

# Management of the Document Preparation Process



When a real estate transaction document needs to be reviewed, edited, or approved by more than one person, good document management and control practices help prevent time-consuming missteps and confusion for all the parties involved.

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## INTRODUCTION

When completing real estate transactions, good document management and control practices can reduce the time and resources necessary to prepare documents, prevent comments and edits from being lost in the shuffle, and assure that all project participants are aware of changes to documents previously reviewed. With an upfront investment of time and effort to plan the process for drafting, editing, reviewing, and approving documents, time-consuming missteps and confusion can be avoided and errors that otherwise might not surface until after closing can be prevented.

The instructions below form a plan for efficiently preparing, managing, and controlling the documents necessary for the closing of a real property transaction.

## SETTING THE STAGE

### Initial Meeting

Set an initial meeting for project participants to agree upon a schedule; an allocation of responsibilities for drafting, editing, reviewing, and approving documents; and expectations regarding the process as outlined below.

### Drafting and Approval Schedule

Reach agreement among all project participants, and their counsel, as to a reasonable time when final drafts for final approval must be delivered in order to achieve closing on the scheduled or desired closing date. Work back from that date to allow sufficient time for an interim round of draft review and work back from that date to set a firm date when the first draft must be circulated for review and comment. Include that information on the closing checklist.

### Circulation List

Reach agreement as to who will be on the circulation list for each document (both reviewers and their counsel). Different closing documents may have different circulation lists. Some reviewers (such as funders) may not want to be on the circulation list for the initial draft, may want a staff reviewer added to the circulation list for the interim draft, and want counsel included for the final draft.

### Efficient Review of Draft Documents

For each document, set a goal of circulating no more than two drafts before the final (last look) draft that will become the execution document at closing. This three-draft rule is perfectly feasible if everyone conforms to the parameters described below.

### Naming and Captioning to Facilitate Final Review

Establishing a straight-forward system for naming and captioning document versions will help reviewers understand what they are reviewing. For example, if the initial draft is based upon an organization's standard template,

label that template as "version 1" and the initial customization of the template prepared for circulation to the reviewers and counsel as "version 2." Label the next draft prepared for circulation as "version 3" and so forth.

The drafts should be distributed in lined (marked up) format (although providing unlined versions may also be helpful). For lined versions, add a caption stating which previous version of the document the present document is compared to. Then, for example, when version 4 is circulated, reviewers who want to see *all* revisions from the original model can be sent a document that both shows those revisions and includes a caption to that effect; others who want to see only the most recent changes can receive a document whose caption indicates that it is version 4 as compared to version 3.

Regarding reviewers who want to see all changes as compared to the original: remind them, noting any exceptions, that all changes except for those between the two most recent versions were previously resolved. Although not foolproof, this helps prevent closed matters from being inadvertently re-opened for debate.

## No Hedging

Absent exigent circumstances, any draft circulated must be reviewed and approved by the party (and counsel) tasked with production of that document *before it is circulated to others*. Everyone wants to hedge their bets, but it is a seriously inefficient practice to circulate a document to others that hasn't been approved by the party putting it out for review and approval.

## INITIAL DRAFT

### No Revision; Only Issue Identification

No one is allowed to mark up the first draft. Allowing reviewers and counsel to make detailed edits of the first draft is both wasteful and expensive. Instead, require each party on the circulation list to identify their issues and concerns, cross-referenced, if possible, to the section(s) of the document impacted by those concerns, and circulate that

schedule of issues and concerns to the others. As with draft documents, the schedule circulated by or on behalf of any party must include comments by counsel as well.

## Negotiate Changes

If needed, schedule a conference call to sort through the issues and concerns that need approval by others to be accommodated in the document. Use the issues schedule to keep track of compromises agreed upon, those items still unresolved, and what needs to be done to resolve them. Circulate the marked-up schedule of issues after the call. Furnish a time frame for reviewers to "speak up now or forever hold your peace."

## INTERIM DRAFT

If consensus has been reached on the issues raised by the first draft, the party tasked with document production creates a second draft (the "interim draft") which seeks to include, as faithfully as possible, the issues, concerns, accommodations, and resolutions that were the result of negotiations following the first draft.

## Issue Resolution

Anyone can make a mistake and overlook something, but it is discourteous and annoying to have someone raise, for the first time, an issue in the review of the interim draft that could have, and should have, been raised and resolved in the first draft. That said, if the person raising the issue has approval rights over the document, then repeat the issue identification process and, this time, have them publicly acknowledge that they really, truly, have no other issues to raise.

## Version Control

The interim draft should be dated and saved as a new version of the initial draft. When circulating to the reviewing group and their counsel, indicate that it has been marked to show all changes from the initial draft dated \_\_\_\_.

Those project participants who have indicated that they want to see all changes compared to the template on

which the document is based should receive the latest version lined to show changes as compared to the template.

## Revision

Unlike the first circulated draft, the interim draft may be marked up. It should be circulated in a format that allows the parties including counsel to make clarifications and suggest language improvements by inputting the revision directly into the text, clearly marked, of course, to show those changes.

## Negotiate Changes

Once again, if needed, schedule a meeting to sort through the matters that need approval by others to be accommodated in the document. Keep track of compromises agreed upon, items still unresolved, and what needs to be done to resolve them. The updated schedule of issues and concerns (now, hopefully, down to a few items) may be circulated again to keep track of the final negotiation points. And again, furnish a time frame for reviewers to “speak up now or forever hold your peace.”

## FINAL DRAFT

### Purpose

The purpose of the final (last look) draft is to allow everyone the opportunity to examine the document, not for the purpose of raising issues, but for the purpose of checking to see that the document reflects the meeting of the minds of the parties reached in the negotiations following the initial draft and, if applicable, interim draft.

### Last Look

Communicate clearly to the reviewing group that this is their last chance to review and, if needed, make changes to the document. The “last look” warning is particularly critical when dealing with counsel for municipalities and other governmental agencies who may not have been wholly in the loop on previous drafts. Provide an outside date when all last look comments must be received.

## Version Control

The final draft is typically marked to show changes from the interim draft; however, in some cases it may be a good idea to show changes as compared to the initial draft if there is reason to suspect that some reviewers, or their counsel, did not pay much (or any) attention to the interim draft.

## Exhibits

Forward all exhibits with the final draft so that a final, and complete, sign-off can be obtained from the reviewers and their counsel.

## Counterparts

Achieve consensus on the number of original counterparts that need to be signed at closing and who is satisfied with a photocopy.



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