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A REALTOR®'s Guide to the BCREA-CBA Assignment Agreements

Last updated: October 26, 2006

BCREA – Canadian Bar Association (CBA) standard forms were developed by BCREA's Assignment of Contract of Purchase and Sale Task Force. Two forms were created—one for “New Development” (typically condominiums sold in the “pre-build market”) and one for “Non-Developer” (existing properties sold by non-developers).

The forms have been approved by the BCREA Standard Forms Committee, the BCREA Board of Directors, the CBA Real Property Section and the CBA-BC Executive.

This document is a step-by-step guide to filling out the Assignment of Contract of Purchase and Sale (New Development), which contains all of the clauses of the Assignment of Contract of Purchase and Sale (Non-Developer) and more.

This document was prepared by Ed Wilson, of Lawson Lundell LLP, who donated more than 60 pro-bono hours on this project. Ed has been the Canadian Bar Association, BC Branch's representative on BCREA's Standard Forms Committee for the past ten years.

REALTOR® and Consumer Protection

Assigning a Contract of Purchase and Sale involves all of the risks involved in any Contract of Purchase and Sale, compounded with the additional risks of an assignment:

- What if the developer doesn't complete construction of the building?
- What if the deposit was secured by bonds?
- What if the developer elects not to proceed?
- What if the construction is faulty or the units are smaller than expected?
- What if deposit protection insurance was used?
- What if the assignor has breached the Contract of Purchase and Sale?
- What if the assignee breaches the Contract of Purchase and Sale after the assignment?
- What if the assignee doesn't pay the increased deposit?
- What if the assignor has already assigned the Contract of Purchase and Sale?
- What if the assignee doesn't satisfy or waive a purchaser's condition?
- What if the assignee doesn't close?
- What if the market has a correction?
- How does GST apply to the transaction?

The BCREA-CBA Assignment Agreements are designed to address and manage these risks.

Parties – Clause 1

The Assignment Agreement has a provision for insertion of the names of two assignors (the sellers) and two assignees (the buyers), as is commonly the situation with residential real estate transactions. If there are additional parties, they should be identified in an addendum. The Assignor's particulars include their name, address and phone number.

The agreement also includes a space for the Assignor to make a declaration that they are a resident or a non-resident of Canada. This is often the only information that conveyancers will have when first inquiring whether they need to provide for a holdback under s. 116 of the *Income Tax Act*.

Where the Assignor is not a Canadian resident and they assign the contract for a profit (a "lift"), there is a requirement on the Assignee to hold back 50 or 25 per cent, depending on the circumstances, of the Assignment Amount until a clearance certificate is obtained from the Canada Revenue Agency.

It's important that, where the buyer under the original contract is more than one party, all of the Assignors (the buyers under the original contract) are made parties to and execute the Assignment Agreement, either directly or pursuant to a valid power of attorney. Caution should be exercised where a person purports to sign an Assignment Agreement as agent for another party.

A title search of the property should be obtained before drafting an Assignment Agreement to ensure that the Assignment Agreement is appropriately completed.

The Assignment Agreements provide room for the insertion of the Assignees' occupations. This was added to facilitate conveyancing, since the Land Title Office requires that the occupations of buyers be inserted on transfers.

Given that original contract and the Assignment Agreements are assignable, the addition of the words "or nominee," "or assignee," or "and/or nominee" after the Assignee's name are unnecessary and should be avoided. The addition of such words may render the description of the Assignee so uncertain as to make the Assignment Agreement unenforceable (see *Kemp v. Lee* (1984), 58 B.C.L.R. 219 (B.C.C.A.) and *Fraser v. Gill* (1981) 32 B.C.L.R. 132 (B.C.S.C.)).

Developer – Clause 2

The New-Development form of Assignment Agreement includes a section entitled Developer. This section is not included in the Non-Developer form of Assignment Agreement.

Why the need to identify the developer?

- The assignment will probably require their consent so you need to know who to approach for that consent.
- Even if you don't need their consent, you will have to give them notice of the assignment prior to closing.

Is there a *Real Estate Development Marketing Act* disclosure statement?

- What are the warranties from the developer as to unit size, fixturing, etc.?
- Does the developer have the right to alter the unit?

- Does the developer have any “outs” at the time of the assignment (subject to presales, financing, etc.) that would allow them to elect not to proceed with the project?

Have there been any amendments to the disclosure statement to date?

- Need to locate and identify them.
- If acting for the Assignor, you need to ensure they pass on all the information they have to the Assignee.
- If acting for the Assignee, they want to see what the developer is building and what the buyer is buying.

Has a deposit protection contract been put in place?

- Deposit protection contracts are provided for under the *Real Estate Development Marketing Act*.
- The developer enters into a deposit protection contract with an insurance company that allows the developer access to the deposits to fund construction of the project.
- The insurance company registers a second mortgage on title behind the construction lender.
- All of the deposits are paid to the lawyer (or notary or REALTOR®, as usual).
- The insurance company releases the deposits to the developer in draws as construction progresses.
- If the developer fails to complete the project, the insurance company will provide funds equal to the deposits paid by the Assignee/buyer back to the Assignee/buyer.
- If the Assignee/buyer fails to complete, the insurance company releases the balance of the deposit to the developer.
- The insurance company may require the buyer sign a release as a condition of releasing their mortgage on title to the strata lot at closing.
- Releases must be provided by Assignee and Assignor confirming the assignment (including the assignment of the deposit) and that the Assignor has no action against the insurance company. This release should be signed at the time the assumption “goes firm” so as to avoid having to chase it down later.

Contract of Purchase and Sale – Clause 3

Contract:

- The parties need to know the terms of the contract so appropriate adjustments can be made.
- Attach the contract to the Assignment Agreement (see section 5.11a) as Schedule A.

Upgrades:

- Does the contract or separate agreement provide for upgrades?
- Have the upgrades been paid for already (separately or by way of an increased deposit)?

Deposits:

- The original purchase price and the amount of any deposits paid to date.
- Blanking out the original purchase price is dangerous.

- Who holds the deposits? The developer (if deposit protection insurance in place), a REALTOR®, a lawyer or notary?
- Who gets the interest on the deposit? The developer, the buyer under the original contract? This is an adjustment issue.
- Has any portion of the deposit paid by way of a bond? Rather than the Assignor having paid the deposit by way of cash (or a cheque), they either place a bond or shares with the stakeholder, or an insurance company issues a guarantee to the developer whereby the insurance company agrees to pay the deposit to the developer if the purchaser fails to complete the transaction. The insurance company agrees to pay this sum in exchange for a premium or fee paid by the buyer, based on the credit worthiness of the buyer. If a bond has been provided, additional provisions need to be added to the Assignment Agreement addressing this issue and it must be taken into account when paying the Assignment Amount.
- Is the developer's consent to the assignment required? This will generally be set out in both the Contract of Purchase Sale and the Disclosure Statement.
- By what date is the developer's consent to be obtained? This date is chosen by the parties and the Assignment Agreement puts the obligation for seeking the consent on the Assignor (see clause 5.5).
- If the developer's consent is not obtained, what happens? The Assignment Agreement provides if the consent is not obtained the assignment is null and void.
- Is there an Assignment Fee (fee charged by developer for providing their consent to the assignment)? The Assignment Agreement provides that the Assignor pays this fee.
- Is the Assignment Fee inclusive of GST? Is it a fixed fee or a percentage of the lift or the purchase price, or is GST on top of the Assignment Fee?

Property – Clause 4

The Assignment Agreement must contain a complete and accurate description of the property to be sold. The contract may be void for uncertainty if the description is inadequate to properly identify the property.

If it's a project under development, include both the current legal description of the property (which you can get from the disclosure statement), the new strata lot number and the new civic address.

The Assignment Agreement provides for identifying the property both by its civic address and its legal description (including parcel identifier). Don't use abbreviated legal descriptions, as this can result in some uncertainty. Using both the civic address and the legal description should reduce the uncertainty that may arise when using a short form or incomplete legal description.

Terms – Clause 5

The Assignment Agreement tries to address all of the common issues, to reduce the uncertainty and protect the interests of all of the parties. However, the parties and their REALTORS® need to address the unique issues that arise in many transactions. Simply relying on the terms of standard form documentation, without amending it to address the unique features of any transaction, is unwise.

Assignment Amount – Clause 5.1

The intention is that the Assignment Amount is equal to the “reimbursement of the deposit” and the profit (or the lift) is broken out to include:

- Reimbursement of the Deposits paid to date pursuant to the contract by the Assignor (a);
- The balance of the Assignment Amount (b);
- The total Assignment Amount is thus $a + b = c$.

The Assignment Agreement also allows for the insertion of the “Assignee Total Purchase Price” in item d) being the original purchase price plus the total Assignment Amount, so the Assignee and their lender know what is the Assignee’s total cost of the purchase of the property.

Deposit – Clause 5.2

The Assignment Agreement provides for a deposit being paid, and provides space for the details of its payment. There’s a provision for inserting the terms of payment of the deposit. If you need more room, use an addendum. The terms upon which the deposit is to be paid can obviously vary significantly from one Assignment Agreement to another.

The name of the person who is to hold the deposit (normally the selling agent, where there are both listing and selling agents) is to be inserted. Where the monies are held by a REALTOR® they must be held in trust in accordance with the provisions of the *Real Estate Services Act* (see in particular s. 28 being the stakeholder provisions). The deposit can be held by a lawyer or notary who would also hold it as a stakeholder, unless the parties agree otherwise and amend the Assignment Agreement accordingly.

While the deposit is commonly paid by the buyer when the Assignment Agreement is accepted, this is increasingly not the case. Many people mistakenly believe that, unless the deposit is paid when the Assignment Agreement is signed by the Assignee and presented to the Assignor, there is no binding agreement—but this isn’t the case. While consideration is a requirement of any assignment agreement, the consideration may be provided after acceptance of the offer. In any event, the deposit is generally not the consideration for the assignment agreement. The Assignee’s agreement to assume the Assignor’s obligation under the contract, and the payment of any lift is the consideration being exchanged. The deposit is the buyer’s sign of sincerity and good faith.

The deposit provision doesn’t state whether the deposit under the Assignment Agreement is to earn interest or who gets the benefit of the interest. This should be inserted by the parties drafting the Assignment Agreement.

If there’s a dispute as to the disposition of the deposit, the REALTOR® must, failing agreement of the parties, pay the monies into Court pursuant to s. 33 of the *Real Estate Services Act*.

Clause 5.2 provides that, if the Assignee fails to pay the deposit as required by the Assignment Agreement, the Assignor may, at the Assignor’s option, terminate the Assignment Agreement. If the Assignor fails to make such election in a timely manner, the

option to terminate the Assignment Agreement may fall away (see *363498 B.C. Ltd. v. Kilner* [1994] B.D.C. Civ. 2268-02). Also note Clause 5.15 that deals with what happens to the deposit if the transaction doesn't close due to the Assignee's default. The deposit may be forfeited without prejudice to the Assignor's other remedies.

Terms and Conditions – Clause 5.3

In this clause, the parties insert the various conditions or subject clauses and any other terms they wish to add to the Assignment Agreement. Most commonly, these additional terms will be written in a separate addendum and reference to the addendum will be inserted in Clause 5.3. A separate addendum form in the "usual format" is available on *WEBForms™*. These terms and conditions are most often for the benefit of the Assignee and typically relate to obtaining legal advice, reviewing the disclosure statement, review of proposed strata bylaws and so forth.

Confusion can arise if the party drafting the Assignment Agreement doesn't indicate for whose benefit the particular condition has been inserted. When inserting subject clauses, drafters of the Assignment Agreement should specify who benefits from each condition, whether the Assignor, Assignee or both.

Unless each condition is waived or declared fulfilled by written notice given by the benefiting party to the other party on or before the date specified for each condition, the Assignment Agreement will be deemed to have been terminated and the deposit is returnable to the buyer in accordance with the *Real Estate Services Act*.

The best practice is to have an addendum agreement prepared removing the condition, and have it signed by all parties to the transaction to confirm receipt of the notice. That should be done prior to the date specified. However, the Assignment Agreement doesn't expressly require that, and simple written notice given by the benefiting party to the other party by the time specified may be sufficient.

Developer's Assignment Fee – Clause 5.4

The Assignment Agreement must provide:

- Who will pay the Developer's Assignment Fee (see Clause 5.4), which the Assignment Agreement has established as the Assignor's obligation.
- When the Developer's Assignment Fee must be paid (see Clause 5.4 and Clause 3). The developer will usually require this amount be paid prior to them providing their consent.
- How much is the Developer's Assignment Fee (See Clause 3). This will usually be provided in the consent and/or the developer's Disclosure Statement.

Developer's Consent – Clause 5.5

The Assignment Agreement must provide answers to these questions:

- Is the developer's consent to the assignment required (see Clause 3 and Clause 5.5)?
- Who is responsible for obtaining the developer's consent, if required (see Clause 5.5)? The Assignment Agreement puts the obligation on the Assignor.
- By what date must the developer's consent be obtained (see Clause 3 and Clause 5.5)? This date is chosen by the Assignor and the Assignee.

- What if the consent isn't obtained by the date specified (see Clause 5.5)? The Assignment Agreement provides that the Assignment Agreement terminates if the consent is not obtained by the dates specified.

Effective Date – Clause 5.6

The Assignment Agreement must provide for the effective date of the assignment. It can be various dates:

- The date the Assignment Agreement is signed by both parties (if no developer's consent is required)
- The date any conditions are satisfied or waived
- The date the developer gives consent
- Any date agreed upon by the parties

The Assignment of Contract of Purchase and Sale (New Development) provides that assignment is effective upon the last of the following three events to occur:

- the date that the last of any conditions set forth in Clause 5.3 of the Assignment Agreement is satisfied or waived
- the date the developer consents in writing to the assignment, where such consent is required under the contract
- such other date as specifically provided in Clause 5.3 of the Assignment Agreement

The Assignment of Contract of Purchase and Sale (Non-Developer) doesn't include the developer's consent as one of the trigger events, as the seller's consent is normally not required in such transactions.

Release of Assignment Amount – Clause 5.7

The Assignment Agreement provides four options for the parties to choose.

Option A: Assignment Amount Released On Submission for Registration

The Assignment Amount, once paid and when all conditions, if any, are waived or satisfied, is to be held in trust by the stakeholder and is to be released to the Assignor (and any real estate commission is then payable) upon the transfer of the property being submitted for registration in the appropriate Land Title Office. If that doesn't happen by the date specified in the contract, the Assignment Amount is to be released to the Assignee, and this Assignment Agreement is terminated.

- Money paid by the Assignee is only released once the title is transferred to the Assignee
- Protects the Assignee from the failure of the developer to complete the project
- Assignor doesn't get the "reimbursement" of the deposit until the title transfers
- Commission is either not payable until the time of the transfer or, if payable earlier, the Assignor must pay it from other funds

Option B: Assignment Amount Released on Subject Removal

The Assignment Amount, once paid and when all conditions, if any, are waived or satisfied, shall be released by the stakeholder to the Assignor (and any real estate commission is then payable), and the Assignee expressly assumes all risks under the

contract, including the risk that construction of the property isn't completed as provided for in the contract or the disclosure statement. Even if the developer doesn't complete construction of the property, or fails to complete the contract, the Assignment Amount shall NOT be returned to the Assignee, except where the developer's failure to complete construction of the property or complete the contract is due to the Assignor's breach of the Assignment Agreement or the contract.

- All of the Assignment Amount (i.e., reimbursement of the deposit, Assignment Amount including the lift is released to the Assignor upon all conditions being satisfied)
- Assignee at risk if the developer fails to complete the project
- Risk to Assignor is made very clear
- Assignor still at risk for any default of the purchaser's obligations under the contract
- Assignee only gets money back if failure to complete the contract is due to a breach by the Assignor
- Commission will generally be payable upon all conditions are waived or satisfied

Option C: Portion of Assignment Amount Released on Subject Removal, Balance Released on Submission for Registration

Once the Assignment Amount is paid, and all conditions waived or satisfied, the portion of the Assignment Amount equal to the deposits paid by the Assignor is to be released to the Assignor, and the balance is to be held in trust by the stakeholder and is to be released to the Assignor (and any real estate commission is then payable) upon the transfer of the property being submitted for registration in the appropriate Land Title Office. If that doesn't happen by the latest date specified in the contract, at the option of the Assignee, the Assignment Amount is to be released to the Assignee and the Assignment Agreement is terminated.

- The portion of the Assignment Fee, equal to the amount of the deposit paid under the contract, is released to the Assignor upon all conditions being satisfied
- Balance of the money (i.e., the lift) only released once the title is transfer to the Assignee
- Protects the Assignee from the failure of the developer to complete the project, as the original deposit remains held in the original stakeholder's trust account
- Assignor gets the "rebate" of the deposit, once all subjects removed
- Commission is either payable out of the refunded deposit amount, not paid until the time of the transfer or, if payable earlier, the Assignor must pay it from other funds

Option D: Other Terms – See Addendum

- Whatever the parties want.

Options A, B and C can generally be thought of as:

Option A: The Assignee's preferred option

Option B: The Assignor's preferred option

Option C: A compromise between Option A and Option B

Release of Deposit – Clause 5.8

The Assignment Agreement assigns the Assignor's interest in the deposit paid under the Contract of Purchase and Sale, and includes the assignment of any interest that has accrued to the Assignor. If the interest accrues to the developer, it isn't assigned.

If no deposit has been paid, but instead a bond has been provided as the "deposit," special provisions must be added in an addendum.

If interest has accrued to the Assignor, they are not specifically credited for this sum under the Assignment Agreement, and the Assignee gets the interest. The Assignment Amount (the profit) should be increased to account for any interest the assignment is assigning to the Assignee, if the Assignor wants the interest.

Disclosure Statement – Clause 5.9

The Assignee acknowledges having been provided with a copy of the disclosure statement (and the amendments thereto) provided by the developer, if so indicated in Clause 2 of the Assignment Agreement. This refers to the *Real Estate Development Marketing Act* disclosure statement, not a "property disclosure statement."

The Assignor makes no representation or warranty as to the accuracy of the disclosure statement.

The Assignee acknowledges that the developer may alter the property as provided for in the contract and/or the Developer's Disclosure Statement prior to the completion date of the contract, and the Assignee assumes all risk with respect to any such changes.

Assumption and Indemnity by Assignee – Clause 5.10

The Assignee covenants and agrees with the Assignor that they will:

- observe and perform all of the obligations of the original purchaser under the contract, as if they had been originally named as the purchaser
- indemnify and save harmless the Assignor from all actions, suits, costs, losses, damages, charges and expenses incurred by the Assignor and arising out of any failure on the part of the Assignee to fully effect or perform the purchaser's obligation under the contract
- remove all of the purchaser's conditions and pay all increases in the deposit required under the contract. The Assignor, particularly if Options A or C in Section 5.7 are chosen wants to ensure that the Purchaser continues on with the transaction and removes all of the purchaser's conditions and pays any increase in the deposit required, so as to earn the lift; hence, this clause.

Assignor's Warranty – Clause 5.11

The Assignor represents and warrants to the Assignee that:

- the contract, a true copy of which (including all amendments and schedules thereto) is attached as Schedule A, constitutes the entire agreement between the developer and the Assignor with respect to the property
- the contract hasn't been modified or amended in any way, except as set out in Schedule A
- the contract is a good, valid and subsisting Contract of Purchase and Sale
- the developer doesn't have any defence, set-off, claim or counterclaim against the Assignor
- all of the Assignor's obligations under the contract have been and will, to the effective date, be duly observed and performed by the Assignor
- the Assignor hasn't previously assigned the contract
- the Assignor now has absolute authority to assign the contract, subject to obtaining the developer's consent, if required

Assignor's Indemnity – Clause 5.12

The Assignor is liable for any breach or non-observance of the Assignor's representation and warranties.

Assignor's Acknowledgment – Clause 5.13

The Assignor acknowledges that the provision of the developer's consent doesn't relieve the Assignor from the purchaser's obligations under the contract in the event the Assignee is unable or fails to complete the contract.

This is a critical clause, in that it confirms that the Assignor remains at risk until the title is transferred and, potentially, afterward.

REALTOR® must warn any Assignor of the ongoing risk.

All Assignees should be qualified by the Assignor's REALTOR® to determine if they have the ability to close the deal.

Risks increase if there is a market correction between time of original contract being executed and the completion date.

Assignor must be positioned to close if the Assignee fails to do so.

If the Assignor wants to be released by the developer, a separate release will have to be obtained from the developer.

Payment – Clause 5.14

Note that payment of the Assignment Amount and the Assignment Amount deposit by the Assignee to the Assignor will be by certified cheque, bank draft or lawyer's/notary's trust cheque. Neither an "uncertified cheque" nor cash is provided for. If the Assignee wants to use an uncertified cheque or cash, the Assignment Agreement needs to be modified.

Time – Clause 5.15

This clause makes time of the essence of the Assignment Agreement. Any amendments to the Assignment Agreement should remake time of the essence.

It should be noted that, if the Assignment Amount isn't paid as and when provided for, Clause 5.15 provides that the Assignor may, at their option, terminate the Assignment Agreement. In such an event, the amount already paid by the Assignee to the Assignor (which could be just a deposit, but also the lift) will be forfeited to the Assignor in accordance with the *Real Estate Services Act*, on account of damages, without prejudice to the seller's other remedies.

Retention of the deposit isn't the sole remedy of the Assignor. The Assignor could sue for damages or specific performance.

If an Assignee wishes to provide that the retention of the deposit is the sole remedy of the Assignor, the Assignment Agreement should be amended to include such a provision.

The contract will typically provide that, should the buyer fail to pay the balance of the purchase price on or before the completion date, the developer can, at the developer's option, terminate the contract. In such event, the amount paid by the original buyer will be absolutely forfeited to the developer on account of damages, without prejudice to the developer's other remedies. If the parties intend to make retention of the deposit to be the sole remedy of the developer, they should try to have the contract amended, as part of the process of obtaining the consent. If the Assignor wants such a change, they should make the obtaining of such the amendment an "assignor's condition" under the Assignment Agreement.

If there's a correction in the market, the market value of the property falls below the Assignment Amount, Assignees may refuse to complete, and the developer will likely insist that the Assignor complete, but they may also simply retain the deposit and then resell the unit and take the reduced lift for themselves.

GST – Clause 5.16

This clause doesn't relate to the GST payable under the original contract, but the GST under the Assignment Agreement.

Whether or not the Assignment Agreement is subject to GST is largely dependent on the intention of the Assignor.

If the Assignor entered into the contract with the intention to complete the contract and move into the unit, the assignment is most likely not "GSTable." If the Assignor was a flipper (i.e., enters into a lot of contracts and makes a habit of buying and flipping contracts,) it is likely GSTable.

The Assignment Agreement provides that it is inclusive of all GST payable; therefore, if there is GST payable, it's up to the Assignor to remit the GST. The Assignee is protected in the event it is GSTable, as they have provided that the GST is included in the Assignment Amount.

One important exception is, where the Assignor is a non-resident, the Assignee will have to remit the GST.

Plural – Clause 5.17

This clause is obviously designed to assist in the interpretation of the Assignment Agreement and to confirm that it binds successors and assigns.

- Singular includes plural, and masculine includes feminine.
- The liability of the Assignee (if more than one person, is joint and several)

Representations and Warranties – Clause 5.18

The Assignment Agreements contain more representation and warranties than does the standard Contract of Purchase and Sale. See, for example, the Assignor's Warranties (Clause 5.11). If the Assignee wants to have any additional representations from the Assignor, they should have those expressly added to the Assignment Agreement.

Property Disclosure Statements (PDS) are now commonly used in most residential real estate transactions. If the Assignment Agreement is being used for an existing house (the Non-Developer version), and the seller has provided a PDS, you may want to add a term stating that the Assignor is providing the PDS provided to them by the seller, but they are making no representation or warranties as to its accuracy.

But note, if the PDS was not made part of the original contract, it isn't part of the Assignment Agreement.

Personal Information – Clause 5.19

This clause is designed to deal with the implications resulting from the *Personal Information Protection Act*. In this clause, the Assignor and the Assignee agree that the information regarding the transaction may be collected and disclosed by the parties described in Clause 5.20 for all purposes consistent with the transaction including its listing on the Multiple Listing Service®.

Agency Disclosure – Clause 5.20

Clause 5.20 constitutes an acknowledgement by the Assignor and the Assignee that they have been given an opportunity to read and that they understand the brochure published by BCREA entitled *Working With a REALTOR®*. It also confirms the agency relationship between the parties and the REALTORS® involved.

The Canadian Real Estate Association's Standards of Business Practice and Code of Ethics requires all REALTORS® to disclose in writing their agency relationships. This disclosure is consistent with agency law generally, and hopefully results in better informed consumers.

Acceptance Irrevocable – Clause 5.21

This clause addresses some case law and provides that, once the Assignor has accepted the Assignment Agreement, they cannot revoke that acceptance during the Assignee's "subject period."

This is a Legal Document – Clause 5.22

This paragraph ensures the parties realize this document has legal significance. Parties are encouraged to seek independent legal advice before signing the agreement. If not practical, you're encouraged to insert a subject condition (for both the Assignor and the Assignee) to get independent legal advice.

Offer – Clause 5.23

The contract continues to take the form of an offer that's open for acceptance by a specified date and time. Frequently there will be counter-offers, and the Assignment Agreement contemplates this potential to a limited degree.

Acceptance – Clause 5.24

In Clause 5.24, the Assignor accepts the Assignee's offer, agrees to complete on the terms set out in the Assignment Agreement and agrees to pay a commission as provided for in the Multiple Listing Contract relating to the Assignment Agreement.

Importantly, the Assignor also authorizes and instructs the Assignee and anyone acting on the Assignee's or Assignor's behalf (e.g., the conveyancing lawyers) to pay the commission out of the cash proceeds of the sale after completion. This is particularly relevant if Option A or C in clause 5.7 are chosen, as it is the closing that allows the release of the Assignment Amount or lift.

Developer's Consent

- To be used where the developer's consent is required.
- Not part of the Assignment Agreement, but incorporates definitions from the contract.
- Defined terms in the Assignment Agreement are shown in bold.
- Assignee becomes contractually bound to the developer (clause 2).
- Assignee acknowledges receipt of the contract, and assumes all obligations under the contract as of the effective date (clause 3).
- Assignor acknowledges that they will remain liable under the contract (clause 4(a)).
- Assignor to pay the developer's Assignment Fee (clause 4(b)).
- Assignee is jointly and severally liable (clause 5).
- Developer's consent is required to further assignments (clause 6).
- Addresses where developers' notices are to be sent (clause 7).
- Developer confirms contract is in full force and effect (clause 8).

Assignment of Contract of Purchase and Sale (Non-Developer)

Is basically the same, except it has no reference to:

- the Developer
- Disclosure statement
- Developer's Assignment Fee
- Developer's consent form