

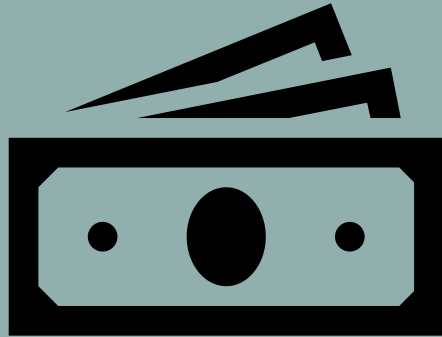
NMAR COMMERCIAL PURCHASE AGREEMENT CHANGE:



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New Mexico Association of
REALTORS®

INDEPENDENT CONSIDERATION

WHAT IS IT?



WHY DO WE NEED IT?



INDEPENDENT CONSIDERATION

LOGISTICS/PROCESS

- **Independent Consideration is required per the NMAR purchase agreements; it is not optional.**
- NMAR purchase agreements do not dictate the amount of Independent Consideration; it can be as little or as much as the parties negotiate, but it cannot be zero dollars (\$0).
- Independent Consideration does not replace earnest money and payment of Independent Consideration does not change how earnest money is treated under the purchase agreement. In the event the parties have agreed that buyer will pay earnest money, payment of the earnest money is in addition to payment of the Independent Consideration. Refund of the earnest money shall be in accordance with the purchase agreement.
- Independent Consideration may be paid to the seller directly or to the title company, as negotiated by the parties in the purchase agreement.
- If Independent Consideration is paid to the title company, it can be paid with the earnest money.
- If Independent Consideration is paid to the seller, it may be paid by any method to which the parties have agreed (cash, check, electronically, etc.). The buyer may request a receipt from the seller indicating seller received the Independent Consideration. Form 2104B – Receipt for Independent Consideration
- Delivery of the Independent Consideration to the seller or the title company, as negotiated, should not be more than three (3) days. The parties agree in the purchase agreements that the buyer's promise to deliver the Independent Consideration within some short period of time after full execution of the purchase agreement is sufficient consideration to form the purchase agreement. The Independent Consideration then becomes the consideration once it is delivered.
- **If buyer fails to deliver the Independent Consideration in accordance with the purchase agreement, the purchase agreement will automatically terminate. Buyer will not have an opportunity to cure buyer's failure to timely deliver the Independent Consideration in accordance with the purchase agreement.**

INDEPENDENT CONSIDERATION

- If the Independent Consideration is delivered to the title company, the title company will disburse the Independent Consideration to the seller as soon as the title company processes the buyer's payment. Seller will need to direct the title company in writing as to how seller would like the funds distributed to seller. Depending on the disbursement type (for example, check, wire, etc.) there may be title company charges associated with the disbursement. Seller should familiarize him/herself with such charges before providing disbursement instructions to the title company. Processing fees, excluding seller disbursement fees which are borne by the seller, are negotiated between the parties in the purchase agreement.
- The Independent Consideration may be credited to the purchase price, down payment or buyer's closing costs (subject to lender approval), as negotiated between the parties in the purchase agreement. If the Independent Consideration is paid directly to the seller, and the Independent Consideration is being credited to the buyer at closing, the title company may require a copy of the seller's receipt, indicating seller received the Independent Consideration and the amount of the Independent Consideration. If the Independent Consideration is being credited, and Buyer is getting a loan, the lender may need evidence of how/where the Buyer got the Independent Consideration funds.
- Generally, once a title company starts a title commitment for a specific buyer, it will require a termination agreement in order to prepare a title commitment for a different buyer. To mitigate the possibility that the title company will need a fully executed termination agreement should the buyer fail to deliver Independent Consideration in accordance with the contract, the NMAR purchase agreements provide that the title company will **not** begin the title commitment until the title company receives the Independent Consideration or evidence from the seller that the seller has received the Independent Consideration.
- **If the contract terminates (does not result in Closing) for any reason, except for seller's breach of contract, seller retains the Independent Consideration; it shall not be refunded to buyer.**

INDEPENDENT CONSIDERATION — DELIVERY TO TITLE COMPANY

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7. **INDEPENDENT CONSIDERATION.** *Independent Consideration is REQUIRED for formation of this Agreement. It can be any amount negotiated by the parties, but it must be greater than zero(\$0). If this transaction does not Close for any reason, other than Seller's breach of this Agreement, the Independent Consideration shall NOT be refunded to Buyer. For further explanation of Independent Consideration see Para. 65(M), Form 6302 — Information Sheet - Independent Consideration.*

A. **DELIVERY OF INDEPENDENT CONSIDERATION.** In consideration of the sum stated in **Para. 1(E)** paid by Buyer, the sufficiency and receipt of which Seller hereby acknowledges, Seller hereby grants Buyer the exclusive right and option to purchase the Property.

i. Buyer shall deliver Independent Consideration to ☐ Title Company or ☐ to Seller

a. If Delivering Independent Consideration to Title Company.



ATTENTION TITLE COMPANY: From Buyer funds received by Title Company per this Paragraph, amounts shall first be credited to Independent Consideration, with the remainder to Earnest Money.

- The Title Company shall release the Independent Consideration to Seller as soon as Buyer's Independent Consideration payment to the Title Company has been processed, subject to any Title Company disbursement charges and receipt of Seller's Independent Consideration disbursement instructions ("Seller's IC Instructions"). Form 6303 - Seller's Instructions to Title Company for Disbursement of Independent Consideration.
- Seller's IC Instructions only require Seller's signature(s); **no further disbursement agreement between Buyer and Seller (beyond this Purchase Agreement and Seller's IC Instructions) is required for the Title Company to disburse the Independent Consideration to Seller.**
- If Independent Consideration is being delivered with the Earnest Money, Buyer may make payment for both Independent Consideration and Earnest Money in one check, money order or wire transfer.
- Buyer shall be responsible for any fees associated with delivering Independent Consideration to Title Company. Seller shall be responsible for any fees associated with disbursement of Independent Consideration to Seller. Any additional fees charged by Title Company to process the Independent Consideration shall be paid in accordance with **Para. 12.**
- If the Independent Consideration is being delivered to the Title Company by check, check **shall be made payable to the Title Company.**

b. If Delivering Independent Consideration to Seller.

Buyer shall deliver Independent Consideration as follows:

- ☐ **Check;** ☐ **Electronically;** or ☐ **Other:** _____
- Seller shall notify Title Company when Seller receives the Independent Consideration from Buyer. Seller may use Form 2104B — Receipt for Independent Consideration or other method to verify receipt.
 - Delivery of the Independent Consideration to the Seller's Broker identified on **Cover Page 3** shall constitute delivery to Seller, even if Seller's Broker is also representing Buyer.

INDEPENDENT CONSIDERATION — DELIVERY TO SELLER

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INDEPENDENT CONSIDERATION

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- ii. **Date of Delivery.** The Independent Consideration shall be delivered on or before _____ **DAYS after Date of Acceptance (three [3] if left blank).**
 - iii. **Contract/Agreement Formation.** The parties hereby agree that Buyer's commitment to deliver the Independent Consideration in accordance with this Paragraph is sufficient consideration to create a legal binding contract from the time of full execution of this Agreement to the time of delivery of the Independent Consideration.
 - iv. **Buyer's Failure to Deliver Independent Consideration.** If Buyer fails to deliver the Independent Consideration in accordance with this Paragraph, this Agreement shall automatically terminate, and notwithstanding **Para. 49**, Seller shall have **no obligation** to provide Buyer with any opportunity to cure. Upon termination, neither party shall have any further rights or obligations under this Agreement, with the exception of executing a Termination Agreement *if* required by the Title Company.

INDEPENDENT CONSIDERATION

shall have any further rights or obligations under this Agreement, with the exception of executing a Termination Agreement *if* required by the Title Company.

B. APPLICATION OF INDEPENDENT CONSIDERATION AT CLOSING. In the event of Closing, the Independent Consideration ☐ **shall** ☐ **shall NOT be** applied to the Purchase Price, down payment, and/or Closing Costs, subject to any lender restrictions, if applicable; Buyer should consult with Buyer's lender, if any, to determine what, if any, documentation may be needed by lender to allow the credit.

8. CASH LOAN OR SELLER FINANCING

INDEPENDENT CONSIDERATION — DELIVERY TO TITLE COMPANY

- In the event Seller wishes for the Independent Consideration to be disbursed prior to Closing, they may submit to the title company NMAR Form 6303.



NEW MEXICO ASSOCIATION OF REALTORS®— 2026 SELLER'S INSTRUCTIONS TO TITLE COMPANY FOR DISBURSEMENT OF INDEPENDENT CONSIDERATION



Relating to the Purchase Agreement dated _____ between the parties
(Buyer) and
(Seller) on the
following property: _____
Address (Street, City, Zip Code) _____

Legal Description _____

NAME OF TITLE COMPANY _____

NAME OF ESCROW OFFICER: _____

1. **PARTIES AGREEMENT.** Pursuant to the above-referenced Purchase Agreement, the Buyer and Seller have agreed as follows:
- that Buyer shall pay to Seller \$ _____ as Independent Consideration;
 - that Buyer shall deliver this Independent Consideration to Title Company;
 - that Title Company may disburse the Independent Consideration in accordance with these Seller instructions;
 - that these Seller's Instructions ONLY require the Seller's signature(s); and
 - that no further disbursement agreement between Buyer and Seller (beyond the Purchase Agreement) is required for the Title Company to disburse the Independent Consideration to Seller in accordance with these instructions.

2. **SELLER'S DISBURSEMENT INSTRUCTIONS.** Seller hereby directs Title Company:

A. To disburse the Independent Consideration as soon as practical. If Independent Consideration is paid by readily available funds, the payment shall be disbursed as soon as the payment is processed. If Independent Consideration is paid by check, then the payment shall be paid as soon as the check has cleared the Buyer's bank and been processed by the Title Company.

- B. To disburse the Independent Consideration to Seller by (check applicable):

☐ Check; ☐ Wire Transfer; or ☐ Other _____.

NOTICE TO SELLER: you must confirm with Title Company that Title Company can disburse by your elected disbursement method and any charges associated with such disbursement method.

- i. Any Title Company disbursement charges shall be deducted from the Independent Consideration before disbursement. If Title Company disbursement charges are greater than the amount of Independent Consideration received by the Title Company, then notwithstanding the foregoing, the Title Company shall disburse by a less expensive method; for example, disbursement by check instead of wire transfer.

IMPORTANT REMINDER TO SELLER ABOUT WIRE FRAUD: The Title Company will need additional wire-transfer information from you. Do NOT wire any funds without personally speaking with the Title Company to confirm the Title Company's routing and account number. For more information, see NMAR Form 2000 – Wire Fraud Notice.

- ii. If disbursement is paid by check, Seller's address for mailing: _____

3. **INDEPENDENT CONSIDERATION CREDITS AT CLOSING.** Whether the Independent Consideration payment will be credited to the Purchase Price, Down Payment or Closing Costs is set forth in the Purchase Agreement.

SELLER(S)

Seller Signature _____ Printed Name _____ Date _____ Time _____

Seller Signature _____ Printed Name _____ Date _____ Time _____

INDEPENDENT CONSIDERATION — DELIVERY TO SELLER

- b. If delivering Independent Consideration directly to Seller, Buyer shall deliver Independent Consideration as follows: ☐ Check; ☐ Electronically; or ☐ Other: _____.
- Seller shall notify Title Company when Seller receives the Independent Consideration from Buyer. Seller may use NMAR Form 2104B — Receipt for Independent Consideration or other method to verify receipt.

- Buyer may deliver IC directly to Seller
- In the event Buyer does deliver to Seller, Seller may deliver NMAR Form 2104B - Receipt for Independent Consideration or any evidence of receipt of the Independent Consideration to the title company.
- Title's receipt of evidence of Seller's receipt of Independent Consideration is important as it is tied to other dates throughout the contract that title should be aware of.

	NEW MEXICO ASSOCIATION OF REALTORS® — 2026 RECEIPT FOR INDEPENDENT CONSIDERATION		
BUYER: _____ Print			
SELLER: _____ Print			
PROPERTY: _____ Address (Street, City, State, Zip Code)			
Legal Description or see metes and bounds description attached as Exhibit _____, _____ County(ies), New Mexico.			
AMOUNT OF INDEPENDENT CONSIDERATION: \$ _____			
RECEIVED IN THE FORM OF:			
☐ PERSONAL CHECK - Check No. _____			
☐ BANK CHECK Check No. _____			
☐ CASH			
☐ MONEY ORDER - Order No. _____			
☐ ELECTRONICALLY			
Through - Name of Platform (optional):			
☐ Venmo ☐ Paypal ☐ Zelle ☐ Cash App ☐ Other: _____			
☐ OTHER _____			
Received By: _____			
Per the NMAR Purchase Agreement, unless otherwise modified in the Purchase Agreement, delivery of Independent Consideration to the Listing Brokerage constitutes delivery to Seller.			
_____ Name of Receiving Listing Broker or Listing Brokerage Representative			
_____ Seller Signature		_____ Printed Name	_____ Time
_____ Seller Signature		_____ Printed Name	_____ Date

INDEPENDENT CONSIDERATION — A FEW SMALL CHANGES

7. → **INDEPENDENT CONSIDERATION.** Independent Consideration is **REQUIRED**. It can be any amount negotiated by the parties, but it must be greater than zero (\$0). If this transaction does not Close for any reason, other than Seller's breach of this Agreement, the Independent Consideration shall **NOT** be refunded to Buyer. For further explanation of Independent Consideration see Para. 65(M), Form 6302 — Information Sheet - Independent Consideration. ¶

A. → **DELIVERY OF INDEPENDENT CONSIDERATION.** In consideration of the sum stated in Para. 1(E) paid by Buyer, the sufficiency and receipt of which Seller hereby acknowledges, Seller hereby grants Buyer the exclusive right and option to purchase the Property. ¶

i. → Buyer shall deliver Independent Consideration to ☐ Title Company or ☐ to Seller. ¶

a. → If Delivering Independent Consideration to Title Company. ¶



ATTENTION TITLE COMPANY: From Buyer funds received by Title Company per this Paragraph, amounts shall first be credited to Independent Consideration, with the remainder to Earnest Money. ¶

→ The Title Company shall release the Independent Consideration to Seller as soon as Buyer's Independent Consideration payment to the Title Company has been processed, subject to any Title Company disbursement charges and receipt of Seller's Independent Consideration disbursement instructions ("Seller's IC Instructions"). Form 6303 -- Seller's Instructions to Title Company for Disbursement of Independent Consideration. ¶

→ Seller's IC Instructions only require Seller's signature(s); no further disbursement agreement between Buyer and Seller (beyond this Purchase Agreement and Seller's IC Instructions) is required for the

INDEPENDENT CONSIDERATION — A FEW SMALL CHANGES

- delivery to Seller, even if Seller's Broker is also representing Buyer. ¶
- ii. → **Date of Delivery.** The Independent Consideration shall be delivered on or before ____ DAYS after Date of Acceptance (three {3} if left blank). ¶
 - iii. → **Contract/Agreement Formation.** The parties hereby agree that Buyer's commitment to deliver the Independent Consideration in accordance with this Paragraph is sufficient consideration to create a legal binding contract from the time of full execution of this Agreement to the time of delivery of the Independent Consideration. **Timely delivery of Independent Consideration is required for continued formation of this Agreement.** ¶
 - iv. → **Buyer's Failure to Deliver Independent Consideration.** Buyer's failure to deliver Independent Consideration in accordance with this Paragraph, 7(A) is not considered a default of this Agreement, but instead shall immediately render this Agreement null and void. Once legally void, neither party shall have any further rights or obligations under this Agreement. Notwithstanding, the parties remain obligated to execute a Termination Agreement if required by the Title Company. ¶
- B. → APPLICATION OF INDEPENDENT CONSIDERATION AT CLOSING.** In the event of Closing, the Independent Consideration ☐ shall ☐ shall NOT be applied to the Purchase Price, down payment, and/or Closing Costs, subject to any lender restrictions, if applicable; Buyer should consult with Buyer's lender, if any, to determine what, if any, documentation may be needed by lender to allow the credit. ¶

QUESTIONS?

If you have any questions, please reach out to:

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