

RR201 Purchase Contract Comments

<u>RR201 – Purchase Contract</u>		
1.	Beginning	Reviewed by: Should not be restricted to "Buyer's" broker only. Can be instances of Seller's offer to sell.
2.		It would be nice to have a separate Agency Disclosure Form so we can have all the figures on the first page of the contract. That is, we should have the Purchase Price, Down Payment Amount, Loan Amount, Earnest Deposit Amount, Closing Date on Page 1 of the Contract
3.		Why are you adding "Buyer's" to Principal Broker/Broker-in-charge? It may be a customer situation so it is not the Buyer's broker and if the Seller is doing a Seller's Offer to Seller situation, where it would be the Seller's Principal Broker on the offer.
4.	Section A	Bottom of page 1 - seems to be 3 separate statements so each should begin on a separate line.
5.		A-2 (a) spacing
6.		A2 Disclosure. I would really try to get all of this section on Page 1. Having that small amount at the top of page 2 is likely to cause confusion with a client. People are going to miss that place to initial. But, maybe when the old copyright language is gone, it will all fit on Page 1?
7.		A-2(c): "A separate Dual Agency Consent Addendum is required." I asked Diane at the Real Estate Commission (Oahu 586-2643), if such an Addendum is required if the same real estate firm represents both Buyer and Seller. I understood Diane to say that this statement is not true. The law requires, she continued, that the real estate firm MUST make it clear which party the firm represents. If firm represents both parties, that must be clear. I understood her to say that if both A-2(a) and A-2(b) had the same firm entered, that would be clear that said real estate firm represented both parties. Consequently A-2(c) was not necessary and the statement was just not true that said: "A separate Dual Agency Consent Addendum is required." It appears evident that what I understood Diane to say was that saying the consent Addendum is required when it is not, is a MISREPRESENTATION. As we know, at least in theory, a misrepresentation is grounds for license revocation. To have a misrepresentation as blatant as this appears to be quite inappropriate in an Hawaii Association of Realtors standard form.
8.		A-2: Remove the extra spaces before "(a) Seller Representation."
9.		I note with interest that we are moving the recommendation for seeking a legal opinion to the middle of the paragraph discussing dual agency rather than the simpler statement of recommending it under the No Agency section.
10.		Last sentence on agency. Correct spelling of acknowledgment by deleting "e" after "g"
260.		"Reviewed by" who initials here if buyer is a customer and not represented? Is it left blank?
261.		Reviewed by. Change "Name of Buyer's:" to "Name of submitting Brokerage Firm's"... "Buyer's" suggests agency, which may or may not apply. Could be a Seller's offer. Buyer could be a customer.

RR201 Purchase Contract Comments

262.		Bottom of page. Change "seek legal counsel" to "seek and consult legal counsel".
263.		When revising the Buyer Representation Contract and the Exclusive Right to Sell contract we inserted language to cover dual agency between multiple listings and also between multiple Buyers and at the time it was suggested we also cover this in a like manner when we reviewed the purchase Contract. On that basis, I suggest the following language: Buyer further acknowledges and agrees that Brokerage Firm may represent other Buyers for the subject property, whether such representation arises prior to, during, or after the termination of this contract. Buyer hereby consents to such representation and further agrees that in such a situation, Brokerage Firm shall not disclose to any Buyer the terms or the existence of any other Buyer's offer [unless, absent a purchase contract confidentiality clause, the agent is instructed to do so in writing by the Seller???].
264.		Should NAR Code of Ethics notice be moved to between A-2 and A-2 (a) so that it is adjacent to the checkboxes denoting who is and who isn't a member of NAR?
265.		If a Buyer hands me a deposit check to hold, do I now need a separate receipt? Is it the intent of the Real Estate Commission that we show a receipt for a check? Or only for cash? Is a check considered funds or is it personal property? Paragraph HAR 66-99-4 (d) covers "funds" and paragraph (e) covers personal property. Paragraph "f" suggests that for personal property there must be some documentary evidence... As a wholly separate matter, in the case of Landlord tenant code and rentals, a receipt must only be provided if requested by the tenant.
266.		Bottom of page. Change "acknowledgement" to "acknowledgment". I believe that the proper word, throughout the form, is "acknowledgment". If so, correct this globally. Actually, I believe that the word can be spelled both ways, but for consistency, only one format should be used.
11.	Section B	As for Wiring Instructions & Fraud, the new phrase provided raises an eyebrow to security and Procedures. Could they have used a better phrase?
12.		B-1 Change "on the terms" to "at the terms"
13.		B-2 Additional Deposit, if any, paid into Escrow on or before (please add one more line to this because we normally write "2 business days after J-1 acceptance" and the space is inadequate.
14.		B-2 Should buyer fail to make the initial money deposit or additional deposit (suggestion)- [on or before expiration date] Seller may elect to terminate this PC pursuant to paragraph O-3
15.		B-2 Should Buyer fail to make..... (within the deadline / within the agreed upon period / don't be late...)
16.		B-2 Please allow "0" or na in the \$ spaces
17.		B-2 should also state ... should an appraisal not meet the financing stated above, this contract may be renegotiated or cancelled by either party.
18.		B-2: Now O-3 and not O-1 regarding earnest monies or additional deposit only. Then in H-1, balance of downpayment is considered O-1.

RR201 Purchase Contract Comments

		Understandable for ALL CASH but if subject to financing or other combination, does not make sense.
19.		B-2: I would recommend that we change Paragraph O-3 to read O-1.
20.		B-2: Perhaps clarify with a reasonable time before the sellers may cancel the contract if the earnest money is not deposited.
21.		B-2: What is the rationale for changing this to O-3?
22.		B3 should also finish up on the page it started on...but if my #1 is done, it will. It's just best not to separate a key paragraph or item on the next page.
23.		B-3: Good addition.
24.		B-3: This is a contract between a buyer and seller who happen to be the primary target of fraudsters however there is no language here that alerts the buyer and seller to this fact. I have provided alternative language to Kalama Kim.
25.		Bottom of B-2 should add: "... by the time frames stated above"
26.		Section B should include the Buyers Agents name and signature line to protect both the Buyer and Agent if the Buyer gives the initial deposit check to the Agent.
267.		<p>B-2 Purchase Price, end. Change "additional deposit," to "additional deposit, as specified above," "Initial Earnest Money Deposit" is shown with initial caps as if it is a defined term, but it is not defined above. "additional deposit" is not shown with initial caps. The ways the two terms are shown are inconsistent. Please decide how to treat these terms consistently.</p> <p>The termination provision changed to O-3. If Seller does not terminate pursuant to O-3 within a certain time period, Seller will (probably) waive the right to do so – but Buyer will still have not made the required deposit. That does not make sense. O-1 might be better. Seller could terminate if Buyer does not make a deposit, until Buyer does so. But with O-1, Seller could retain the initial deposit if the default is on the additional deposit. Competing interests.</p>
268.		B-2. Initial Earnest Money Deposit. I don't like that it doesn't have any place to indicate what form of earnest money, if any, the broker assisting the buyer is holding; nor that the blank date leaves a lot of latitude on the part of the buyer and broker to set 5, 7, 10 or more days after Acceptance Date before an EMD is due. I suspect there could be a lot of counter offers generated just on that aspect alone. At least the current PC states if the agent is holding an EMD, and what form, or if wired, when it will be done. Perhaps some built-in limitation language (provided to escrow within 4 days of Acceptance?).
269.		B-3 The last phish attempt I had was from a text. It might be worth changing to "email accounts" to "email and texting accounts" and add the word texts to the other locations in the paragraph.
270.		B-3. Make sure that the real estate company that was the source of this language authorizes its use in writing. Email is the only medium noted. Basically, all forms of electronic communications could be hacked: email, text, social media posts, etc. Perhaps the word "email" should be broadened to include cyber crime (see: https://www.fbi.gov/investigate/cyber).
27.	Section C	C-1: Addenda - Seller rent back Rental Agreement?

RR201 Purchase Contract Comments

28.		C-1: Why is 1031 Exchange addendum there but no HAR 1031 Exchange addendum exists? Our company has one but just wondering...
29.		Perhaps change "1031 exchange" to "IRC 1031 exchange".
30.		I didn't understand "rent back".
31.		In Rental Agreement (Seller - you need to close the parentheses at the end of (Seller).
32.		There is no standard 1031 Exchange Addendum. Seems odd to start off with an addendum that doesn't exist and that every agency handles differently.
271.		C-1. You might want to add the Blank Addendum.
33.	Section D	I do like the removal of Section D.
34.		Section D I'm curious the mind set behind removing the receipt section of the contract?
272.		Section D. It is not a good idea to have Sections or Paragraphs that are "Intentionally Left Blank". Maybe you could make "Wired Funds" Section C, and "Addenda" Section D.
35.	Section E	E-1: Description. Parcel and CPR need to add (s) so they match page 1 of the TMK info. E-2: please add another line for Other. One line is not enough
36.		E-3 - Please define "Energy Purchase Photovoltaic Agreement.
37.		*E-2: need to clarify if free standing microwave or one with hood, need to check if has TV cable outlets, a water heater... *If 2 parking with remotes, be sure to note number needed in E-2 otherwise just says All which could just mean in possession and may have lost one.
38.		Also: could the choices to check off on the appliance Inclusions list match exactly with those on the MLS Inclusions list? They're slightly different, and it often causes confusion when we write a contract.
39.		E-1 Description would save space and avoid redundancy to move it to page 1 under TMK E-2 or E-4 distinguish between built-in furnishings and furnishings anchored to the wall for safety reasons as per manufacturer recommendations
40.		E-1: Description: lots of discussion of what should actually be written in this space when it says full legal description will be provided in the title report. Some don't want to put square footage, or maintenance fees etc for litigious reasons. It leaves it open for agents to put various things on this line which not all agree on.
41.		E-1: The TMK is already addressed on Page 1. Perhaps remove one?
42.		E-2 Can the like items be grouped. Like Dryer next to Washer and cooktop next to stove, Water Heater by Solar Water Heater, etc. Logical inspection order if possible. Thank you for all your work.
43.		E-2 Please add EV Charging Station
44.		E-2 Other - should add more space to list # of AC's, remotes, etc...
45.		E-2 please do NOT remove cable tv. It is still important to know if a property is wired for cable tv. -Not sure what the word "system" refers to in the list
46.		E-2 Sprinklers- Exterior - add a space after sprinklers
47.		E-2. Seller shall replace any inclusions without written consent of Buyer. Even if disposal needs replacement before closing? Air

RR201 Purchase Contract Comments

		Conditioner - Window (inconsistent dash formatting). Microwave-Built in; Microwave-Free standing.
48.		E-2: Why need the written consent of the Buyer to fix a plumbing leak or change a broken appliance? Notice should just be given as a 508D update. The Seller is still the owner and it is up to them and/or a tenant may not want to wait for the Buyer to decide timely.
49.		E-2: Attached items like Built-in Appliances, light fixtures, Automatic Garage Door, Ceiling Fans, Dishwasher, Disposal, Window Coverings, Microwave Hood, Range, Range Hood, Smoke Detectors, Window Coverings, Solar Water Heater, Ovens, and sprinklers are fixtures and are attached/affixed to the property. They should convey along with means to operate fixtures (i.e. remotes) if they currently exist at the property. It would be nice if there was a separate paragraph added to address that "the following fixtures, if they currently exist at the property, are to convey with the property" rather than having to check them each time we write an offer.
50.		E-2: Change "without written consent" to read without prior written consent".
51.		E-3 Needs to be on a separate addendum. HECO does not allow Buyer to apply for transfer of Net metering prior to Buyer obtaining ownership. Also - it appears that Buyer has the ability to cancel the PC at anytime if they do not obtain evidence of transfer. This may be of no fault of the Seller.
52.		E-3: Has anyone investigated whether the transfer requirements are reasonable and fairly easy to obtain?
53.		E-3: PV system... This is confusing cause it is only applying to the leased system. Wouldn't this be better as an addendum for leased systems?
54.		E-3: did you get approval of the transfer agreement company for the Buyer to apply right away - is there a cost? What happens if PC terminated, easy to withdraw transfer application? Why would a Buyer be denied transfer agreement approval?
55.		E-3: We should include termination provisions of either O-2 or O-3 if we are going to make the buyer's obligation to purchase contingent upon the delivery of evidence that the transfer was approved.
56.		E4 Frankly, I think "furniture and furnishings" is redundant. The inventory document will clarify and list exactly what is included such as "sofa, loveseat, 2 lamps", "1 Q bed and "all linens" or, "no linens", etc. I feel that "furnishings" is enough. Furniture IS furnishings, but furnishings can infer that furniture and other items may be included. Again, the inventory will support that item, if checked
57.		E-4 number of some items should be encouraged
58.		E-4: This may affect the buyer's loan. Should we include a notification to that affect in this paragraph?
59.		Inventory is clean & necessary
60.		Section E We will really need to do some education on the PV piece of the inventory.
61.		This paragraph needs (a) and (b) It should say " (a) Seller shall provide applicable documents for the contracts and/or leases indicated above to Buyer no later than _____() days after the Acceptance Date. If Buyer does not approve the applicable documents, Buyer may

RR201 Purchase Contract Comments

		elect, within _____ () days of receipt of the applicable documents, to terminate this Purchase Contract pursuant to Paragraph O-2. (b) Upon approval of applicable documents, Buyer to apply for the transfer agreement of any leased photovoltaic system. Buyer's obligation to purchase the Property is contingent upon Buyer providing evidence to Seller that the transfer of the photovoltaic system was approved no later than _____ () days prior to Closing. If Buyer does not provide evidence of approved transfer agreement, Seller may elect to terminate the Purchase Contract pursuant to Paragraph O-3.
62.		What does "system" refer to above "cooktop" in E-2?
63.		When writing an offer, personal property like Refrigerators, Washer, Dryers, etc can be checked if they are to be included. There should also be a line where we can briefly describe the make/brand, whether it's stainless steel, front-loading, etc.
273.		E-2 Has this section been compared to the 3 MLS input sheets since this form can know autofill from many MLS fields. It may also be worth checking on whether there is a developing RESO compliant data dictionary for these terms. I can also see we might want to include instructions to put the number of each item rather than a check box since many homes have multiple devices. Again research on RESO compliant standards might be indicated.
274.		E-2. Why delete "water heater"? Almost all properties include a water heater and this is very rarely deleted. Photovoltaic System – how many panels? (owned system) -- owned outright or owned but financed? What happened to "Automatic Garage Door"? This is often included. Is this fully covered by Paragraph F-12? Change "Range w/Oven" to "Range With Oven". Avoid abbreviations generally. I feel that the current version with Microwave, and Microwave Hood, and Range, and Range Hood is better than the current proposal which is too detailed. Do we really need Cooktop? Cooking type items are split up by being alphabetized. Perhaps they could be subgrouped. "Seller shall not replace any inclusions without written consent of Buyer." This would include all built-in furniture, attached existing fixtures, built-in appliances, electrical..." What if one or more of these need to be repaired? Does the Buyer have to consent? I think that the "replace" term is meant to apply to the checklist only.
275.		E-3 should we also incorporate home automation systems which now include centralized monitoring and control units onsite or in the cloud just like alarm systems.
276.		E-3. What if the PV system is financed? Will be financing statement be paid off and released, will the Buyer enter into a new one, etc.? Some companies address PV issues with a separate addendum that goes into more details than this Purchase Contract revision proposal. "Seller shall provide documents for the contracts or leases..." This is awkward. What does it mean? The contract or leases are documents. Contingency on transfer approval at the end of the paragraph -- no termination provision is stated. What about agreements with HECO, power company...? Are they in effect, transferrable, etc.? What about newer systems with battery back-up?

RR201 Purchase Contract Comments

277.		E-4. Is "Inclusions" grammatically correct? Should it be "Inclusion"?
64.	Section F	F-1: What does "recorded in" mean??? How about "with" or "at"?
65.		F-2 Please could we have zipforms not force those awful dates? somehow it used to be easier to change from date to an alpha field . AND, once changed to alpha, could the system please keep it alpha. I know this is zipforms, not form content. Sorry.
66.		F-3: Unilateral right to extend - this will create a lot of problems. Example: seller has arranged for movers/cleaners/etc. and may not be assured that buyer can close. Or, buyer has loan lock and seller's extension takes recordation beyond that lock date
67.		F-3 - does having time frames measured from the extended closing date create a problem for the Buyers Rate lock and funding? It seems that if a Seller "forgot" or didn't want to order the TIR or Survey (which are often times tied to the closing date) The Seller could Unilaterally extend the closing.
68.		F-3 - So the Extension of Closing Date form will change too? ugh.
69.		F-3 I think the criteria that the extension must be for reasons beyond the buyers or sellers control should remain. Otherwise, clients will just extend at will.
70.		F-3(a): I have real concerns about this wording. As it is written now, a party can exercise this right for any reason. It is not hard to imagine buyer's agents immediately upon opening of escrow, exercising this right rather than loose it.
71.		F-3. I noticed that "reasons beyond control" is not included. Does this allow for any reason to extend?
72.		F-3: Extension of the Closing Date... seems 'unfair'. If you go into a contract (i.e. as a Buyer) and you request a 15 Day Extension in this section. The Seller, to really screw with the Buyer, could opt for a 2 Day Extension... and, therefore, fully eliminate the ability of the Buyer to claim the 15 Day Extension that was so important to him/her in the first place.
73.		F-3: now need to check what is filled in on H-4(b) because if tied to closing date, then you are also giving an extension to loan commitment. Add "IF a party fails to perform by the extended Scheduled Closing Date, such party shall be considered in default and the other party may elect to terminate this Purchase Contract pursuant to Paragraph O-1."
74.		F-4 This transaction shall be escrowed by: Escrow Company _____ Branch Office _____ Escrow Officer _____
75.		F-4 PLEASE CHANGE " In a timely manner" to a blank space for a # of days or simply state " by the next business day. "In a timely manner" is WAY Too Open to interpretation.
76.		F-4: What does "promptly execute" mean . .
77.		F-4: I would like to see an additional paragraph added here captioned as "Title Insurance; Title insurance is for the sole benefit of the buyer. The buyer hereby selects _____ for their title insurance policy." This is a very common practice throughout the country and recognizes the separate but related functions of escrow vs. title services.
78.		F-4: Perhaps add fields where we can input the escrow officer, phone number, email, address, and fax.

RR201 Purchase Contract Comments

79.		F-6 Closing costs for buyer should include: Homeowners Insurance and flood insurance if applicable.
80.		F-7 Parenthesis after blank needs to shift to the next line
81.		F7 - the () for one of the items (written notification to escrow) spans two lines and may be confusing or even difficult to fill in
82.		F-7: Can this result in a credit???
83.		F-7: Spoke with Escrow and they said 15 days prior to recordation and not needed 15 days after acceptance. So, is Buyer in default if needs to change to other than Buyer's principal residence IF not informed within 15 days after acceptance? It may be that they need to add additional buyers and now need to change it to investor due to qualifications later....
84.		F-11 Possession is not ownership. Ownership of the property shall transfer to the buyer upon recordation. Possession is addressed in N. This is confusing if you don't change it here. It is not the same thing.
85.		F12 Keys: Says that Seller will cover cost for one set of all keys. But then it says that Buyer will "pay all fees and/or deposits" required.
86.		Section F My biggest bone of contention is why we as Realtors lead the way in confusing the consumer by mis-use of the word "closing". Everywhere in this document except when discussing the completion of a mortgage we should be using "recording" NOT "closing".
87.		Why delete garage door opener? It is not prudent to assume this is included with "key delivery" for a home with a garage and/or a condo with secure garage.
278.		F-1. Closing. Seems too wordy. Suggest short to: For purposes of this Purchase Contract, "closing" shall be the date when all appropriate conveyance documents are recorded in the Hawaii Bureau of Conveyances. (The rest of it is quite redundant.)
279.		Under F-3 assume a 15 day unilateral right to extend. As a seller I want to cut that time down; so all I need to do is immediately after acceptance unilaterally extend the contract by 1 day and I have accomplished my goal. The buyer is no longer able to take advantage of any significant extension even for reasons beyond their control. Further given that no reason needs to be given if the buyer is fast enough they can also go in and immediately extend by 15 days. At minimum both parties should be allowed at least one extension.
280.		F-3 (a). Why delete "for reasons beyond ... control"? Now it is just a completely free right to extend? This is a major change. Members will need to be educated about this carefully. If the blank is filled in with "TEN (10) DAYS" and one party extends ONE (1) DAY, or even ONE (1) MINUTE, then neither party can further extend unilaterally. The remaining NINE (9) DAYS are gone. Is this intended?
281.		The two lines below Escrow could be flush left.
282.		F-7. Don't split the () on line 5 and 6. 15 days default after the Acceptance Date could be too quick – could need more time.
283.		F-7. The penalty provision herein seems questionable. The buyer is penalized for a change reported that may be beyond their control and unanticipated. As long as it is reported to escrow prior to recordation, I don't see the harm. I really don't believe any Seller will not want to sell their property due to the status of the Buyer as one or the other, in spite

RR201 Purchase Contract Comments

		of the extra cost due to non-principal purchaser. This is especially true on multi-million dollar homes, where owner occupancy is a rarity. Please rethink the ramification of this penalty.
284.		F-11 use a check box for "closing" and a second checkbox for "subject to occupancy agreement" (late or early)
88.	Section G	G-2 (a) (ii) Equity sharing agreements and buy -back provisions may be recorded as running with the property and carrying to the new Buyer. While the first Seller may be released, the new Buyer may inherit the encumbrance.
89.		G-2 (a) Please change " Seller is owner of the Property" to " Seller is owner or Authorized person" . Many properties are sold by Trustees, LLC, Corporations where the individual signing is not the actual owner, but rather the Authorized Signatory.
90.		G-2: appears to contradict G-1, Seller is to have property FREE and CLEAR of ALL encumbrances. There is a period (.) and so there needs to be a (:) or (;) so that it is connected to the i) and ii). As to ii) equity sharing, buy-back provisions, repurchase rights that may run with the property and not the Seller due to the program/time requirements with the development - how is this removed?? Why are you deleting, "Unless otherwise agreed by the parties in the purchase contract," Buyer may agree to assume the mortgage/agreement of sale/etc. and in short sales or REO's, Buyer may need to pay past due maintenance fees (6 months), etc.
91.		G-3 " Page 15" should be corrected to "page 14". Buyer signs on Page 14.
92.		G-3 Does a business entity not need to provide some sort of documentation verifying the business and its owners? It would be helpful to list that here just like you list the trust.
93.		G-3 Vesting - no place does the contract address assignment of contract
94.		G-3: "The Buyer" is singular so verb should be singular. Also, does this paragraph now make initials on each page unnecessary?
95.		G-3: I liked it the way it was...
96.		G-3: There are times that all parties do NOT initially sign Page 15 at the time of the offer so what do we have this? H-1: why the reference to O-1 here for balance of down payment which is required by B-2 and not referenced at all in B-2 as an issue of concern? Understandable for ALL CASH but if subject to financing or other combination, does not make sense. Add to Failure sentence "and Seller may elect to terminate this Purchase Contract pursuant to Paragraph O-1."
97.		Section G Really like this! Make them prove they have the right to be signing.
285.		G-1 Does this comport with escrow practices? I personally would want to see all incumbrances, especially those that might indicate a short sale or other lien that could possibly delay a sale.
286.		G-2 (c) changing the wording from does not to unable reintroduces the argument over what unable means and who defines that word. i.e. Does a \$70,000 expense out of \$60,000 net proceeds constitute the inability to correct the deficiency when the seller has \$100,000 in their checking account. "Does not" is clear and concise with no arguments.

RR201 Purchase Contract Comments

287.		<p>G-2. The format of (a) with (i) and (ii) is not properly done. It might be better to state: "Seller agrees to convey the Property at closing with warranties vesting marketable title in Buyer, free and clear of all liens and encumbrances EXCEPT easements.... (continue with list)...., all as generally described in Paragraph M-1. (ii) Could be stated as (i), but the language "Unless otherwise agreed by the parties in this Purchase Contract" must be stated. Some of those items could be assumed or transferred.... (b) Title Defects. What are "reasonable efforts"? Would it be reasonable for the Seller to have to spend \$1,000,000 to cure a defect? What is the standard for "unable"? I do not know the answer to these questions.</p>
288.		<p>G-3 While the Buyer may be the person who is legally obligated to complete the sale the vesting can be someone wholly different. Who the property will be vesting in can often determine the outcome of a negotiation. Particularly where there is a PMM or one person signs the sales contract but the property is vesting in two or more people or there is potential property flipping where the buyer never takes recorded ownership in a hot market.</p>
289.		<p>G-3. Change "The Buyer" to "Buyer". If Buyer does not provide title and tenancy within the specified time period, is Buyer in default and can Seller terminate pursuant to O-1 and declare default?</p>
290.		<p>Section G. Please have your legal counsel review this Section very carefully. Please also seek the input of the local title and escrow companies regarding the specific language changes. These involve sometimes complex legal issues.</p>
98.	Section H	<p>H-3(b) - does the "ender fails to fund prior to closing" need to remain in the PC?</p>
99.		<p>H.1 VOF : Please allow Realtors the option of checking more than one box. Buyers often have multiple accounts in which their down payment money exists.</p>
100.		<p>H-1 Please add (after [] Verification from Depository Financial Institution) [] Verification from Lender H-2 Change . . . "in accordance with Paragraph D-2" to "Paragraph B-2"</p>
101.		<p>H-1 "constitutes default" but doesn't say what happens, for example does O-1 control?</p>
102.		<p>H-1 (a) The clause referring to "If Seller is not satisfied with such evidence of cash funds, Seller may elect within ---- days of such receipt..." is not beneficial to either parties, I think it this part should be included in the acceptance of Purchase Contract if Seller is not satisfied with such evidence, not after the Purchase Contract has already accepted. That way it save everyone time and disappointment.</p>
103.		<p>H-1. Maybe state Failure of Buyer to make ANY of the Cash Payments agreed to in this PC shall be a default (that includes the 'Initial Deposit').</p>
104.		<p>H-1: Add the following sentence to the end of the paragraph "Seller may elect to terminate this purchase contract pursuant to paragraph O-1."</p>
105.		<p>H-2 Must allow for a date ___ when the funds will be withdrawn or available in a bank account and allow for explanation, and if funds are not available as of that date, seller has the right to cancel. Not as</p>

RR201 Purchase Contract Comments

		currently written....if buyer is ultimately unable.... Just give us a due date and if buyer can't perform within the time O-3 applies.
106.		H-2(a) can you clarify. "if seller is not satisfied with such evidence of cash fund" what is the standard of not satisfied. (color of ink, the type print, etc.) This is similar wording as in preliminary title report review. In the title report review a buyer does not have to say why he is not satisfied with the title report all he has to say is he is not satisfied and he can terminate the purchase contract under O-2. So does the Seller have the same right in the purchase contract because they are not satisfied with the proof of funds? Does the seller have to give a reason or just say I am not satisfied? I can see a seller getting a better offer after and using H-2 (a) to get out just by saying I am not satisfy and then terminate the contract using O-3 just to accept a higher offer.
107.		H-2: need one more blank line for Other (c) Change D-2 to B-2.
108.		H-3/4: Where's the part about how many days buyer has to fill out the loan application? What??? Why change this..
109.		H-4 (a) Extra spaces after "Buyer is obligated to deliver to Seller by . . ."
110.		H-4 (b) as written exercising F-3 automatically extends the conditional loan approval date - is that the intent?
111.		H-4(a) should start some interesting conversations for people who pick "without lender..."
112.		H4) "with or without lender document review" feels unclear. Which documents, credit score? Taxes? Application?
113.		H-6: Why is this deleted?
114.		H-6: Why was this deleted?
115.		Section H We are opening a can of worms giving the Seller to right to cancel just over the form of the proof of funds. With multiple offers I can see a creepy Seller using it to take a higher offer that comes along after acceptance. I'm not sure its worth the space to have check boxes for the form the proof will be. Sometimes client doesn't know which route they are going to go when writing the offer. I've had many think they will send a copy of an account only to have their banker caution them about the security of that and then the banker writes the confirming letter of proof. Will that require my contract to be amended?
291.		A useful addition to H-2 could be c (iii) Should buyer elect to cancel under paragraph H-2 (c) buyer and seller agree that \$_____ of deposit is non-refundable and shall be released to Seller.
292.		H-4. Buyer is first obligated to provide a "Pre-Qualification Letter". Then, below, there is a reference to a "Pre-Approval Letter". Doesn't this need to be identified above too?
116.	Section I	I-2 and I-5 cause the most issues....
117.		1-3/4: Why is a written receipt necessary? Once the buyer's agent receives the form on behalf of their client, an email confirmation should be enough confirmation for both parties. Or, the buyer's initials can acknowledge receipt.
118.		Another item that is appearing in multiple firms standard addenda addresses the updated disclosure requirement in I-2. In discussing with several attorneys, there seems to be disagreement in what is needed when additional disclosure items are discovered by the buyer or seller (for example with the buyer's professional inspection report). Some

RR201 Purchase Contract Comments

		<p>have argued that when the buyer becomes aware then that is an updated disclosure. Other attorneys state that the seller must prepare and deliver a formal document titled: Amended Disclosure Statement. Perhaps something in the Paragraph I-2 can be inserted to provide guidance or could include language like this providing automatic updated disclosure as items are discovered: a. Amendments to Disclosure Statement. Purchase Contract Paragraphs I-2, I-4 and I-5 are hereby amended under the following terms and conditions. If the Buyer becomes aware of information that was not previously disclosed or that information in the Disclosure Statement is inaccurate and said information directly, substantially, and adversely affects the value of the Property (called "Later Discovered Information") then such information shall automatically be deemed Amended Seller's Disclosure Statement upon receipt of such information by the Buyer. The Later Discovered Information may come from many sources including, but no limited to, reports, inspections, inspection reports, termite inspection reports, public records, title reports, surveys, and items described in Paragraphs F-8, G-1, I-8, J-1, K-1, K-2, L-2, M-1, N-1.</p>
119.		<p>I would like to see under Seller Disclosure that: Reports provided to Buyer such as Home Inspection, Termite Inspection, M-1 Documents do not require a re-disclosure by the Seller, and do not trigger a need for Seller to re-disclose if buyer provides them reports that include information that they are not previously aware of.</p>
120.		<p>I-1 " Investigation, research" should be deleted. Seller discloses to the best of their knowledge. Seller is not required to Investigate and research.</p>
121.		<p>I-1 "or at Sellers Direction" The intent seems resonalble that someone with a disability or language barrier would direct someone to fill out the disclosure. It should be made clear the the Realtor may NOT be directed to fill out the SRPDS.</p>
122.		<p>I-1 (b) (1), (2) and (4): Insert the word "Material" before the word "Fact".</p>
123.		<p>I-1 Consider adding (5) Facts know to the seller's agent or broker</p>
124.		<p>I-1 Is not clearly written. Consider moving ""and under common law" to just after "as amended" or at the very least close the bracket () to separate it from the explanation item (1) & (2).</p>
125.		<p>I-1(1) one to four dwellings (omit "from")</p>
126.		<p>I-1. I'd personally love to see the SRPDS have to be done in less time than 6 months old. I just think that is a very old disclosure and should be newer.</p>
127.		<p>I-1: The use of the term "under common law" is going to cause some confusion and will be subject to a variety of interpretations as used in this context. I would suggest we either delete this language or provide greater clarity to mitigate the urge of agents to adopt their own interpretation.</p>
128.		<p>I-1: Why don't we clearly state that the "Seller is to deliver the "Sellers Real Property Disclosures" vs "Disclosure Statement"... Unless the name of that form is being changed to "Disclosure Statement"?</p>
129.		<p>I-2 " ... by no later than 12 noon of the last business day prior tot he recorded sale of the property" should be change to " by no later than the day before"</p>

RR201 Purchase Contract Comments

130.		I-2 It is ironic that you continue to hold the seller responsible for reports they don't procure or read, and that a seller has 10 days to notify of a defect or new info. I would propose no more than 7.
131.		I-2(a): 1st sentence - ". . . and said information directly, substantially, and adversely affects the value of the Property)" - close parenthesis needs to be removed.
132.		I-2(a): Too late to pull a recordation.
133.		I-3: Change I-3 to this paragraph or M-1 (two areas)
134.		I-3c and I-4: 15 days is too long. Buyers do not need 15 days to review a five page document.
135.		I-4. Could we make capital letters for "or" in this language that leads into the words "contains an inaccurate assertion"? It would help to emphasize that a Buyer can cancel even if the Seller will not amend the SRPDS.
136.		I-5 you don't clarify who is responsible for issuing an amended disclosure or require the buyers broker to at least advise the listing broker that a new material fact has been discovered. They can just cancel without any communication. I think the buyer should be asked to notify seller within ___ days (5 if left blank) of the discovery of an undisclosed and/or newly discovered information
137.		I-5: delete I-3 since it does not involve the Seller
138.		I-6 Change "Paragraphs I-8 (a) through I-8 (i)" to "Paragraphs I-6 (a) to I-6 (k)"
139.		I-6 k) Also include volcanic activity.
140.		I-6 shouldn't lava flow be on that list?
141.		I-6(i): Federal law may require that Buyer be provided - does this mean that SELLER to provide?
142.		I-6: Change "Paragraphs I-8(a) through I-8(k)" to read "Paragraphs I-6(a) through I-6(k)".
143.		I-6: Change I-8(a) and I-8(i) to I-6(a) and I-6(i)
144.		I-8(b) is very good
145.		I-8(k) I asked Ethel about this because I represented HAR at the climate change workshop and I serve on the OEQC. This is a good start but I'd like to hear the background on this language so that I can put the best face on this for Realtors in general when I'm dealing with the climate change folks.
146.		Section I as the chair of GAC the year we finally got 508D passed and involved in the many changes since I read this several times to try to understand what SF is doing here. The business of additional disclosure and it being referenced in so many other sections is still very messy and difficult for most practitioners to manage. I get calls frequently from brokers on this because I teach the PC.
293.		Section I. Please have your legal counsel review this Section very carefully. This Section generally addresses the 508D disclosure requirements. Section M addresses the document provision aspect of this. It would make more sense for these Sections to be consolidated, or at least side by side (one after the other).
294.		I-3 By adding paragraph (c) this puts the right to rescind date in conflict with the statute and I-4 which specifies the earlier of number of days or Discovery.

RR201 Purchase Contract Comments

295.		I-3. (a) refers to "I-3". I do not think it should (this paragraph is 1-3). I believe it should refer to I-1, I-2, or M-1. (b) refers to "I-3". "I-3". I do not think it should (this paragraph is 1-3). I believe it should refer to I-1, I-2, or M-1.
296.		I-5. Refers to "I-3". I do not think it should. I-3 is a Buyer's paragraph. I believe it should refer to I-1, I-2, or M-1.
297.		I-6 (k) Would recommend deleting websites over which we have no control or the links could change or be outdated. I note we do not provide links to the EPA or FEMA sites. We don't even provide links to the statutes. The information and the way to get to that information often changes.
298.		Paragraph I-6 (a). Line 5. After "Paragraph G-2(a)(i)" add "and Paragraph M-1".
299.		Paragraph I-6 k) Line 3, after storms, add "storm surge". After landslides, add "sinkholes, erosion, volcanic eruptions, lava flows, lava tubes, volcanic gas and ash emissions,"
300.		Deletion of old Paragraph 1-7. What if the Property is not "residential" as defined in 508-D? For example, what if it is vacant land? If so, shouldn't I-7, in some form, be included? The Purchase Contract appears to apply 508D requirements upon all properties for which the form is used, without consideration of whether the statute actually applies to that specific property. This is probably a good idea, but the concept is not explained or any other option given. For a property that is not covered by 508D, a material fact disclosure obligation exists in some form, but not necessarily under the scheme/structure/timing set forth in 508D.
147.	Section J	J-1 like the added language
148.		J-1....If buyer does not approve of inspection and within 7 days of inspection a written agreement is not obtained then the seller may cancel this escrow....
149.		J-1: Although the Inspection Period is mentioned: 1. If the buyer is requesting repairs, when do they submit the repair request? 2. How many days does the seller have to respond to the repair request? 3. If there is anything that the seller has refused to address, how many days does the buyer have to respond to the seller or cancel the contract? It would be very helpful to have a standard form for the repair request and the seller's response.
150.		J-3 Extra common just after 'Paragraph J-1'.
151.		J-3 Please create a standard J-3 Walk Through form.
152.		J-3: Add E-3 since they should maintain even if not owned
153.		J-3: When does the 2nd walk thru have to been completed since it just says prior to closing and then the following sentence just says if not in the specified time period, Buyer will have waived this right. What about the right of the 2nd walk thru?
154.		J-4 If a loan is involved, it is my understanding that the buyer can not get funds paid out after closing. This would change the Closing Statement by the lender and cause closing delays.
155.		J-4 Please check if possible to insert "0" in the blank (the current form does not accept the number "0" in the second blank)

RR201 Purchase Contract Comments

156.		J-4 Nice try with the word immediately but this is a case for training of agents when presenting offers to Sellers to realize that they are pre-agreeing to 150% of cost to be withheld
157.		J-8: Removal of items should preclude any unilateral extension of closing date.
158.		J-8: Requiring the Seller who owns the property to vacate prior to closing based on whatever number of days the Buyer puts in this blank. This is serious issue. Where are they supposed to put their items? Guess one would be using the unilateral right to extend.....
159.		J-8: Change to read "Seller shall remove all remaining personal belongings from the Property prior to closing.
160.		J-9 Change "J-5" to "J-4"
161.		J-9 - Should reference J-4, not J-5 (typo?)
162.		J-9 (a): Add a term for a cleaning credit as an alternative
163.		J-9 Cleaning. Looks like if the cleaning is not completed, reader is to reference J-5? Seems in error as a reference location.
164.		J-9 If we are going to do check boxes why not have a check box for professional cleaning or Seller/self cleaning not just pro carpet cleaning.
165.		J-9 you say it has to be cleaned but nowhere does it say the seller has to be out to keep it clean. Last year a seller insisted on staying after it was cleaned and called to confirm with the state that this was legal since it is not specified in the contract. How can it be clean if they continue to use the property?
166.		J-9: Change to "interior of the improvements on the Property shall be professionally cleaned".
167.		Delete extra ", "on 3rd line
301.		Paragraph J-1. End of first paragraph, change "rights and timelines" to "rights, obligations, and timelines".
302.		Paragraph J-3. There is a double ,, on line three. Line 10, capitalize first letters of Final Walk Through.
303.		J-4 Is it still our understanding that releasing withheld funds to a buyer in a standard loan scenario constitutes loan fraud? If so, perhaps there should at least be a checkbox option so release to buyer can still be done on cash sales and an alternative checkbox for when it is not allowed along with a caution note about loan fraud.
304.		Paragraph J-6. Why delete the recommendation?
305.		J-8 Should a buyer have the right to enter the property and dispose of or keep items prior to closing? Not sure I agree on that. Who pays the insurance claim when they injure themselves while cleaning the property before closing?
306.		Paragraph J-8. No time period stated for Seller's removal of personal belongings – a certain number of days or by closing? At the end, "J-4" should be "Paragraph J-4".
168.	Section K	K-1 & K-2 __BUYER or__ Seller Please add option for BUYER to pay for Staking or Survey.
169.		K-2 Add " survey does not address ownership of the improvements"
170.		K-2, K-3, and K-4 should each have a box to N/A the whole paragraph (for condos or if K-1 is N/A for any reason).

RR201 Purchase Contract Comments

171.		K-2. What does the "vicinity of the perimeter property lines" mean? 1 foot, 10 foot of the line or maybe within the properties "Setback Line"?
172.		K-3 Is unclear and confusing, appears to give buyers the right to cancel whether or not there is a discrepancy in the survey. Since surveys are usually ordered AFTER other contingencies have been released, this would appear to invite capricious 11th hour issues.
173.		K-3 should be modified so that Buyer may not cancel if encroachments(if any) fall into De minimus.
174.		Section K very good, much better to use from acceptance than prior to closing/recordation.
307.		Paragraph K-2. After ... "and restrictions", add "and restrictions; easement provisions or requirements;".
308.		I think I would like to see K-3 with a check mark. Seller's should have a negotiated right to correct the encroachment as has been customary. Buyer's still have rights under additional disclosures
309.		K-4 While I am fine with the wording on setback violations in K-2, if they are found perhaps they should be covered under K-5. Simply adding "and setback violations" into the sentence would accommodate this but would have no effect where setbacks were not identified in a survey.
175.	Section L	in L2, I think you need another word after "preventative". Your changes have it end there. The word "maintenance" used to be after it.
176.		L-2 page 15, line 5, "which shall" seems incomplete.
177.		L-2 did we check with VA lender to see if Buyer is allowed to pay for that termite update? I don't think so.
178.		L-2 Incomplete sentence "..... which shall not include preventive." Should be preventive treatment.
179.		L-2 Insert the word "Maintenance" after "prevenative"
180.		L-2 Termite Inspection Contingency. If Buyer selects the licensed pest control operator, then said Buyer's Agent must contact said pest control operator and schedule the appointment because said appointment is based on Agen'ts and Client's schedules, if they want to be present during the inspection. **Recently, I represented the Seller, and I contacted the Pest Control Operator to schedule the Termite Inspection, according to the Purchase Contract. Said Operator keeps telling me he will call me back. I finally contacted the Buyer's Agent to contact the Operator because the appointment is based according to their availability if they want to be present during the Termite Inspection. Buyer's Agent keeps telling that it was my duty to schedule the appointment based on L-2 of the Purchase Contract. I told the Buyer's Agent that the Operator is not returning my calls. I told the Buyer's Agent to call and schedule said Termite Inspection. It took one week to coordinate such a simple task because Buyer's Agent is following L-2 verbage. Language should states "SELLER OR BUYER" SHALL ORDER THE TERMITE INSPECTION AND TERMITE INSPECTION REPORT FROM THE SELECTED OPERATOR.
181.		L-2: Add "measures" after preventive.
182.		L-2: can that be changed to sellers only
183.		L-2: Change to read : "which shall not include preventative measures." The current reading ends the sentence with an adjective.
184.		Section L. Since we are now using "after acceptance" I can see arguements over whether the day of acceptance is counted or does

RR201 Purchase Contract Comments

		one start counting the next day when putting contingencies onto a calendar/timeline.
310.		L-1 Termite Inspection. At 2nd sentence, states "highly recommended", whereas in other sections, uses "strongly recommends". For consistency, I would use one or the other, though favor "strongly" as this is unarguable. "Highly" could be a recommendation after smoking pakalolo (medical use, of course...lol).
311.		Under L-2 Change second sentence to "...Should the party who chooses..."
312.		Paragraph L-2. Line 4, change "time" to "time period". Last paragraph, "preventative" what? Don't you need the word "measures" or something? What if the Seller fails to provide the "preventative"? Don't you need to state a Buyer's right to terminate?
185.	Section M	We were under the impression from several board speakers that Paragraph M-1 was not optional but it appears that a new selection box has been added. Perhaps HAR could provide guidance as to when this Paragraph is not applicable.
186.		Could the 1031 exchange paragraph, section M-1, of the commercial purchase contract, be included in the residential contract?
187.		I like that M1 is part of the condo document section but I would rather buyer is not to dictate how aoao will deliver the docs. on appliance replacement, shouldn't you just say replaced with like kind and if it was replaced, isn't it just an updated disclosure whereby if buyer doesn't like the new appliance or floors, they have the right to cancel. seller cannot be forced to move out when final walk through because seller is still paying his housing expense, its ok if the unit is vacant. the whole document needs to use consistent language throughout.
188.		M section: Lenders Disclosure should not be required of the seller. Many companies providing condo documents charge extra for this document which is primarily the same information as the RR105c just in a different format. And it is solely for the lender! This should be paid for by the buyer if there is an extra charge if provided at all.
189.		M-1 Most lenders do not require the Lender's Disclosures and this is an extra charge for the Condo Docs. Request that this be removed as a mandatory Seller document
190.		M-1 (b) Add " Condominium Map and amendments"
191.		M-1 Mandatory Association Documents have a (X) space indicating they have now become optional
192.		M-1(b) Change " To the extent that they exist and are obtainable" to " ... If available through the AOA or HOA designated source for documents."
193.		M-1: can that be docutrieve complete package instead of listing all of the documents. Can it also be made mandatory to include a mandatory \$10 cd and not an option
194.		M-1: Delete check box option. It is a Mandatory Provision. (a) Add the heading "Properties Subject to a Recorded "Declaration"" change word "possible" to "applicable" as stated in the law. correct the order of (2) and (3) to follow the law, it currently (3) and (2) Remove the (5) in parenthesis. It is NOT a part of that section but an entirely different property reference section: Use the heading "(b) Properties Subject to

RR201 Purchase Contract Comments

		Restrictions or Conditions on Use" Add "(a) i to the G at the end of the sentence. Change existing "{b}" to "{c}" and Use the heading "Condominium/Cooperatives/Subdivision/Homeowner/Community Association Documents" Delete "Seller shall provide Buyer the following documents to the extent that they exist and are obtainable" Change to "Seller shall provide applicable documentation to Buyer as set forth below:" The only "un" obtainable document has been the RR105c because it is not mandatory by law and it is up to the Property Management Company but the other documents would be provided, IF APPLICABLE. Change existing "(c)" to "(d)" and delete the "e" in acknowledgment. Change existing "(d)" to "(e)" Delete "Upon receipt of the documents provided pursuant to HRS 508D Buyer shall have _____ () days [or fifteen (15) days if left blank] to rescind and terminate the Purchase Contract pursuant to Paragraph O-2." Replace with "If Buyer is not satisfied with the documents provided, Buyer may elect, within _____ () days [or fifteen (15) days if left blank] of Buyer's receipt of the documents, to terminate this Purchase Contract pursuant to Paragraph O-2." Change existing "(e)" to "(f)" Delete "rescinded or" and "rescission or"
195.		M-1c: state document delivery time in BUSINESS days after acceptance. The companies that supply the documents work in business days and 95% of our agents don't allow enough time when weekend days are included in the delivery timeframe.
196.		M-2 Delivery of Documents. 99% of the condo/association documents are electronics delivery now. You pay on line and they send you a link to down load. No such thing as CD or DVD as most of the computers nowadays don't even come with these drivers. I think that this paragraph needs to change to that documents are to received via electronically unless otherwise specified or requested other formats other than email electronically
197.		M-2: leave it the way it was... Electronic delivery is fine.
198.		M-2: Delete "(a)" since there is no "b" Delete new language and replace with original M-5 language taken from the law and use with Heading "Electronic Delivery of Documents" Logically, in submitting the offer, the Buyer does NOT know which form the Management Company/Seller will be providing the documents so no appropriate box would be checked.
199.		M-3: Add the following to the end of the last sentence "and the buyer's rights under paragraph I-4 shall apply."
200.		M-3: Delete "(a)" since there is no "b" Add to M1 (a), (b) and "(c)" since correction made to the numbering.
201.		M-4: Delete "(a)" since there is no "b" Q. can put a "[]" in front of the SPECIAL TERMS
313.		Section M Do we need to define what a "recorded declaration" is in our training material?
314.		Paragraph M-1. Delete the [] It is a mandatory paragraph. (a) Add the heading: "Properties Subject to a Recorded Declaration." Change "HRS" to "Hawaii Revised Statutes". Change "508D 3.5" to "508D-3.5". (Generally, you are using the dash format). At the end of (a), the language "to the extent possible" does not appear in the statute. If you are going to state "in accordance with" the statute

RR201 Purchase Contract Comments

		<p>then you have to be very accurate. You do not want to suggest a less strict requirement by contract than is required by law – the law controls. Subparagraph (a) and items (1) through (4) reflect 508D-3.5 (a). Item (5) reflects 508D-3.5 (b), which is not a subset of (a) and stands on its own. Item (5) should be (b) and the remainder of the paragraph should be re-lettered. (b) applies even if there is no “recorded declaration”. In other words, (b) applies even if (a) does not. This is very important and could be misleading unless separated! This is a legal issue. For this new (b) add the heading: “Properties Subject to Restrictions or Conditions on Use.”</p> <p>Paragraph (b) in page 11, includes “Subdivision and/or title documents”. Do you intend these to be provided for all transactions? What are these? Are you creating a broad obligation? What if a transaction closes and the Buyer was not provided “Subdivision and/or title documents”? Can he then sue? These terms used to make sense when there were boxes before them. But when 508D- 3.5 became law, the Purchase Contract was revised and the boxes were removed. So all the potential inclusions, if checked, became mandatory inclusions.</p> <p>Paragraph (e). Rescinded or terminated pursuant to what? What if the Seller terminates pursuant to some terms of the contract? The word “agent” should be “Brokerage Firm”.</p>
315.		M-1(c) change to “...with a written acknowledgement of receipt within () days of receipt.”
316.		Paragraph M-2. At the end of the second line, change “or” to “and/or”.
317.		Paragraph M-3. Does the provision of “additions... amendments” retrigger M-1(d) – Buyer’s right to rescind or terminate? I personally believe that M-1 appropriately includes “any amendments or supplements” and that this requirements applies until closing – giving the Buyer the right to rescind each time. Again, this is my personal view.
318.		Old Paragraph M-4 (Common Element Discrepancies). Did this go somewhere else, or was it just deleted? Perhaps there should be a general Condominium Addendum (or something similar).
202.	Section N	N-2 Add "Other" with a blank space after Short Term Rental Vacation Rental Reservation(s) and delete "Seller shall also provide copies of the following documents and information, if obtainable"
203.		N-2 is messy .
204.		<p>N2. This is confusing. Firstly, as a property manager, our management agreement with our client (i.e. the seller) is a confidential document (contract) with information that may only apply to that individual and not to some other owner's situation We never give that to anyone (but I suppose with the seller's written permission one could) What we do provide is a blank contract so that the buyer can see what our contract entails, and then they can decide if they want us to continue managing or find another prop. mgr. I strongly disagree with a property manager being mandated to provide a copy of a management contract to a buyer, whether we're the selling broker or not.</p> <p>Additionally, we may have had a contract with a given owner for 10 or 15 years. We may have revised our contract since then but not required this "old client" to sign a new one for reasons that require no</p>

RR201 Purchase Contract Comments

		<p>explanation. So, if we gave that contract to a buyer it would not give them accurate information. Please explain why you think this is necessary. Security Deposit Statement? If the rental agreement is from standard forms, the amount of the deposit and where that deposit is, is plainly stated in the rental agreement. This should be optional and only required if some individual seller is the landlord and/or there is no written lease. The item "Short Term Vacation Rental Reservations" is redundant. The words "short term" and "vacation rental" mean the same thing.....that you don't have a 180 day or more lease agreement. Vacation Rental Reservations is sufficient and more professional than "short term" You could use the legal term "transient accommodation" which also means the same as the 1st two! There are a lot of people who truly do not understand that those 3 phrases mean exactly the same thing.</p>
205.		N-3: Add a check box (to make it applicable or not)
206.		<p>this phrase "and may want to retain them prior to closing" could be changed to "and may want to arrange to retain them upon closing" because - you can't sign a management contract until you own the property. Retain means to hire them, to sign a contract, to pay a fee (reserve fund). This is important</p>
319.	Section N	Paragraph N-2. Should "them" be "it"?
207.	Section O	<p>O-1 This makes no sense. Of course O-1 applies to paragraphs where O-2 has been designated. Designating O-2 is what's wierd. O-1 and O-2 are the same thing except one explains when cancellation is within the time period and one explains what happens if the time has lapsed. They are not different termination conditions. O-3 is a different termination. This has always struck me as odd. O-1 should really have two sub-paragraphs: a-cancellation within time frame, b-cancellation when in default</p>
208.		O-2 and O-3 still need clarification -- the way they are written it's not clear what would trigger these two to go into effect.
320.		Section O. Please make sure that your legal counsel reviews and approved of each word of this Section.
321.		Paragraph O-7. Is the term "appropriate state or federal court" too open? How do the parties decide if a legal action should be in the state or federal court? Is the word "appropriate" sufficient to trigger the applicable qualifying requirements of the courts?
209.	Section P	<p>P-1 and P-2: it's absolutely not feasible or realistic to require HARPTA/FIRPTA exemption forms to be completed, submitted and returned within 14 days of contract acceptance. For example, the state takes 10 days to process and return the forms, plus they only accept original copies so originals, by definition, must physically travel from the mainland or other countries. And sellers (or their CPAs) need time to collect data and correctly fill in the forms, and possibly additional time to gather supporting documentation required (like remodel receipts, depreciation schedules, etc.). I like that there's now to be a deadline for this documentation, but let's make it something like 5 days before scheduled COE.</p>
210.	Section Q	I would like to see additional lines under Section Q.
322.		Section Q. Put a [] before SPECIAL TERMS. I think we always thought this was supposed to be there (not on M-1).

RR201 Purchase Contract Comments

211.	Section R	R-6 (a) Is it possible to move this check box into the margin so it is not missed? This is one of the most frequently missed items on the contract.
212.		In nearly every standard form being used by the various real estate companies, we all include a paragraph about the availability of professional Home Inspections and Home Warranties. These paragraphs are a result of the E & O company guidelines. Could we include language and checkboxes in Paragraph R-1 similar to what is being used: Professional Property Inspections and Protection Plans. It is strongly recommended that the Buyer obtain a professional property inspection as well as inspections in specialized areas beyond the scope of standard property inspection services. The Buyer and Seller understand that the Brokerage Firms are not qualified in the area of property inspections and the Buyer and Seller are not relying upon the opinions, advice, warranties or representations from the Brokerage Firms. Buyer is aware that several firms, such as American Home Shield, provide Home Protection Plans that may cover home system components and appliances for extended periods of time. Buyer to complete at submission or at Acceptance of Purchase Contract: Buyer: <input type="checkbox"/> Will or <input type="checkbox"/> Will not obtain a Professional Home Inspection at Buyer's Expense. Buyer: <input type="checkbox"/> Will or <input type="checkbox"/> Will not obtain a Home Protection Plan paid by <input type="checkbox"/> Buyer <input type="checkbox"/> Seller
323.		Paragraph R-1. Near the end. "I-8" should now be "I-6".
213.	Section S	S-2: Can we clarify how we count the days. That is, if the J-1 Period is 10 day, is Day #1 the day that the contract is accepted or is the following day Day #1?
214.		Section S: Why leave Agent's Name instead of replacing with Real Estate Licensee's Name like it is change for the one following the Seller's page?
215.		Sections S and T: For Buyer/Seller's "Title," could we clarify what that means or add "If Applicable"?
324.		Paragraph S-4. Add at the end: "The conveyance document for the Property shall be executed by both Seller and Buyer in original form, with acknowledgments acceptable for recordation." Sometimes Buyers refuse to sign the conveyance document at the last minute, usually because of embassy or other acknowledgment difficulties. For a Seller, this presents some risk.
325.		Near the bottom. Change "Agent's Name" to "Real Estate Licensee's Name" (like in the Seller's area).
326.		Reviewed by. Change "Name of Seller's:" to "Name of receiving Brokerage Firm's"... "Seller's" suggests agency, which may or may not apply.
327.		S-7? It has long been talked about at SFC about adding a "confidentiality provision" to the PC. Section S: General Provisions, seems like the appropriate place to add a provision for such, as it is would be no less binding than S-5 Counterparts, or S-6 Complete Agreement. I recommend some form of the following language (though will have to be debated no doubt): S-7 The parties shall keep all negotiations made, such as price and terms accepted or acceptable, resulting from this Purchase Contract,

RR201 Purchase Contract Comments

		related Counter Offers, and Addenda, STRICTLY CONFIDENTIAL. Any disclosure of any such terms to any parties outside this transaction shall be deemed actionable under Hawaii Law. (I think this is more important than some of the standard Disclosures in Section I-8 (e), and if given a choice, would swap out one.
216.	Section T	Please explain T-3, notification of rejection?
217.		On pg 15, we need a T3--seller rejects without a counter. Also, a signature line for buyer to acknowledge what the seller did. Without that, a buyer does not know if his offer was even submitted.
218.		page 15 'T-3' should be moved under 'T-2'.
219.		Section T Move <input type="checkbox"/> T-3 Notification of Rejection. Hawaii Administrative Rules . . . right below <input type="checkbox"/> T-2 so it is not missed. Seller Status: Move brackets before the item to be consistent with the rest of the form <input type="checkbox"/> Foreign Person <input type="checkbox"/> Non-Hawaii Resident <input type="checkbox"/> Owner Occupant <input type="checkbox"/> Other * Is the Seller Status really necessary to include in the PC? The Buyer would not know the Seller Status -- it would be confirmed by Escrow. This is another item that is frequently missed and the buyer would not know the Seller Status. It should be confirmed in escrow. If the Seller Status remains in the contract, please add a bracket <input type="checkbox"/> before "Seller is a . . ." so it is not missed.
220.		Section T: It is going to blow some Seller PB's minds that they have to sign the PC that they have reviewed it. This is a good but huge change.
221.		T. Why Deletion of Agreement to Pay Commission to Brokerage Firm? Does this mean that the listing agreement must now go to Escrow to authorize compensation from Seller? Escrow says that they need something to show that the Seller agrees to pay.
222.		T-3 appearing below the Seller/Selling Broker information seems lost. Instructions for Section T instruct to Select T-1, T-2, or T-3. Putting T-3 separate/below the Seller's/ Seller's Broker information does not seem to follow form. If the committee is worried about having a signature to confirm Seller's wishes to enact T-3, then Seller signing below that option would convey this selection in a more effective format.
223.		T-3 Great addition..... rejection and listing brokers signature.
224.		T-3 is great. Having both Brokers review leaves room for agents to negotiate terms and not the clients.
225.		T-3 Move this to under T-2
226.		T-3 Notification of rejection. ADD lines for Sellers initials and date.
227.		T3- seller initials or signature. . It is required in other states when seller rejects offer as it confirms the offer was actually presented to the seller.
228.		T-3: Notification of Rejection: HAR16-99-3(j) - Add "If an offer or counter offer is rejected, the rejection shall be noted on the offer or counter offer, or in the event of seller's or buyer's neglect or refusal to do so, the broker for the rejecting party shall note the rejection on the offer or counter offer and a copy shall be returned immediately to the originator of the offer or counter offer." So we will now be noting this on the counter offer form also? It says to be returned immediately BUT what if working on multiple responses before rejection because it may be next in line for countering?

RR201 Purchase Contract Comments

229.		T-3: Rejection. Why is that down at the bottom like that... kinda seems out of place... Wouldn't seller initial next to that then... Please re-think that one... Not saying where it should be, but it's seems off that it's not where T-1 and T-2 are... Can't we just leave the PC the way it is?
230.		T-3: I would recommend that this paragraph be moved to immediately after T-2 and above the signature block.
328.		T-2 Where seller is a FSBO and not represented by a broker how is this handled? Is it left blank?
329.		T-3 Need place to initial and date and a place to write a comment like seller not responsive or refuses to respond. (probably need to review options under license law)
330.		T-3. The actual rejection language is missing (Notification of Rejection appears to be a paragraph title) -- such as: "Seller rejects this Purchase Contract and acknowledges receipt of a copy of this Purchase Contract." The reference to Hawaii Administrative Rules 16-99-3(j) does not make sense standing alone. Are Buyers and Seller's supposed to look it up? If the reference will remain, quote the provision. Is this Paragraph intended to be complete, or is it still a draft?
231.	General Comments	Don't understand page 15 for the review by brokers/signature. Who are you looking for to sign this page?
232.		Additional suggestions for new Paragraphs that are appearing in various Standard addenda: Distressed Property Sale. In the event that the Property is, or becomes, a Distressed Property as defined by the Hawaii Mortgage Rescue Fraud Prevention Act ("Act"), then the Seller shall immediately notify the Buyer and Brokerage Firms. A Distressed Property may include, but is not limited to, properties that are in foreclosure or risk of foreclosure; at risk of or have an existing lien or encumbrance due to nonpayment of taxes, lease assessments, association fees, maintenance fees; secures a loan for which a notice of default has been given or secures a loan that has been accelerated. Legal Kitchens. In general, residential zoned properties allow for only one legal kitchen however some properties in Hawaii may have additional unpermitted and/or illegal kitchens. A kitchen is generally defined as having a heating element (stove, oven, cooktop), sink and refrigeration. The consequences of inadequate building permit status or illegal kitchens may include but are not limited to: required removal of unpermitted items; hazardous and unsafe living conditions; adversely affected property values; adversely affected appraisals and addition loan restrictions. During the J-1 Inspection Period, the Buyer is advised to have experts research the building permit history and conduct a site inspection to ensure compliance. Buyer understands that the real estate Brokerage Firms are not qualified to provide opinions on these matters. Thank you for your consideration of these items
233.		Again I ask that the items with suggested time frames be changed from 15 days to 14 days. We measure time in weeks. The same goes for 10 days to 7 days. I strongly suggest, that the forms be as attachments. Sadly, I could not toggle between the forms and this the response page. Which resulted in me losing extensive comments from my first

RR201 Purchase Contract Comments

		go around. Perhaps other Realtors could toggle between forms and this page, but, it certainly turned off my original response to reply to your call for help
234.		All in all this is the best redraft of the PC I've seen. Thank you for your efforts and energy.
235.		As a transaction manager, I really appreciate the changes to the Purchase Contract. In particular, to Sections F3(a) & (b), K, L and M. In my limited experience, these are sections that were often misinterpreted for a number of reasons. I like the clarity the new verbiage brings.
236.		Considering the scope of this undertaking the committee has done an AMAZING job!
237.		DO NOT CHANGE THE CONTRACT! There is nothing wrong with the one we are using. Why must you change it? Every time you do it adds another page.
238.		general comment - while I am not aware that it has been done for any standard forms in the past, I think that any of our forms would look more "professional" if they were "margin controlled" (i.e., the left hand margin AND the right hand margins always line up vertically, rather than having the right hand margin lines end wherever. I don't know what you call it, but the alignment feature is used by Word, by Paragon, etc. and is quite common in virtually all written documents (books, magazines, newspapers, etc.).
239.		Hard to believe that the current Purchase Contract, which seemed to work fine, required so many changes. IMO, some things that were "fixed" were not broken. By changing the Copyright and Trade Mark notice, does this mean that alterations to the printed form are now acceptable?
240.		I commend you all for really taking the oddities out of the contract! Thank you very much. Just one comment: When I click on the link and open the Draft with annotations the dropdown heading says DROA. :-)
241.		I like the new PC. It seems more streamlined.
242.		I like the revisions. Even though the PC is now 15 pages I think it clearly defines and provides better explanation of the Real Estate buying process. Good job!
243.		I prefer the Annotated version because it clearly points out what is important for buyers and sellers to read, understand and know
244.		I think this would be the time to combine buyer and seller signatures on the same page - page 15. This has been a source of confusion for clients since it was separated
245.		I would like suggest to have the Appraisal value of the property contingency included in the contract. Seller & Buyer agrees that if the property appraisal value is lower than the accepted offer, Buyer & Seller should negotiate, and if one parties donot agree on the price, either Buyer or Seller can cancel the Purchase Contract, with full refund of Buyer's earnest money. Thank you!
246.		In general the changes are great. My personal opinion is that our PC both old and revised is very confusing for buyers because it jumps around the transaction so much. It doesn't take a buyer through provisions from a "get through escrow one step at a time" process. It discusses closing before it gets to a lot of contingencies. If it was

RR201 Purchase Contract Comments

		organized to walk a buyer from beginning to end, it would be much easier for them to understand. I know that would be a dramatic change though. Thanks for all your work on this.
247.		It is too difficult to understand. Put it in simple understandable language. This version has too much "legalese".
248.		Like. Has more definitive choices in several areas.
249.		Looks clean and up to date
250.		Looks great! Thank you so much for the updates.
251.		Mahalo for everything that you do! Please let me know if I can help with anything!
252.		Please be extremely careful to make sure blank spaces can be filled and that blank spaces are not overly long. The fewer pages in the PC the better.
253.		Seller is "owner occupant" "non-Hawaii Resident" etc. Add "Hawaii Resident" to this. Many sellers live here but do not live in the subject property. I see a lot of widowed and orphaned paragraphs, but hopefully when all is done, those will disappear. These break the flow and are very distracting. Thanks for letting me put my 2 cents' worth in. I do have a question perhaps someone could answer it. Is it possible to develop a standard "Satisfaction of Contingency" form?
254.		Separate note, lawyers are filling the Contract with unnecessary verbiage.
255.		Thank you for the great changes!
256.		Thank you so much for your hard work! I love all of the other changes!
257.		The draft form improves on the current contract in many ways. However, the PC attempts too many things at once: (1) codifying promises between buyer and seller, (2) disclosures and CYA from and for brokerages, and (3) generally instructing the parties about real estate matters. The new draft unfortunately does not improve on this defect. A contract should be written as clearly as possible and should only contain codified promises between buyer and seller. Everything else can and should be handled via separate disclosure or instruction forms. By including disclosure and instructional matters, the parties to the contract run the risk of having a court interpret the contract in such a way that some of the disclosure and instructional matters are in fact enforceable promises made by the parties to each other. Such ambiguity harms and does not help the parties, especially when such matters could quite easily be handled with separate disclosure or instructional documents. Examples of confusing language included in the contract include the following: -- "If you receive an email containing wiring instructions or a request for sensitive personal information from someone appearing to be involved in this transaction, you should call them at a telephone number that you obtain from a source other than from the email (for example, the Purchase Contract, their website, etc.) to be sure that you are contacting a legitimate party." This language is ambiguous because of the use of the word "should." Is a party *required* to make a telephone call? Has the party failed to live up to an enforceable promise if the party doesn't make a phone call? This kind of precatory language is dangerous to include in a contract because one cannot predict how a judge or jury will interpret it. To be clear, it doesn't matter how *you* interpret it or mean it; what

RR201 Purchase Contract Comments

		<p>matters is how a third party finder of fact is likely to interpret the document. -- "Buyer and Seller understand that Brokerage Firms have not made any representations or warranties, and have not rendered any opinions about: (a) the legal or tax consequences of this transaction; (b) the legality, validity, correctness, status, existence, or lack of any building permits which may have been required for the Property; (c) the land area of the Property, the location of the boundaries, or the size of any improvements on the Property; or (d) any of the matters set forth in Paragraph I-8, General Disclosures." This language is clearly CYA on the part of brokerages. Why would the buyer and seller need to make a promise to each other with respect to disclaiming the liability of their respective brokerages? The answer is simple: They wouldn't. This kind of thing does not belong in a purchase contract. It belongs in a disclosure or disclaimer form made by and between a brokerage and its client, not here. There are many examples of extraneous language throughout the PC, and it needs severe paring down. Also, the PC has hard-to-interpret timelines and dates. Since the PC is necessarily long, it's very helpful to stack a list of the parties and all deadlines right up front. That way a quick scan of the doc reveals the relevant info in an easy-to-read way. I happened to have occasion a few weeks ago to rewrite the standard PC in a way that preserves section numbers as much as possible while substantially simplifying and clarifying the contract. It does not take into account some of your new changes, but it should look both familiar and radically different. In writing the document, I attempted to adhere to stylistic considerations as called for in "A Manual of Style for Contract Drafting," by Kenneth Adams. You can see the draft document at https://bit.ly/2J7FybH. I offer it as a public service and sincerely hope you adopt at least some of features and provisions. You're welcome to contact me if you have any questions about the choices I made in the drafting process.</p>
258.		<p>With contingency deadlines so important, we need consistency in wording of dates so there is no confusion in counting dates. IE Streamline to After and Prior. K-3 within blank days of Buyer's receipt. Change "of" to "After" receipt. That makes it clear to start counting the day after receipt. Same with I-4 and elsewhere in the contract. Incorrect date counting leads to default or contingency waiver because verbiage is inconsistent throughout the contract and is open to interpretation as to when to count days or what constitutes day 1.</p>
259.		<p>Wow, that is a lot of work. My gratitude and appreciation to you. My comments are meant with the greatest respect for all that you do to keep our forms going.</p>

RR201 Purchase Contract Comments

		Additional Comments
260.	Section A	"Reviewed by" who initials here if buyer is a customer and not represented? Is it left blank?
261.		Reviewed by. Change "Name of Buyer's:" to "Name of submitting Brokerage Firm's"... "Buyer's" suggests agency, which may or may not apply. Could be a Seller's offer. Buyer could be a customer.
262.		Bottom of page. Change "seek legal counsel" to "seek and consult legal counsel".
263.		When revising the Buyer Representation Contract and the Exclusive Right to Sell contract we inserted language to cover dual agency between multiple listings and also between multiple Buyers and at the time it was suggested we also cover this in a like manner when we reviewed the purchase Contract. On that basis, I suggest the following language: Buyer further acknowledges and agrees that Brokerage Firm may represent other Buyers for the subject property, whether such representation arises prior to, during, or after the termination of this contract. Buyer hereby consents to such representation and further agrees that in such a situation, Brokerage Firm shall not disclose to any Buyer the terms or the existence of any other Buyer's offer [unless, absent a purchase contract confidentiality clause, the agent is instructed to do so in writing by the Seller???].
264.		Should NAR Code of Ethics notice be moved to between A-2 and A-2 (a) so that it is adjacent to the checkboxes denoting who is and who isn't a member of NAR?
265.		If a Buyer hands me a deposit check to hold, do I now need a separate receipt? Is it the intent of the Real Estate Commission that we show a receipt for a check? Or only for cash? Is a check considered funds or is it personal property? Paragraph HAR 66-99-4 (d) covers "funds" and paragraph (e) covers personal property. Paragraph "f" suggests that for personal property there must be some documentary evidence... As a wholly separate matter, in the case of Landlord tenant code and rentals, a receipt must only be provided if requested by the tenant.
266.		Bottom of page. Change "acknowledgement" to "acknowledgment". I believe that the proper word, throughout the form, is "acknowledgment". If so, correct this globally. Actually, I believe that the word can be spelled both ways, but for consistency, only one format should be used.
267.	Section B	B-2 Purchase Price, end. Change "additional deposit," to "additional deposit, as specified above," "Initial Earnest Money Deposit" is shown with initial caps as if it is a defined term, but it is not defined above. "additional deposit" is not shown with initial caps. The ways the two terms are shown are inconsistent. Please decide how to treat these terms consistently. The termination provision changed to O-3. If Seller does not terminate pursuant to O-3 within a certain time period, Seller will (probably) waive the right to do so – but Buyer will still have not made the required deposit. That does not make sense. O-1 might be better. Seller could terminate if Buyer does not make a deposit, until Buyer does so. But with O-1, Seller could retain the initial deposit if the default is on the additional deposit. Competing interests.

RR201 Purchase Contract Comments

268.		B-2. Initial Earnest Money Deposit. I don't like that it doesn't have any place to indicate what form of earnest money, if any, the broker assisting the buyer is holding; nor that the blank date leaves a lot of latitude on the part of the buyer and broker to set 5,7, 10 or more days after Acceptance Date before an EMD is due. I suspect there could be a lot of counter offers generated just on that aspect alone. At least the current PC states if the agent is holding an EMD, and what form, or if wired, when it will be done. Perhaps some built-in limitation language (provided to escrow within 4 days of Acceptance?).
269.		B-3 The last phish attempt I had was from a text. It might be worth changing to "email accounts" to "email and texting accounts" and add the word texts to the other locations in the paragraph.
270.		B-3. Make sure that the real estate company that was the source of this language authorizes its use in writing. Email is the only medium noted. Basically, all forms of electronic communications could be hacked: email, text, social media posts, etc. Perhaps the word "email" should be broadened to include cyber crime (see: https://www.fbi.gov/investigate/cyber).
271.	Section C	C-1. You might want to add the Blank Addendum.
272.	Section D	Section D. It is not a good idea to have Sections or Paragraphs that are "Intentionally Left Blank". Maybe you could make "Wired Funds" Section C, and "Addenda" Section D.
273.	Section E	E-2 Has this section been compared to the 3 MLS input sheets since this form can know autofill from many MLS fields. It may also be worth checking on whether there is a developing RESO compliant data dictionary for these terms. I can also see we might want to include instructions to put the number of each item rather than a check box since many homes have multiple devices. Again research on RESO compliant standards might be indicated.
274.		E-2. Why delete "water heater"? Almost all properties include a water heater and this is very rarely deleted. Photovoltaic System – how many panels? (owned system) -- owned outright or owned but financed? What happened to "Automatic Garage Door"? This is often included. Is this fully covered by Paragraph F-12? Change "Range w/Oven" to "Range With Oven". Avoid abbreviations generally. I feel that the current version with Microwave, and Microwave Hood, and Range, and Range Hood is better than the current proposal which is too detailed. Do we really need Cooktop? Cooking type items are split up by being alphabetized. Perhaps they could be subgrouped. "Seller shall not replace any inclusions without written consent of Buyer." This would include all built-in furniture, attached existing fixtures, built-in appliances, electrical..." What if one or more of these need to be repaired? Does the Buyer have to consent? I think that the "replace" term is meant to apply to the checklist only.
275.		E-3 should we also incorporate home automation systems which now include centralized monitoring and control units onsite or in the cloud just like alarm systems.
276.		E-3. What if the PV system is financed? Will be financing statement be paid off and released, will the Buyer enter into a new one, etc.? Some

RR201 Purchase Contract Comments

		<p>companies address PV issues with a separate addendum that goes into more details than this Purchase Contract revision proposal.</p> <p>“Seller shall provide documents for the contracts or leases...” This is awkward. What does it mean? The contract or leases are documents. Contingency on transfer approval at the end of the paragraph -- no termination provision is stated.</p> <p>What about agreements with HECO, power company...? Are they in effect, transferrable, etc.?</p> <p>What about newer systems with battery back-up?</p>
277.		E-4. Is “Inclusions” grammatically correct? Should it be “Inclusion”?
278.	Section F	F-1. Closing. Seems too wordy. Suggest short to: For purposes of this Purchase Contract, “closing” shall be the date when all appropriate conveyance documents are recorded in the Hawaii Bureau of Conveyances. (The rest of it is quite redundant.)
279.		Under F-3 assume a 15 day unilateral right to extend. As a seller I want to cut that time down; so all I need to do is immediately after acceptance unilaterally extend the contract by 1 day and I have accomplished my goal. The buyer is no longer able to take advantage of any significant extension even for reasons beyond their control. Further given that no reason needs to be given if the buyer is fast enough they can also go in and immediately extend by 15 days. At minimum both parties should be allowed at least one extension.
280.		F-3 (a). Why delete “for reasons beyond ... control”? Now it is just a completely free right to extend? This is a major change. Members will need to be educated about this carefully. If the blank is filled in with “TEN (10) DAYS” and one party extends ONE (1) DAY, or even ONE (1) MINUTE, then neither party can further extend unilaterally. The remaining NINE (9) DAYS are gone. Is this intended?
281.		The two lines below Escrow could be flush left.
282.		F-7. Don’t split the () on line 5 and 6. 15 days default after the Acceptance Date could be too quick – could need more time.
283.		F-7. The penalty provision herein seems questionable. The buyer is penalized for a change reported that may be beyond their control and unanticipated. As long as it is reported to escrow prior to recordation, I don’t see the harm. I really don’t believe any Seller will not want to sell their property due to the status of the Buyer as one or the other, in spite of the extra cost due to non-principal purchaser. This is especially true on multi-million dollar homes, where owner occupancy is a rarity. Please rethink the ramification of this penalty.
284.		F-11 use a check box for “closing” and a second checkbox for “subject to occupancy agreement” (late or early)
285.	Section G	G-1 Does this comport with escrow practices? I personally would want to see all incumbrances, especially those that might indicate a short sale or other lien that could possibly delay a sale.
286.		G-2 (c) changing the wording from does not to unable reintroduces the argument over what unable means and who defines that word. i.e. Does a \$70,000 expense out of \$60,000 net proceeds constitute the inability to correct the deficiency when the seller has \$100,000 in their checking account. “Does not” is clear and concise with no arguments.

RR201 Purchase Contract Comments

287.		<p>G-2. The format of (a) with (i) and (ii) is not properly done. It might be better to state: "Seller agrees to convey the Property at closing with warranties vesting marketable title in Buyer, free and clear of all liens and encumbrances EXCEPT easements.... (continue with list)...., all as generally described in Paragraph M-1. (ii) Could be stated as (i), but the language "Unless otherwise agreed by the parties in this Purchase Contract" must be stated. Some of those items could be assumed or transferred.... (b) Title Defects. What are "reasonable efforts"? Would it be reasonable for the Seller to have to spend \$1,000,000 to cure a defect? What is the standard for "unable"? I do not know the answer to these questions.</p>
288.		<p>G-3 While the Buyer may be the person who is legally obligated to complete the sale the vesting can be someone wholly different. Who the property will be vesting in can often determine the outcome of a negotiation. Particularly where there is a PMM or one person signs the sales contract but the property is vesting in two or more people or there is potential property flipping where the buyer never takes recorded ownership in a hot market.</p>
289.		<p>G-3. Change "The Buyer" to "Buyer". If Buyer does not provide title and tenancy within the specified time period, is Buyer in default and can Seller terminate pursuant to O-1 and declare default?</p>
290.		<p>Section G. Please have your legal counsel review this Section very carefully. Please also seek the input of the local title and escrow companies regarding the specific language changes. These involve sometimes complex legal issues.</p>
291.	Section H	<p>A useful addition to H-2 could be c (iii) Should buyer elect to cancel under paragraph H-2 (c) buyer and seller agree that \$_____ of deposit is non-refundable and shall be released to Seller.</p>
292.		<p>H-4. Buyer is first obligated to provide a "Pre-Qualification Letter". Then, below, there is a reference to a "Pre-Approval Letter". Doesn't this need to be identified above too?</p>
293.	Section I	<p>Section I. Please have your legal counsel review this Section very carefully. This Section generally addresses the 508D disclosure requirements. Section M addresses the document provision aspect of this. It would make more sense for these Sections to be consolidated, or at least side by side (one after the other).</p>
294.		<p>I-3 By adding paragraph (c) this puts the right to rescind date in conflict with the statute and I-4 which specifies the earlier of number of days or Discovery.</p>
295.		<p>I-3. (a) refers to "I-3". I do not think it should (this paragraph is 1-3). I believe it should refer to I-1, I-2, or M-1. (b) refers to "I-3". "I-3". I do not think it should (this paragraph is 1-3). I believe it should refer to I-1, I-2, or M-1.</p>
296.		<p>I-5. Refers to "I-3". I do not think it should. I-3 is a Buyer's paragraph. I believe it should refer to I-1, I-2, or M-1.</p>
297.		<p>I-6 (k) Would recommend deleting websites over which we have no control or the links could change or be outdated. I note we do not</p>

RR201 Purchase Contract Comments

		provide links to the EPA or FEMA sites. We don't even provide links to the statutes. The information and the way to get to that information often changes.
298.		Paragraph I-6 (a). Line 5. After "Paragraph G-2(a)(i)" add "and Paragraph M-1".
299.		Paragraph I-6 k) Line 3, after storms, add "storm surge". After landslides, add "sinkholes, erosion, volcanic eruptions, lava flows, lava tubes, volcanic gas and ash emissions,"
300.		Deletion of old Paragraph I-7. What if the Property is not "residential" as defined in 508-D? For example, what if it is vacant land? If so, shouldn't I-7, in some form, be included? The Purchase Contract appears to apply 508D requirements upon all properties for which the form is used, without consideration of whether the statute actually applies to that specific property. This is probably a good idea, but the concept is not explained or any other option given. For a property that is not covered by 508D, a material fact disclosure obligation exists in some form, but not necessarily under the scheme/structure/timing set forth in 508D.
301.	Section J	Paragraph J-1. End of first paragraph, change "rights and timelines" to "rights, obligations, and timelines".
302.		Paragraph J-3. There is a double ,, on line three. Line 10, capitalize first letters of Final Walk Through.
303.		J-4 Is it still our understanding that releasing withheld funds to a buyer in a standard loan scenario constitutes loan fraud? If so, perhaps there should at least be a checkbox option so release to buyer can still be done on cash sales and an alternative checkbox for when it is not allowed along with a caution note about loan fraud.
304.		Paragraph J-6. Why delete the recommendation?
305.		J-8 Should a buyer have the right to enter the property and dispose of or keep items prior to closing? Not sure I agree on that. Who pays the insurance claim when they injure themselves while cleaning the property before closing?
306.		Paragraph J-8. No time period stated for Seller's removal of personal belongings – a certain number of days or by closing? At the end, "J-4" should be "Paragraph J-4".
307.	Section K	Paragraph K-2. After ... "and restrictions", add "and restrictions; easement provisions or requirements;".
308.		I think I would like to see K-3 with a check mark. Seller's should have a negotiated right to correct the encroachment as has been customary. Buyer's still have rights under additional disclosures
309.		K-4 While I am fine with the wording on setback violations in K-2, if they are found perhaps they should be covered under K-5. Simply adding "and setback violations" into the sentence would accommodate this but would have no effect where setbacks were not identified in a survey.
310.	Section L	L-1 Termite Inspection. At 2nd sentence, states "highly recommended", whereas in other sections, uses "strongly recommends". For consistency, I would use one or the other, though favor "strongly" as this is unarguable. "Highly" could be a recommendation after smoking pakalolo (medical use, of course...lol).
311.		Under L-2 Change second sentence to "...Should the party who chooses..."

RR201 Purchase Contract Comments

312.		<p>Paragraph L-2. Line 4, change “time” to “time period”. Last paragraph, “preventative” what? Don’t you need the word “measures” or something? What if the Seller fails to provide the “preventative”? Don’t you need to state a Buyer’s right to terminate?</p>
313.	Section M	<p>Section M Do we need to define what a “recorded declaration” is in our training material?</p>
314.		<p>Paragraph M-1. Delete the [] It is a mandatory paragraph. (a) Add the heading: “Properties Subject to a Recorded Declaration.” Change “HRS” to “Hawaii Revised Statutes”. Change “508D 3.5” to “508D-3.5”. (Generally, you are using the dash format). At the end of (a), the language “to the extent possible” does not appear in the statute. If you are going to state “in accordance with” the statute then you have to be very accurate. You do not want to suggest a less strict requirement by contract than is required by law – the law controls. Subparagraph (a) and items (1) through (4) reflect 508D-3.5 (a). Item (5) reflects 508D-3.5 (b), which is not a subset of (a) and stands on its own. Item (5) should be (b) and the remainder of the paragraph should be re-lettered. (b) applies even if there is no “recorded declaration”. In other words, (b) applies even if (a) does not. This is very important and could be misleading unless separated! This is a legal issue. For this new (b) add the heading: “Properties Subject to Restrictions or Conditions on Use.” Paragraph (b) in page 11, includes “Subdivision and/or title documents”. Do you intend these to be provided for all transactions? What are these? Are you creating a broad obligation? What if a transaction closes and the Buyer was not provided “Subdivision and/or title documents”? Can he then sue? These terms used to make sense when there were boxes before them. But when 508D- 3.5 became law, the Purchase Contract was revised and the boxes were removed. So all the potential inclusions, if checked, became mandatory inclusions. Paragraph (e). Rescinded or terminated pursuant to what? What if the Seller terminates pursuant to some terms of the contract? The word “agent” should be “Brokerage Firm”.</p>
315.		<p>M-1(c) change to “...with a written acknowledgement of receipt within () days of receipt.”</p>
316.		<p>Paragraph M-2. At the end of the second line, change “or” to “and/or”.</p>
317.		<p>Paragraph M-3. Does the provision of “additions... amendments” retrigger M-1(d) – Buyer’s right to rescind or terminate? I personally believe that M-1 appropriately includes “any amendments or supplements” and that this requirements applies until closing – giving the Buyer the right to rescind each time. Again, this is my personal view.</p>
318.		<p>Old Paragraph M-4 (Common Element Discrepancies). Did this go somewhere else, or was it just deleted? Perhaps there should be a general Condominium Addendum (or something similar).</p>
319.	Section N	<p>Paragraph N-2. Should “them” be “it”?</p>
320.	Section O	<p>Section O. Please make sure that your legal counsel reviews and approved of each word of this Section.</p>

RR201 Purchase Contract Comments

321.		Paragraph O-7. Is the term “appropriate state or federal court” too open? How do the parties decide if a legal action should be in the state or federal court? Is the word “appropriate” sufficient to trigger the applicable qualifying requirements of the courts?
322.	Section Q	Section Q. Put a [] before SPECIAL TERMS. I think we always thought this was supposed to be there (not on M-1).
323.	Section R	Paragraph R-1. Near the end. “I-8” should now be “I-6”.
324.	Section S	Paragraph S-4. Add at the end: “The conveyance document for the Property shall be executed by both Seller and Buyer in original form, with acknowledgments acceptable for recordation.” Sometimes Buyers refuse to sign the conveyance document at the last minute, usually because of embassy or other acknowledgment difficulties. For a Seller, this presents some risk.
325.		Near the bottom. Change “Agent’s Name” to “Real Estate Licensee’s Name” (like in the Seller’s area).
326.		Reviewed by. Change “Name of Seller’s:” to “Name of receiving Brokerage Firm’s”... “Seller’s” suggests agency, which may or may not apply.
327.		S-7? It has long been talked about at SFC about adding a “confidentiality provision” to the PC. Section S: General Provisions, seems like the appropriate place to add a provision for such, as it is would be no less binding than S-5 Counterparts, or S-6 Complete Agreement. I recommend some form of the following language (though will have to be debated no doubt): S-7 The parties shall keep all negotiations made, such as price and terms accepted or acceptable, resulting from this Purchase Contract, related Counter Offers, and Addenda, STRICTLY CONFIDENTIAL. Any disclosure of any such terms to any parties outside this transaction shall be deemed actionable under Hawaii Law. (I think this is more important than some of the standard Disclosures in Section I-8 (e), and if given a choice, would swap out one.
328.	Section T	T-2 Where seller is a FSBO and not represented by a broker how is this handled? Is it left blank?
329.		T-3 Need place to initial and date and a place to write a comment like seller not responsive or refuses to respond. (probably need to review options under license law)
330.		T-3. The actual rejection language is missing (Notification of Rejection appears to be a paragraph title) -- such as: “Seller rejects this Purchase Contract and acknowledges receipt of a copy of this Purchase Contract.” The reference to Hawaii Administrative Rules 16-99-3(j) does not make sense standing alone. Are Buyers and Seller’s supposed to look it up? If the reference will remain, quote the provision. Is this Paragraph intended to be complete, or is it still a draft?