

Guidelines for the Preparation & Use of the Pennsylvania Association of Realtors® Broker's Request for Affirmation (Form BRFA)

General Notes on Usage of PAR Standard Forms

The Pennsylvania Association of Realtors® Standard Forms are developed by the PAR Standard Forms Committee for use in a wide variety of transactions and market areas. To provide maximum flexibility to the parties, many provisions contain blank spaces that can be filled in as appropriate. Further, it is helpful to remember that where pre-printed language is not agreeable to the parties it can be crossed out and/or modified, with the parties dating and initialing the change in the margins. As a general rule, text added by the parties that changes pre-printed text, or pre-printed text altered by the parties, will prevail over pre-printed language should a dispute arise.

As stated in the title, these are only *guidelines* for the proper use of this form. The Guidelines presented here should be used in conjunction with, and as a supplement to, your professional education, and are in no way meant to substitute for a proper professional education. Seek guidance from your Broker and/or your legal counsel if you have any questions about the proper use of this or any PAR form in a transaction.

To make these Guidelines more useful there may be helpful “extras” added to the main text. Many of the “Note” or “Practice Tip” items you will see are based, in part, on the experiences of PAR members and legal counsel, and are designed to point out some of the more practical items involved in filling out this form.

The purpose of this form is to enable members to easily comply with NAR's Standard of Practice 1-7 in the Code of Ethics, which states, in relevant part, as follows:

Upon the written request of a cooperating broker who submits an offer to the listing broker, the listing broker shall provide a written affirmation to the cooperating broker stating that the offer has been submitted to the seller/landlord, or a written notification that the seller/landlord has waived the obligation to have the offer presented.

Effective January 1, 2019, Realtors® who have presented an offer on behalf of a buyer may present a written request to the listing agent for written confirmation that the offer was, in fact, presented to the seller. If the listing agent receives such a request, he or she must provide a written response.

A similar provision was adopted in 2022 for buyer's and tenant's agents. Standard of Practice 1-8 was amended to add:

Upon the written request of the listing broker who submits a counter-offer to the buyer's tenant's broker, the buyer's/tenant's broker shall provide, as soon as practical, a written affirmation to the listing broker stating that the counter-offer has been submitted to the buyers/tenants, or a written notification that the buyers/tenants have waived the obligation to have the counter-offer presented.

Written Request and Affirmation, Presentation of Offer

If desired, an agent may, on behalf of Buyer, make a written request to the listing agent for confirmation that an offer has been submitted to Seller. This paragraph is essentially that written request, though it is not necessary to use Form BRFA to make such a request. Fill in as much information as you wish on lines 7 through 13 to identify the offer you are asking about.

Practice Tip: This information may be particularly helpful when trying to confirm whether Seller received the most recent offer made by Buyer. For example: Buyer submitted an offer on November 1 before learning that there were multiple offers on the Property. On November 2, Buyer submitted another offer on the Property but increasing the purchase price and changing the Settlement Date. If Buyer's agent wants to confirm that the November 2 offer was submitted to Seller, he or she can fill in the relevant details on the lines provided.

The agent working with Buyer should sign and date the form prior to sending it to Broker for Seller. As this is not part of the contract between Buyer and Seller, there is no need for Buyer to sign Form BRFA.

Seller's agent should check the appropriate box to indicate whether the offer was or was not submitted to Seller. Note that there is only one explanation for not presenting the offer to Seller, which is that the Property is already under contract with another buyer. Pennsylvania law only excuses the seller's agent's duty to make a continuous and good faith effort to find a buyer or tenant for the property when said property is subject to an existing agreement of sale or lease. All other times, Seller's agent must abide by the general duty to present all written offers in a timely manner.

After checking the relevant box, Seller's agent should sign and date the form before returning it to the person who made the request.

Note: PAR does produce a form called Seller's Reply to Purchase Offer (PAR Form SRP), which can be used for Seller to indicate his or her response to Buyer's offer. While it is arguable that a represented seller who has completed Form SRP in response to a written request for affirmation, it may not be enough to comply with the Code of Ethics and the language of Standard of Practice 1-7 which requires a written response from Seller's agent.

Written Request and Affirmation, Presentation of Counteroffer

If desired, an agent may, on behalf of Seller or Landlord, make a written request to the agent for Buyer or Tenant asking for confirmation that the counteroffer has been submitted to their client. This paragraph can serve as that written request, though it is not necessary to use Form BRFA to make such a request. Fill in as much information as you wish on lines 26 through 32 to identify the counteroffer you are asking about.

Practice Tip: This information may be particularly helpful when trying to confirm whether Buyer or Tenant received the most recent or the final counteroffer made by Seller or Landlord. For example: The parties have been negotiating the terms of a lease for a commercial space for several weeks.

Broker for Landlord would like to confirm that their last counteroffer, one of several, was presented to the Tenant. The agent for Landlord can fill in the relevant details on the lines provided and submit the request to Broker for Tenant.

The agent working with Buyer/Tenant should sign and date the form prior to sending it to Broker for Seller/Landlord. As this is not part of the contract between Buyer/Tenant and Seller/Landlord, there is no need for either party to sign Form BRFA.

For agents representing buyers and tenants, Pennsylvania law does not provide an exception to the general rule that all offers and counteroffers be presented to clients in a timely manner. Therefore, there is only one option for Broker for Buyer's/Tenant's affirmation, which is to indicate that the counteroffer was, in fact, provided. Buyer's or Tenant's agent should sign and date the form before returning it to the person who made the request.