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Real Property

The newsletter of the Illinois State Bar Association's Section on Real Estate Law

Little Red Riding Hood: Private Equity Owning Law Firms

BY DONALD HYUN KIOLBASSA AND EMILY HOLMES

LOOSELY SPEAKING, PRIVATE equity firms are investment companies that focus on private companies. A classic example of a private equity firm looks like this. For whatever reason, a business owner is looking to divest risk and exit the owner's business. The private equity firm comes in and buys the company from the founder.

The private equity firm then allegedly improves operations and often sells the company. Please keep in mind that private equity is oftentimes using other peoples' money, so most need to have some exit strategy.

As lawyers age and succession planning proves difficult, many are suggesting private equity as an exit for founders. I do not believe that would be a good idea.

Before we get started, let us have a sidebar and discuss a story that may lend a lesson. The story of Little Red Riding Hood.

There was once a young girl named Little Red Riding Hood. Her mother asked her to bring a basket of food to her Grandmother. The Big Bad Wolf discovered that Red was headed to her Grandmother's house, so he rushed to the cottage and dressed up as Red's Grandma. When Red arrived the Wolf disguising his voice invited her in.

Red said, "Grandma, What big eyes you have." The Wolf replied, "All the better to see you my dear."

Red said, "Grandma, What big ears you have." The Wolf replied, "All the better to hear you my dear."

Continued on next page

Did You Know?

WE ALMOST ALWAYS SEE LAND described as being located East of the 3rd principal meridian or West of the 3rd principal meridian. However, did you know some of Illinois land is described as West of the 2nd principal meridian and some as East of the 4th principal meridian? ■

Some IRS Changes for 2025!

Annual gift tax exclusion now $19,000.00. Estate tax exclusion now $13,990,000. Standard mileage rate for business now $0.70/mile. ■

Little Red Riding Hood

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Red said, "Grandma, What big teeth you have."
The Wolf jumped up and said, "All the better to eat you."
Red barely escaped, but learned to not be so trusting.

Ladies and gentlemen of the jury, I submit to you that if private equity is allowed to own law firms, like the Wolf, they will try to eat us all.

The world is about to face a seismic demographic shift that will send waves throughout the globe causing geopolitical chaos.

In the last few weeks, we have seen a vote of no confidence in France, an attempt of martial law in South Korea, and the resignation of the Vice Prime Minister of Canada (who happens to be the Finance Minister).

Arguably, all of the above instability can be traced back to finance. Even the United States can throw its hat in the mix with a threatened government shutdown.

The reason demographics are so important is the aging population is so top heavy with Baby Boomers, and they require government entitlements, which must be paid for via taxes on the younger generation.

People are living longer, everything is more expensive, and there are fewer young workers to pay for the Baby Boomers.

Well, the Silver Tsunami is hitting the United States. The Silver Tsunami is the rapid retirement of the Baby Boomers. Many of the Baby Boomers own small businesses, and they want to cash out. However, they are finding succession planning difficult.

This epidemic is on full display in the legal field. Valuing a law firm is difficult, and most younger lawyers do not have the capital to purchase existing firms.

What about private equity?

Well, that is a problem, because Illinois Rules of Professional Conduct 5.4 prohibits nonlawyers from owning law firms. The intent is protecting confidentiality and avoiding conflicts of interest.

Private equity has an appetite for the law. Partially due to a lack of opportunity, they are running out of low-hanging fruit to invest in. Partially due to a huge untapped market.

Baby Boomer lawyers struggling with succession planning have an appetite for private equity, mostly due to a lack of options.

Many would see opportunity in the pain point and the solution. Let us analyze.

Typically, private equity buys a company from the founder based off of some multiple or an earn out. The founder will often stay on board for some time to monitor the transition.

If the private equity firm pays top dollar, it will oftentimes require a "Claw Back Provision" allowing the private equity firm the ability to take back money if Annual Reoccurring Revenue (ARR) drops below certain metrics.

Then, the private equity firm turns its attention to *profitability*, so it can exit and pay back its investors.

See, that is the problem right there.

Law firms are so distinguishable in society that we should not allow private equity to own law firms. Law firms are sacred. Law firms must stand to zealously protect their clients and society. Private equity firms are about profitability. They have no choice because they are beholden to their investors.

If everything comes down to profit, then private equity will seek maximum revenue against minimum expenses. This will lead to a hyperfocus on work with the highest margins leaving behind the most vulnerable of society.

In addition, as a matter of practical application, the most expensive line item is generally attorneys. With the push of artificial intelligence, we will be the first ones that private equity pushes out.

If we are not careful and private equity is allowed to own us, then the Big Bad Wolf might eat us all, and we might not be as lucky as Little Red Riding Hood... ■

Real Property

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The Logistics of Handling Powers of Attorney Under the Recent Amendments to the Act – Reasonable and Unreasonable Cause to Refuse

BY MICHAEL J. FLECK

SENATE BILL 3421 WAS ENACTED as Public Act 103-0994 on August 9, 2024, to be effective January 1, 2025. The Public Act makes certain changes to the Illinois Power of Attorney Act, specifically under Section 2-8 ("Reliance on document purporting to establish an agency.").[1] This article will focus on the practical logistics of handling powers of attorney due to these recent amendments, to minimize the chance that powers of attorney are rejected by a third party.

By way of background, I did an article for this newsletter in 2018 entitled "Big Bank Versus Little Client: How to Deal with Unreasonable Requests and Demands."[2] The article was more of a therapeutic rant by me on the frustrations of dealing with certain third parties who would not honor valid and enforceable powers of attorney for property among other types of documents. Often, the third party would refuse to honor the statutory form for a number of reasons such as, 1) It is too old in their opinion; 2) It is not an original; 3) It is not their own form; and on and on. Eventually, these issues typically get worked out but at great frustration, time, and expense to the person attempting to utilize the agency. This can create problems with the client who may get the impression that the drafter of the power of attorney somehow did something wrong in the drafting and/or who may be in desperate need of being able to make property transactions but cannot while the issues are being worked out.

The amendments purport to resolve some of these concerns by making it unreasonable to refuse to honor a valid power of attorney under certain enumerated circumstances but also giving reasonable cause for a third party to refuse to honor an otherwise valid power of attorney. The practitioner should be aware of these unreasonable circumstances and the valid reasons for refusal and take proactive steps to address these issues before the time comes to enact the agency under the power of attorney. These proactive steps could avoid additional frustration, time, and expense.

Unfortunately, there is the potential that these amendments, while created to address very real concerns regarding abuse of the power of attorney form, could create an even greater possibility for a third party to refuse to accept the power of attorney.

The Concern:

We are all aware of plenty of anecdotal stories of abuses surrounding the creation and use of powers of attorney for property. The ease by which these documents can be executed, including lay persons being able to pull forms off of the internet and simply fill them in, can make it easy for a principal to give away power to an agent without fully understanding the scope consequences of that power transfer. Also, the intent to harm the principal by convincing them to name a particular agent as power of attorney, and then the agent then emptying the accounts of the principal or changing beneficiaries on accounts, are real problems with the use of these documents that were designed to avoid adult-disabled guardianships of the estates of persons.

It should be noted that powers of attorney, while often used as Durable Powers of Attorney in the event that the principal becomes disabled, also have plenty of uses while the principal is perfectly able to manage their own financial affairs but is unable to take the steps necessary for a particular transaction. The amendments to the Act apply to durable and non-durable powers of attorney, however, a principal who is still competent is able to assure the third party of a valid agency.

The Illinois General Assembly took steps under prior Public Acts to try and minimize such abuses by making sure that the principal understood the importance of executing such a document in favor of an agent.[3] Even so, abuses persist. Third parties often did not want to honor a power of attorney that didn't pass their internal review procedures, despite language in the Act that absolves the third party of liability for reasonable reliance on the document.[4] To be fair, these third-party institutions are often taking such steps to protect their clients from being abused, as well as protecting themselves.

The Amendments—Unreasonable Cause and Reasonable Cause to Refuse

The current changes to the Act go a little bit further in making it clear what is unreasonable cause to refuse to honor a document, and what is reasonable cause to refuse to honor a document.

The prior language of Section 2-8 remains as set forth in 2-8 (a-d) regarding (a) protections for reasonable reliance on the document; (b) Attorney Certification language; (c) presumptions of validity; and (d) civil liability for failure to comply with a valid power of attorney.[5]

The new amendments specifically add subsections (e) Unreasonable Cause and (f) Reasonable Cause.

Unreasonable Cause: Subsection (e) sets forth five (5) defined circumstances where it is unreasonable if the *only* reason for the refusal to honor a properly executed power of attorney *in accordance with the laws in effect at the time of its execution*, is any of or more than one of the following

circumstances:

1) The power of attorney is not on a form the third party receiving such power prescribes, regardless of any form the terms of any account agreement between the principal and third party requires;
2) There has been a lapse of time since the execution of the power of attorney;
3) On the face of the statutory short form power of attorney, there is a lapse of time between the date of acknowledgment of the signature of the principal and the date of the acceptance by the agent;
4) The document provided does not bear an original signature, original witness, or original notarization but is accompanied by a properly executed Agent's Certification and Acceptance of Authority, Successor Agent's Certification and Acceptance of Authority, or Co-Agent's Certification and Acceptance of Authority bearing the original signature of the named agent; or
5) The document appoints an entity as the agent.

Further, nothing in Section 2-8 (e) shall be interpreted as prohibiting or limiting a third party from requiring the named agent to furnish a properly executed Agent's Certification and Acceptance of Authority, Successor Agent's Certification and Acceptance of Authority, or Co-Agent's Certification and Acceptance of Authority under this Act.[6]

Reasonable Cause: Subsection (f) sets forth 14 defined circumstances where it is reasonable to refuse to honor a power of attorney. Note that the Act does not make this list exclusive, using "including but not limited to" language:

1) The refusal by the agent to provide an affidavit or properly executed Agent's Certification and Acceptance of Authority, Successor Agent's Certification and Acceptance of Authority, or Co-Agent's Certification and Acceptance of Authority;
2) The refusal by the agent to provide a copy of the original document that is certified to be valid by an attorney, a court order, or governmental entity;
3) The person's good faith referral of the principal and the agent or a person acting for or with the agent to the local adult protective services unit;
4) Actual knowledge or a reasonable basis for believing in the existence of a report having been made by any person to the local adult protective services unit alleging physical or financial abuse, neglect, exploitation, or abandonment of the principal by the agent or a person acting for the agent;
5) Actual knowledge of the principal's death or a reasonable basis for believing the principal has died;
6) Actual knowledge of the incapacity of the principal or a reasonable basis for believing the principal is incapacitated if the power of attorney tendered is a nondurable power of attorney;
7) Actual knowledge or a reasonable basis for believing that the principal was incapacitated at the time the power of attorney was executed;
8) Actual knowledge or a reasonable basis for believing:
   a) The power of attorney was procured through fraud, duress, or undue influence, or
   b) The agent is engaged in fraud or abuse of the principal;
9) Actual notice of the termination or revocation of the power of attorney or a reasonable basis for believing that the power of attorney has been terminated or revoked;
10) The refusal by a title insurance company to underwrite title insurance for a gift of real property made pursuant to a statutory short form power of attorney that does not contain express instructions or purposes of the principal with respect to gifts in paragraph 3 of the statutory short form power of attorney;
11) The refusal of the principal's attorney to provide a certificate that the power of attorney is valid;
12) A missing or incorrect signature, an invalid notarization, or an unacceptable power of attorney identification;
13) The third party:
   a) Has filed a suspicious activity report as described by 31 U.S.C. § 5318(g) with respect to the principal or agent;
   b) Believes in good faith that the principal or agent has a prior criminal history involving financial crimes; or
   c) Has had a previous, unsatisfactory business relationship with the agent due to or resulting in material loss to the third party, financial mismanagement by the agent, or litigation between the third party and the agent alleging substantial damages; or
   d) The third party has reasonable cause to suspect the abuse, abandonment, neglect, or financial exploitation of the principal, if the principal is an eligible adult under the Adult Protective Services Act.[7]

Key Takeaways:

First, the Act's language provides two key terms that can be interpreted to give greater latitude for a third party to refuse to honor. In subsection (e), it uses the phrase "if the ***only*** reason for the refusal is any of or more than one of the following . . ." The use of the word "only" allows an institution to state that any of these enumerated unreasonable circumstances were not the ***only*** reason, so it may be possible that these circumstances exist, along with any of the valid reasons. Therefore, even if any one of the five unreasonable circumstances exists, it may not be the end of the inquiry.

In subsection (f), a third party may find any of these 14 circumstances to exist and deny the power of attorney. The language in so many of these 14 circumstances seems to favor a third party in that it can simply find that even in the absence of actual knowledge, it can have a "reasonable basis for believing . . ." that a circumstance exists. This can create challenges for the agent or the attorney in trying to overcome

whether the basis is reasonable. To be sure, many of these 14 circumstances make perfect sense, such as death of the principal which per the Act ends the agency, or capacity/incapacity issues, but some may open the door for valid refusal that may be difficult to overcome absent additional affidavits or certifications, and as these are under penalties of perjury[8], they are not to be drafted and executed lightly.

Second, to the extent practicable, the practitioner should anticipate the possibility under the circumstances at the time of drafting, whether any of these factors (reasonable or unreasonable) may become an issue, and take steps to address them (assuming the practitioner is confident that the execution of the power of attorney is proper at the time of execution, that it comports with the principal's wishes and understandings of the agency, and that it is executed with the proper legal capacity of the principal and not under fraud, duress or mistake. If any circumstances do potentially exist, then the client should be advised of the issues under the Act and the possibility that a third party may raise them in the future.

Preparation of an Agent's Certification and Acceptance of Authority at the time of execution (to be filled in and executed under penalties of perjury by the agent at the time the agent accepts the agency) and going over the intent and meaning of the certification is a good way of helping the principal understand what is expected of the agent at that time.

Finally, this newsletter contains additional information from other authors that will be helpful to the practitioner in dealing with the aspects of the attorney having to certify the validity of a previously executed power of attorney. Naturally, the practitioner may have no knowledge of future events post-execution of the power of attorney, such as whether it was revoked, replaced, or modified, so certifications should be executed with caution. This could place the practitioner in a precarious position of not being able to confirm the facts that a third party may need to accept the power of attorney.

Logistically, the practitioner should use extra caution in the preparation and execution phase of a power of attorney for a client, confirming that there are no concerns that may arise in the event the agency is to take place. Certifications should be prepared for future execution and explained to the client. In the event the attorney needs to provide an affidavit in the future, the attorney should only state what the attorney has actual knowledge of and not make any assumptions. This may be the most difficult aspect of these amendments, as the document may have been executed years prior, the principal is incapacitated, and the attorney has no knowledge of what may or may not have occurred since the execution of the original power of attorney. ■

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1. 755 ILCS 45/2-8.
2. Ill. Bar Trust & Estates vol. 65, no. 2 August, 2018.
3. For example, P.A. 96-1195 added the "Notice to the Individual Signing the Illinois Statutory Short Form Power of Attorney for Property." This was designed to inform the principal that the document they were about to execute gives broad powers to an agent to carry out numerous financial transactions. The notice included the clauses: "It is also important to select an agent whom you trust, since you are giving that agent control over your financial assets and property. Any agent who does act for you has a duty to act in good faith for your benefit and to use due care, competence, and diligence. He or she must also act in accordance with the law and with the directions in this form."
4. Section 2-8 (a) states, "Any person who acts in good faith reliance on a copy of a document purporting to establish an agency will be fully protected and released to the same extent as though the reliant had dealt directly with the named principal as a fully-competent person."
5. 755 ILCS 45/2-8(a-d) (2024).
6. P.A. 103-994, (eff. 1/1/2025), to be codified as 755 ILCS 45/2-8(e) (2025).
7. P.A. 103-994, (eff. 1/1/2025), to be codified as 755 ILCS 45/2-8(f) (2025).
8. 755 ILCS 45/2-8(b) (2024).

The New Multi-Board 8.0 Residential Real Estate Contract

The Good, the Bad… and Your Options.

BY PHILIP J. VACCO

BY MEANS OF FULL DISCLOSURE, those who know me know that since its introduction, I have never been a fan of the 7.0 contract. In my opinion, the contract imposes little or no consequence on the buyer to hold them to the terms of the contract, while at that same time, imposing upon the seller, the obligation to make multiple representations about the property that go far and beyond the state's required Residential Real Property Disclosure Report. The 8.0 version does not address this imbalance.

Expected to make its grand entrance in February of 2025, version 8.0 of the Multi-Board Residential Real Estate Contract has been completed and is ready to be submitted for approval by various bar associations so that it may be adopted and used by Realtor® Associations throughout Illinois. Although the form is the copyright property of the Illinois Real Estate Lawyers Association, since the contract is one that is designed for use by Illinois brokers, its members have had significant input on the final language used. As such, while some technical issues with the 7.0 contract have been addressed, other issues have been created which will provide plenty of fodder for the legal profession to justify its continued involvement in residential real estate transactions. This article highlights some of these issues.

Financing Contingency

One of my concerns with the 7.0 contract was that the financing contingency was poorly drafted, and given the contract language its plain meaning, it prevented the buyer from requesting an extension of the financing contingency without risking terminating the sales contract.[1] In particular, paragraph 7 of the 7.0 contract reads as follows: *"If Buyer, having applied for the loan specified above, is unable to provide such loan approval and serves Notice to seller not later than the Loan Contingency Date, this Contract shall be null and void." (Emphasis added).* Since, by the very nature of a financing extension request, the buyer is notifying the seller that their loan is not approved, as written, there is no way that a buyer could ask for a financing extension without risking invoking the automatic termination feature.

Fortunately, the 8.0 draft corrects this problem, now providing: "If Buyer, having applied for the financing specified above, has received a *written rejection* of the financing application, and serves Notice as provided in Paragraph 28, (hereinafter referred to as "Notice") of the same to Seller not later than the Financing Contingency Date or any extended financing contingency date agreed to by the Parties, this Contract shall be null and void." (Emphasis added). This change should be a benefit to all buyers' attorneys by removing a potential trap where an innocuous extension request ends up inadvertently terminating a contract.

NAR Compliance

The new contract, as expected, also incorporates language that will enable brokers to make use of the exception to the NAR Settlement, requiring buyers' agents to seek compensation from their clients by allowing buyers to "negotiate" with the seller, to have the seller pay their agent's compensation. As such, the 8.0 now has a new paragraph dedicated exclusively to this goal.

Paragraph 4, entitled SELLER CONTRIBUTION TO BUYER BROKERAGE COMPENSATION puts the buyer's request to have the seller pay their agent's fee, front and center, as part of their offer to purchase. This paragraph consists of two subparagraphs; subparagraph a) in which the parties agree that the seller will either pay a percentage of the sales price (the amount to be inserted by the parties) or a specific dollar amount (again, the amount to be inserted by the parties) on the buyer's behalf to be applied to the buyer's brokerage compensation, or b) in which the seller declines to pay the buyer's broker's compensation.

Fixtures and Personal Property

Other changes to the sales contract seem to more cumbersome than beneficial. For example, notwithstanding the fact that the 7.0 contract provides a blank space to enable brokers to add additional items of personal property that are being transferred with the home which are not itemized on the printed contract, the 8.0 contract has seen the list of personal property items expand from 39 to 52. Among the new fixtures and personal property the parties may check to be transferred with the home, include the following: Freezer(s), Sump Pump Battery Backup, Above Ground Pool, Pool Equipment, Sprinkler System, Propane Tank(s) (unless rented), Security System (unless rented), Interior Security System, Smart Thermostat, Video Doorbell, Surround Sound System, Home Theater / Projector, Surveillance System(s), and Electric Vehicle Charging System. Furthermore, if the home is equipped with solar panels, there is a whole separate section of the contract that needs to be completed which is intended to clarify whether the seller owns the system outright or is financing the purchase or renting the equipment. The seller is also obligated to provide the purchaser with "copies of all documentation regarding

solar panels or other sources of energy to the premises including purchase agreements, financing agreements or rental agreements and electricity supply agreements." The buyer is then provided with a three business day period in which to declare the contract terminated.

While it is convenient to simply run down a pre-printed list of items and check off what is staying, I personally am confused over what the difference is between a "security system" and "interior security system" or a "surround sound system" and a "home theater" system and I can see where this may create disagreements at the closing table as to what the parties intended the seller to leave. However, a larger concern is that the drafters have altered the seller's obligation to transfer "existing storms and screens" by deleting the word "existing. Thus, under the 8.0 contract, I foresee many arguments at the closing table over whether the seller is now obligated to purchase and install screens on all windows, whether they existed at the time of contract or not. As attorneys we will need to pay more attention to what personal property is being transferred and clarify the actual intent of the parties so as not to waste time engaging in disputes at the closing table.

As-Is Offers

Significant changes have also been made to the "As-Is" provision of the contract. What was once a single optional paragraph that acknowledged that the buyer was purchasing the property "as-is," subject to an inspection which allowed the buyer the option, either to proceed with the sale following their due diligence inspection or declaring the contract null and void, has now been hitched to the inspection contingency, providing the buyer with three separate options.

These options include:

Paragraph a): buyer is purchasing the property in its "As-Is" condition on the date of the offer, with no representations, warranties, or guarantees with respect to the condition of the real estate being made by the seller other than those known defects, if any, disclosed by seller except for those representations made in paragraph 24 of the contract. Unique to this option is the fact that the buyer waives any right to inspect the property, unless either paragraphs b or c are initialed in the inspection contingency.

Paragraph b) on the other hand, reflects that the buyer is purchasing the property "As-Is" with not only the ability to inspect the property, BUT to request that the seller make repairs, as long as the requested repairs cover only the major components to the real estate. The language of the 7.0 contract is retained providing that a major component, regardless of its age, or if it is near or at the end of this useful life, is deemed operational as long as it does not constitute a health or safety issue, and that minor repairs, routine maintenance items and painting, decorating or other items of a cosmetic nature are not deemed to be "defects" and thus not deemed to be a part of the contingency. The only penalty to the buyer for demanding repairs that go beyond the limits set is for the seller to declare the contract terminated and direct the full return of the buyer's earnest money. In other words, there is no penalty or real teeth to this paragraph that prevents the buyer from requesting repairs to which they are not entitled. As such, I expect that buyers will continue to demand that the seller make repairs or provide credits for items that are beyond the scope of the inspection contingency.

Paragraph c) enables the buyer to inspect the property, but with the understanding that no repair requests can be made. Similar to the original "As-Is" paragraph, the buyer's only remedy under this paragraph is to move forward with the purchase once the inspection is completed or to declare the deal terminated. However, once again, the language preventing the buyer from reneging on this promise is gutted by the fact that the only penalty the buyer faces for violating the buyer's promise is the threat that the seller may declare the contract terminated which results in the full return of the buyer's earnest money.

While it has been common for a buyer to provide an "as-is" offer as a means of outcompeting other potential buyers by offering to purchase the seller's property without asking the seller to address a laundry list of repairs, with the language contained in the 8.0 version, I don't see any buyer presenting an "as-is" offer without the option to demand repairs, as such there no longer appears to be any advantage for the seller to consider accepting an "as-is" offer.

Other changes to the inspection provisions of the contract include, increasing the amount of time that the seller has to conduct a wood destroying inspect inspection from ten to fifteen business days; presumably, to enable the seller to hold off on this expense until the ten business days to complete the attorney review and home inspections has been completed.

Additionally, if you are representing a seller of a property serviced by a well and septic system, please keep in mind that even with an "as-is" contingency, the 7.0 contract *obligates* your client to remedy any defects found with these systems up to $3,000.00. Under the 8.0 contract this amount has been increased to $5,000.00.

Seller's Representations

With regard to other obligations, the 8.0 version of the Multi-Board contract continues to place a burden upon the seller to make representations about the property, pledging that the seller is not aware of, nor has received any written notification from any association or governmental entity regarding, particular matters that may affect the property. Not only have the original eight representations contained in paragraph 22 of the 7.0 been retained in paragraph 24 of the 8.0 version, but the four additional representations that the parties were to initial to activate to indicate that they did or did not exist, have now been in incorporated into the contract. Thus, by executing this contract, the seller is now representing that the seller is unaware of:

- any improvements to the real estate which are not included in full in the determination of the most recent tax assessment;
- any improvements to the real estate which are eligible for the home improvement tax exemption;
- any proposed, unconfirmed, or

pending special assessment affecting the real estate by any association; or
- any special assessment by a government entity which has not been paid in full by the seller.

I am assuming that this change was prompted by the confusion associated with the 7.0 version concerning who was to make the choice of whether these additional representations did or did not exist. (These were representations that the seller was asked to make, but since the buyer typically presents the offer, often times these "representations" were left blank). Thus, the drafters seem to resolve this dilemma by simply including these representations along with the original eight representations. However, with this change, the seller goes from providing an affirmation that the representations either "are" or "are not" affecting the real estate to merely stating they are not aware of the matter. Oddly enough, this tactic seems to have weakened the effect of these four representations, which may actually have a negative impact on the buyer.

Cancellation of Prior Contract

Finally, the drafters of the 8.0 version have made significant changes to the Cancellation of Prior Real Estate Contract Contingency (Paragraph 31 of the 7.0 form). While the original paragraph consisted of two sentences that applied to either party who was subject to a prior real estate contract, the new 8.0 contract breaks this into three separate paragraphs, two of which are specific to the seller and one to the buyer. These changes clarify the obligations of the buyer and seller as to when notice of cancellation of the prior contract should be served, the timeline for earnest money deposits, and which date controls the running of the attorney review and inspection contingencies.

Conclusion

It appears that with each new generation of the Multi-Board Contract, one thing is certain: the contract becomes longer, is more complicated, and is more buyer-friendly. The promised 8.0 version, which tops out at 17 pages, is no exception.

While there are some other minor clarifications and changes to the 8.0 contract, the biggest changes appear to be the inclusion of the NAR Settlement paragraphs pertaining to the seller's contribution to the buyer's broker's compensation and the options now being offered to buyers for "as-is" offers which will entitle them to ask the seller for repairs and or credits following receipt of a property inspection report. Add to this mix the change to the Fixtures and Personal Property section and the re-working of the seller's representations being made in the contract, the changes are significant enough to require the real estate transactional attorney to consider redrafting their attorney modification letter to tailor it to the new contract language, and they can also expect to spend more time reviewing the contract and counseling their clients on its impact. ■

1. *The Unintentional Demise of a Sales Agreement: A Cautionary Tale of the 7.0 Multi-Board Real Estate Sales Agreement*, Illinois State Bar Association, Real Property Newsletter, Vol. 67, No. 5, December 2021.

LAWPAC Needs You!

In 1978, the ISBA created LAWPAC (the Illinois Lawyers' Political Action Committee). LAWPAC's purpose is simple—to support the legislative goals of the ISBA and the legal profession of Illinois. It is administered by an independent, bi-partisan Board of Trustees of four Republicans and four Democrats. LAWPAC makes contributions to candidates for nomination or election to the Illinois General Assembly. The determination of the political contributions to be made in furtherance of the purposes of Illinois LAWPAC are at the discretion of the Board of Trustees in consultation with the legislative representatives of the ISBA. LAWPAC does not support or oppose candidates based on their positions on policy matters that ISBA members may reasonably disagree on unrelated to the legal profession. LAWPAC's focus is on candidates whose positions would have positive or negative impacts on the practice of law, the independence of the judiciary, or the efficient administration of the courts. We want to support candidates that care about the ISBA's interest in maintaining the integrity of the legal profession and recognize the needs and changing issues facing attorneys today.

The legislative positions of the legal profession often are opposed by highly organized and well-funded special interest groups and other professions who are not vested in our positions as attorneys. It is unrealistic for the legal profession to expect to be truly effective with its legislative program to protect your practice and the independence of the judicial system unless it is willing to be a full participant in the legislative process.

This is where YOU are critical. LAWPAC relies solely on contributions by lawyers and others interested in the legislative program of the Bar. It does not use ISBA membership dues. However, contributions to LAWPAC have decreased recently. We cannot be effective without your assistance. We need your contributions to fund LAWPAC! Please contribute today.

You can help LAWPAC by sending your contributions to LAWPAC, 424 South Second Street, Springfield, IL 62701-1779 or by visiting the following link: https://www.isba.org/legislative/lawpacontribution.

Please help LAWPAC help you!

It is more important than ever that we all do our part to give our profession a strong voice in Springfield and help elect legislators who will stand up for the administration of justice and the practice of law.