



**COLORADO**

Department of  
Regulatory Agencies

Division of Real Estate

## Paragraph #15.3.3 of the CBS

On January 1, 2022, the Colorado Real Estate Commission released its latest version of the Contract to Buy and Sell Real Estate (“Contract”). Since its release, the Division of Real Estate has received numerous questions regarding the use and interpretation of paragraph #15.3.3 and how it relates to paragraph #16.2. While the Division of Real Estate has submitted potential revisions for these paragraphs for future consideration, this article is aimed at helping brokers understand how these paragraphs function until any such changes are made.

1. Paragraph #15.3.3. relates to payment of reserves, working capital and advance assessments required by the Status Letter. This means if the Status Letter requires reserves and working capital to be paid at Closing then whomever is responsible based on the check boxes (buyer, seller or one-half by each) will have to pay the required reserves and working capital.
2. Paragraph #16.2. says the buyer may be obligated to pay reserves and working capital at closing. This sentence was originally added as a warning to buyers about the financial burden they might be required to pay at closing. However, it does not say the Buyer must pay reserves and working capital at closing. Therefore, if the “Seller” box is checked in paragraph #15.3.3., the Seller will have to pay reserves and working capital at closing regardless of paragraph #16.2.
3. Paragraph #16.2 also says that the seller will receive a credit if the seller has paid any assessments in advance. Nothing in paragraph #15.3.3. changes the seller’s credit for prepaid assessments. Paragraph #15.3.3. only applies to those assessments required to be paid in advance by the Status Letter.

In a balanced market, typically, Record Change fees (paragraph #15.3.2) are paid by the Seller. Likewise, Reserves, Working Capital, regular assessments and required advance assessments (paragraph #15.3.3.) are paid by the Buyer. However, paragraphs #15.3.2. and #15.3.3. are negotiable as to who can pay those amounts. The reason the Colorado Real Estate Commission makes these provisions negotiable is to ensure the Contract functions regardless of the market the broker is working in. For instance, if the market becomes a buyer market, many sellers may agree to pay fees that are typically paid by buyers.

In many cases the “problem” brokers have been encountering in the Contract with these provisions is when the buyer submits a Contract with the box “seller” checked in paragraph #15.3.3. and the listing broker overlooks this provision. Then at closing, the seller is surprised to learn that they are now obligated to pay for charges that are typically paid for by the buyer; particularly when the market was a seller’s market.

As with all the provisions in the Contract, Brokers are encouraged to review these paragraphs carefully with their clients and to advise their clients accordingly. If the seller does not want to pay Reserves, Working Capital or required advance Assessments that may be required by the Status Letter, then the seller’s broker needs to change the provision in the Contract through a Counterproposal or by drafting a new Contract.