

**V. COUNTER OFFER (MSC-2040)**

This form is to be used whenever a counter-offer is to be made. Prior practice of crossing out certain terms, initialing changes and making multiple changes to a single counter-offer form often resulted in a messy and difficult to interpret Contract. Realtors are now instructed to use a new Counter Offer form every time they negotiate a change in terms. Each new Counter Offer form should include and “carry-forward” all prior changes agreed upon. Doing so serves to make the process much cleaner and reduces potential for mistake. The final “accepted” Counter Offer form (together with the Contract and all attachments thereto) will make up the final agreement between the parties. Any previously rejected Counter Offer forms are not part of the final Contract, but should be retained as part of a Realtor’s files.

The Counter Offer form generally applies to all MAR form sale contracts (RES, LND, FRM or COM). The particulars of the Counter Offer form are discussed below.

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<b>A.</b>	Complete the Reference (identification) line in a manner consistent with the Contract.
<b>B.</b>	Each new Counter Offer is to be identified with a new number. Insert the sequential number of the Counter Offer then being submitted at “ <b>B</b> ”.
<b>8</b>	Check the applicable box to indicate which party is initiating the pending Counter-Offer ( <i>i.e.</i> , the “Counter-Offeree”).
<b>9-15</b>	Identify both parties to the Contract and insert the Property address/common description at the spaces indicated.
<b>16-41</b>	Complete the blanks at subparts (a) - (c) only if the referenced terms are to be changed. At subparts (d)-(e), check the applicable box(es) with respect to only the referenced forms that are being changed, and include a brief description of the change(s) made.

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<b>42-49</b>	<p>At subpart (f), reference the paragraph and line number (if appropriate) of any additional change(s) being made to the Contract and any other attachment thereto (in which case the form number and caption should also be specified). Briefly describe the terms changed.</p> <p><b>Note:</b> Realtors are strongly encouraged to not draft <u>any</u> special or customized agreements on behalf of their clients in order to avoid the potential of being found to have engaged in the unauthorized practice of law. Clients should be encouraged to consult with legal counsel in connection with any language to be inserted at subpart (f). If a client insists on including additional changes at this section, only the specific language directed by the client to be included should be set forth. Realtors should advise their clients that Realtors cannot attempt to explain the legality or legal consequences of any such inclusions.</p>
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Counter Offer # \_\_\_\_\_ B \_\_\_\_\_

*This document has legal consequences. If you do not understand it, consult your attorney.*

1 This Counter Offer is part of an offer to buy or sell the Property. Carefully read its terms and those of any  
2 additional documents referenced herein as part of this Counter Offer.

3 **Any acceptable terms set forth in a previous Counter Offer must be included in this Counter Offer along**  
4 **with any new proposed changes. Only the terms contained in this Counter Offer, together with the**  
5 **remaining unchanged terms of the Contract (including any other addenda or riders attached thereto),**  
6 **constitute the new offer. THE TERMS OF ANY PREVIOUSLY REJECTED COUNTER OFFER, IF NOT SET**  
7 **FORTH HEREIN, SHALL NOT BECOME A PART OF THE FINAL AGREEMENT BETWEEN THE PARTIES.**

8 **1. COUNTER OFFEROR.** This Counter Offer is originated by (check one):  Seller  Buyer (“Counter Offeror”)

9 **2. PARTIES/PROPERTY.** This Counter Offer between the parties concerns the Property described below.

10 Seller: \_\_\_\_\_

11 Buyer: \_\_\_\_\_

12 Property commonly described as: \_\_\_\_\_

13 \_\_\_\_\_

14 \_\_\_\_\_

15 \_\_\_\_\_

16 **3. CHANGED TERMS.** Acceptance of the above-described Contract is subject to the following changed  
17 agreements and/or contingencies/conditions (only terms that are changing from the original Contract should be  
18 specified):

19 (a) Purchase price shall be \_\_\_\_\_

20 (b) Earnest Money deposit shall be \_\_\_\_\_

21 (c) Closing date shall be \_\_\_\_\_

22 **Check the following (d-e) only if applicable:**

23 (d)  MSC-2010 - Financing Agreements, changed as follows (Note: MSC-2010 is not applicable to  
24 COM-2000 unless a government sponsored loan is involved):

25 \_\_\_\_\_

26 \_\_\_\_\_

27 \_\_\_\_\_

28 \_\_\_\_\_

29 \_\_\_\_\_

30 \_\_\_\_\_

31 \_\_\_\_\_

32 \_\_\_\_\_

33 (e)  MSC-2020 - Contract Conditions, changed as follows:

34 \_\_\_\_\_

35 \_\_\_\_\_

36 \_\_\_\_\_

37 \_\_\_\_\_

38 \_\_\_\_\_

39 \_\_\_\_\_

40 \_\_\_\_\_

41 \_\_\_\_\_

<p><b>50-64</b></p>	<p>Insert the date and time (deadline) by which the Counter-Offeree must accept the Counter Offer at blank “C”. As discussed above (see Section 30 of the Contract), any offer (including a Counter Offer) may generally be withdrawn at any time before it is accepted. The Counter Offer form specifies that any such withdrawal must be documented in a written Notice timely delivered to the Counter-Offeree in order to be effective (see lines 57-58). Obtain the signature of each Counter-Offeror (and insert the date thereof) at the spaces indicated by “D”, and indicate whether it is the Seller or Buyer at “E”.</p>
<p><b>65-82</b></p>	<p>If the Counter-Offer is to be accepted, obtain the signature of each Counter-Offeree (and the time and date thereof) at the spaces indicated by “F”, and indicate whether it is the Seller or Buyer at “G”. Acceptance of the Counter Offer must be accomplished by delivering a fully executed copy to the Counter-Offeror in order to be effective (see lines 50-52).</p> <p><b>Note:</b> Although signature of a Counter-Offeree is not legally required in order to reject a Counter Offer (<i>e.g.</i>, it would otherwise ultimately automatically expire as of the stated “Acceptance Deadline”), MREC regulations provide that “<i>A buyer or seller must be promptly advised when an offer or counteroffer has been rejected.</i>” 4 C.S.R. 250-8.100(2). Accordingly, if a Counter-Offeree does <u>not</u> intend to accept the Counteroffer, (s)he should <u>not</u> affix any signatures at “F”. In such case, a Realtor representing a Counter-Offeree should promptly return the unsigned Counteroffer to the Counter-Offeror with either the “<b>Reject</b>” blank initialed (at “H”), or with the “<b>New Counter Offer</b>” blank initialed (at “I”), in which case a new Counter Offer form should be attached (and the sequential number thereof identified at “J”).</p> <p>The signature lines at the bottom of the Counter Offer form conform to the procedures used in the Contract (<i>i.e.</i>, a Counter Offer is to be signed if it is to be accepted, or initialed if it is to be rejected or if a new Counter Offer is to be submitted).</p>

Reference \_\_\_\_\_

(A)

Counter-Offer # \_\_\_\_\_

(B)

42 (f) Other agreements or contingencies/conditions (specify form no. and caption, if applicable):  
 43 \_\_\_\_\_  
 44 \_\_\_\_\_  
 45 \_\_\_\_\_  
 46 \_\_\_\_\_  
 47 \_\_\_\_\_  
 48 \_\_\_\_\_  
 49 \_\_\_\_\_

50 **4. TIME FOR ACCEPTANCE.** This Counter Offer must be accepted by the Counter-Offeree, by signing and  
 51 delivering a fully executed copy to Counter-Offeree, on or before \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_  
 52 \_\_\_\_ m. (the "Acceptance Deadline"); otherwise, it shall be considered withdrawn. Except as modified above  
 53 in this Counter Offer, the parties accept and agree to all terms and conditions of the above Contract, all of  
 54 which are hereby fully incorporated herein by this reference. The use of any capitalized terms not otherwise  
 55 defined herein shall be given the same meaning as set forth in the Contract. In the event of any inconsistency  
 56 between the terms set forth herein and the terms set forth in the Contract, the terms set forth herein shall  
 57 control. Until this Counter Offer has been accepted, the parties understand that Counter-Offeree may  
 58 withdraw this Counter Offer to buy or sell the Property, by delivering written Notice thereof to Counter-Offeree.

59 \_\_\_\_\_ (D) \_\_\_\_\_ Date \_\_\_\_\_ (D) \_\_\_\_\_  
 60 **Signature of Counter-Offeree** (Check one (1) below, as applicable)

61 \_\_\_\_\_ Seller \_\_\_\_\_ Buyer ("Counter-Offeree") (E)  
 62 \_\_\_\_\_ (D) \_\_\_\_\_ Date \_\_\_\_\_ (D) \_\_\_\_\_  
 63 **Signature of Counter-Offeree** (Check one (1) below, as applicable)

64 \_\_\_\_\_ Seller \_\_\_\_\_ Buyer ("Counter-Offeree") (E)

65 **5. ACCEPTANCE/ REJECTION OF (OR NEW) COUNTER OFFER. (sign or initial as applicable)**

66 **Accept.** By signing below, the undersigned (the "Counter-Offeree") agree to the modification(s) or additional  
 67 term(s) and condition(s) contained in this Counter Offer, and hereby **accept** the Contract, as modified by this  
 68 Counter Offer, including all attached documents (if any), and acknowledge receipt of a copy hereof.

69 \_\_\_\_\_ (F) \_\_\_\_\_ Date \_\_\_\_\_ (F) \_\_\_\_\_ Time \_\_\_\_\_ (F) \_\_\_\_\_ m.  
 70 **Signature of Counter-Offeree** (Check one (1) below, as applicable)

71 \_\_\_\_\_ Seller \_\_\_\_\_ Buyer (Counter-Offeree) (G)  
 72 \_\_\_\_\_ (F) \_\_\_\_\_ Date \_\_\_\_\_ (F) \_\_\_\_\_ Time \_\_\_\_\_ (F) \_\_\_\_\_ m.  
 73 **Signature of Counter-Offeree**

74 \_\_\_\_\_ Seller \_\_\_\_\_ Buyer (Counter-Offeree) (G)

75 **Reject or New Counter Offer.** By initialing below, the Counter-Offeree(s) do not agree to the modification(s) or  
 76 additional term(s) and condition(s) contained in this Counter Offer, but either reject the same or make a new  
 77 Counter Offer (initial one, as applicable).

78 \_\_\_\_\_ (H) **Reject (Initial).** Counter-Offeree(s) **reject** this Counter Offer, and acknowledge receipt of a  
 79 copy hereof.

80 \_\_\_\_\_ (I) **New Counter Offer (Initial).** Counter-Offeree(s) acknowledge receipt of a copy hereof and  
 81 hereby make a new Counter Offer. Counter Offer # \_\_\_\_\_ (J), which amends the terms of the Contract, is  
 82 attached and incorporated into the Contract.