyer or replacing buyer(s) with at least one original buyer remaining (other assignment). In each case, buyers under the Residential Purchase Agreement (C.A.R. Form RPA) have a limited right to assign their interest in the contract as long as they follow the appropriate procedures.

Right to Assign under Paragraph 23 of the RPA

Paragraph 23 of the RPA lays out the procedure for an assignment to take place. If the buyer is assigning all of their interest to either 1) their own trust or 2) any wholly-owned entity of buyer's that is in existence at the time, then the buyer has the right to make the assignment and does not need seller's consent. In any other circumstance, buyer may not assign the contract without first getting the separate written consent of the seller to the specified assignee. The seller's consent, notably, cannot be unreasonably withheld. When making an assignment request, the buyer must:

- Disclose the name of the assignee
- Disclose the amount of any monetary consideration between buyer and assignee
- Provide assignee with all documents relating to the transaction
- Ensure that assignee will provide a letter from assignee's lender that assignee is prequalified or preapproved as specified in the RPA

If the buyer does not deliver the assignment request and satisfy the above requirements within 17 Days after Acceptance (or whatever time is specified in RPA Paragraph 3K) then the seller's withholding of consent to the assignment shall be deemed reasonable.

Use of the Assignment of Agreement Amendment

To make the assignment request, and to complete the assignment itself, the buyer should use the Assignment of Agreement Amendment (C.A.R. Form AOAA). The AOAA Form has spaces for the buyer to indicate the name of the assignee; whether the assignment is total, partial, or other; and whether or not the buyer is receiving consideration for the assignment. Paragraph 2 of the AOAA defaults to stating that a copy of the prequalification/preapproval and initialed copies of all prior documents are attached to the form. The buyer may elect to deliver prior documents to the assignee 3 Days after the seller signs and delivers back the AOAA form in Paragraph 2A. The assignee is required to initial the first page of all prior documents, which can be done with the AOAA or within a time specified in Paragraph 2C(2). If the prior documents are not delivered on time and/or the prequalification/preapproval is not attached to the AOAA form, the seller may deliver a Notice to Buyer to Perform and subsequently cancel the Assignment.

Effect of Assignment

If all the above requirements are satisfied and the AOAA form is fully-executed, then the assignment will be effective. Keep in mind that once the assignment has taken place, the assignee has approved and ratified all prior acts of the buyer in the transaction as if they were assignee's own, and agreed to perform all of buyer's obligations remaining in the agreement. The original buyer, however, is not released from the obligations or covenants of the agreement and could still be liable along with the assignee in the event of a breach. All parties involved are advised to seek legal advice regarding the assignment, as brokers and agents cannot advise on any potential legal or tax consequences that could arise.