

# Addendum Class

**closing costs & seller repairs**



WASATCH  
LAW GROUP

# What Is An Addendum

## **addendum**

n. an addition to a completed written document. Most commonly this is a proposed change or explanation (such as a list of goods to be included) in a contract, or some point that has been subject of negotiation after the contract was originally proposed by one party. Real property sales agreements often have addenda (plural of addendum) as the buyer and seller negotiate fine points (how payments will be made, what appliances will be included, date of transfer of title, the terms of financing by the seller and the like). Although often they are not, addenda should be signed separately and attached to the original agreement so that there will be no confusion as to what is included or intended. Unsigned addenda could be confused with rough drafts or unaccepted proposals or included fraudulently

# Order & Timing

Is it the number sequence or date/time of the addendum that determines which addendum is part of the contract?

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the REPC, including all prior addenda and counteroffers, these terms shall control. All other terms of the REPC, including all prior addenda and counteroffers, not modified by this ADDENDUM shall remain the same.

# Closing Costs Addendum

What Are Closing Costs?

Title & Escrow Costs?

Lender Costs & Loan Prepayments?

Attorney Fees?

# Section 3 - Closing Costs

3.1 Settlement. Settlement shall take place no later than the Settlement Deadline referenced in Section 24(d), or as otherwise mutually agreed by Buyer and Seller in writing. "Settlement" shall occur only when all of the following have been completed: (a) Buyer and Seller have signed and delivered to each other or to the escrow/closing office all documents required by the REPC, by the Lender, by the title insurance and escrow/closing offices, by written escrow instructions (including any split closing instructions, if applicable), or by applicable law; **(b) any monies required to be paid by Buyer or Seller under these documents (except for the proceeds of any new loan) have been delivered by Buyer or Seller to the other party, or to the escrow/closing office, in the form of cash, wire transfer, cashier's check, or other form acceptable to the escrow/closing office.**

# Section 3 - Closing Costs

3.2 Prorations. All prorations, including, but not limited to, **homeowner's association dues, property taxes for the current year, rents, and interest on assumed obligations**, if any, shall be made as of the Settlement Deadline referenced in Section 24 (d), **unless otherwise agreed to in writing by the parties. Such writing could include the settlement statement.** The provisions of this Section 3.2 shall survive Closing.

3.3 Special Assessments. **Any assessments for capital improvements as approved by the HOA (pursuant to HOA governing documents) or as assessed by a municipality or special improvement district, prior to the Settlement Deadline shall be paid for by:**  Seller  Buyer  Split Equally Between Buyer and Seller  Other (explain)                     . The provisions of this Section 3.3 shall survive Closing.

# Section 3 - Closing Costs

## REPC Section 3

3.4 Fees/Costs/Payment Obligations. Unless otherwise agreed to in writing, Seller and Buyer shall each pay **one half (1/2) of the fee charged by the escrow/closing office** for its services in the settlement/closing process. Tenant deposits (including, but not limited to, security deposits, cleaning deposits and prepaid rents) shall be paid or credited by Seller to Buyer at Settlement. **Buyer agrees to be responsible for homeowners' association and private and public utility service transfer fees, if any,** and all utilities and other services provided to the Property after the Settlement Deadline. The escrow/closing office is authorized and directed to withhold from Seller's proceeds at Closing, sufficient funds to pay off on Seller's behalf all mortgages, trust deeds, judgments, mechanic's liens, tax liens and warrants. The provisions of this Section 3.4 shall survive Closing.

# Closing Costs Addendum

1. Seller's Contribution to Closing Costs. Seller agrees to contribute at Settlement the amount of \$\_\_\_ to be applied at Buyer's discretion toward any or all of the following: (a) a permanent reduction, or temporary reduction, in the mortgage loan interest rate; (b) mortgage financing costs; (c) closing costs; and (d) Prepays/Escrows. Any unused portion of Seller's contribution may, at Buyer's option, be used to reduce the Purchase Price.

# REPC Section 6

6. TITLE & TITLE INSURANCE. 6.1 Title to Property. Seller represents that Seller has fee title to the Property and will convey marketable title to the Property to Buyer at Closing by general warranty deed. Buyer does agree to accept title to the Property subject to the contents of the Commitment for Title Insurance (the “Commitment”) provided by Seller under Section 7, and as reviewed and approved by Buyer under Section 8. Buyer also agrees to accept title to the Property subject to any existing leases, rental and property management agreements affecting the Property not expiring prior to Closing which were provided to Buyer pursuant to Section 7(e). The provisions of this Section 6.1 shall survive Closing. 6.2 Title Insurance. **At Settlement, Seller agrees to pay for and cause to be issued in favor of Buyer, through the title insurance** agency that issued the Commitment (the “Issuing Agent”), the most current version of the ALTA Homeowner’s Policy of Title Insurance (the “Homeowner’s Policy”). If the Homeowner’s Policy is not available through the Issuing Agent, Buyer and Seller further agree as follows: (a) Seller agrees to pay for the Homeowner’s Policy if available through any other title insurance agency selected by Buyer; (b) if the Homeowner’s Policy is not available either through the Issuing Agent or any other title insurance agency, then Seller agrees to pay for, and Buyer agrees to accept, the most current available version of an ALTA Owner’s Policy of Title Insurance (“Standard Coverage Owner’s Policy”) available through the Issuing Agent.

# Repair Addendum

## 1. REPAIRS TO BE MADE BY SELLER

1. Agreed Repairs to Property. Seller and Buyer agree that the repairs to the Property will be taken care of as follows: (check applicable box):

1.1  Seller will be responsible for completion of the repairs listed below prior to the Settlement Deadline.

1.2  Seller will credit Buyer at Settlement in the amount of (\$\_\_\_\_) and Buyer agrees to be responsible for completion of the repairs listed below.

Agreed Upon Repairs (specify):

# Repair Addendum

Necessary?

Contract Purpose?

Unintended Consequences?

# Repair Addendum

“Buyer and Seller agree that \$1,000.00 will be placed in escrow with \_\_\_\_\_ Title Company specifically for the purpose of replacing window panes in Pella door assemblies. The panes have been identified and marked. As soon as a bid for window pane replacement is received and approved, the Title Company will either release to Seller **the difference between their bid price and \$1,000.00** or **inform Seller of any additional funds necessary to meet the bid**. Seller will have the panes replaced within or before 90 days of closing, subject to physical inspection by Buyers”.

# From the Buyer to Agent:

“We have received the bid for the correction of the problems with the windows from Pella and the total of the bid is \$12,747.98. Please inform the Seller or Seller’s agent that the bid has been obtained and that we look forward to the replacement of the windows per the quote above from Addendum #5.”

# Court's Ruling

Minute Entry - MEMORANDUM DECISION Judge LUBECK The above matter came before the Court for a bench trial ...Because there is no contract over this issue, no agreement or meeting of the minds, this aspect concerning the windows is not enforceable. **Plaintiffs have failed to prove by a preponderance of the evidence that defendants agreed to perform as plaintiffs believed the agreement called for.** Defendants have prevailed on this issue and are entitled to a reasonable attorney fee in this action under the contract. Defendants are to provide an order awarding attorney fees, with the amount of fees and costs left blank, and the court will fill in whatever amount it deems appropriate after receiving the affidavit of defendants and response of plaintiffs. Defendants have failed to prove their counterclaim and the court concludes no rents are due to defendants under the counterclaim. **The court finds and concludes, from the photographic evidence, that cosmetically the windows and doors at issue are unacceptable. The escrowed amount of \$1000.00 is to be released to plaintiffs upon discretion of defendants, which release should occur as soon as practicable.** This Memorandum Decision is the Order of the court and no other order is required except defendants are to prepare an order in compliance with URCP, Rule 7 (f) setting forth this ruling as to attorney fees above described.

# Repairs: Performance Spec

## Performance Requirements:

System shall accommodate movement of components without buckling, failure of joint seals, undue stress on fasteners, or other detrimental effects when subjected to seasonal temperature changes and live loads.

Design system capable of withstanding building code requirements for negative wind pressure.

# Repairs: Design Spec

RTU's to include the following equipment:

1. Cabinet:
  - a. Interior panels:
    - 1) 18 or 20 ga. thickness
    - 2) G-90 Galvanized steel
  - b. Exterior panels:
    - 1) Heavy gauge
    - 2) G90 Galvanized steel
    - 3) Two layer, pre-painted baked enamel finish
    - 4) Corrosion resistant paint
      - a) Salt spray resistance of 1,000 hours, ASTM B117

# More on Repairs

Who should complete the repairs?

Who Decides when the Repair is Complete?

What if the repair fails?

Why not just reduce the purchase price?

# Distribution

Who needs copies of Addenda?

- Lender

- Title Company

- Client

# Questions?

Thanks!

