

Negotiation After Inspection

The Residential Purchase Agreement (RPA) allows for negotiation through multiple options.

Paragraph 14 of the RPA provides that during the investigation contingency period a buyer may use the Request for Repair form (RR) to seek concessions from the seller following inspections. The seller can agree to all, some or none of the requests on the RR form or may continue negotiations using the Seller Response and Buyer Reply to Request for Repairs (RRRR). Whether the RR or RRRR form is used, the request stays open until the chosen form is signed by all parties, or the contract is cancelled.

Rather than use one of the above forms, the Amendment of Existing Agreement Terms (AEA) may be used as an alternative to document a post-contract, post-inspection agreement between buyer and seller. The AEA is not just a request, it is an offer that expires by 5 pm on the third day after the offer is made.

Also, unlike the RR forms, there are no pre-printed terms in the body of the AEA. The AEA form is more like the Addendum and mostly filled with blank lines. Therefore, the party initiating the AEA needs to specify what is being asked-for, be it repairs, a credit, a purchase price reduction or something else. If a seller is willing to agree to the terms of the AEA, the seller should insist that, like on the RR and RRRR forms, the buyer agrees to remove at least the physical inspection contingency, if not the entire investigation contingency and maybe other contingencies as well. Those terms should be written in to the AEA.

Why Use the AEA rather than the RR or RRRR forms?

Because the RR form can include inspection reports, those reports often are requested by lenders who may then pass the information to underwriting which could then impede the loan approval process or impede negotiations between buyer and seller. The AEA, on the other hand, has no attachments; it just contains the bottom line. The cause or underlying reason for the negotiation is not identified.

If parties start with the RR, before the final signatures are obtained, can they switch to the AEA?

Yes, but they should make sure the AEA contains all terms agreed-to in the RR forms, including contingency removals. Also, it is best to include on the AEA or in a separate document a withdrawal of the RR and any RRRR forms.

Which approach is best? Using the RR forms or the AEA?

Either approach to negotiate after inspections is legally and contractually acceptable. Deciding which is best is up to the parties in consultation with their REALTOR®, and if necessary, legal counsel.