

Legal Bulletin 187
July 1, 2010 Forms Revisions

By Northwest Multiple Listing Service
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NWMLS has revised more than 80 of its forms. Most changes relate to the new vernacular required by the amendments to RCW 18.85 (effective July 1, 2010) and are not substantive. However, some of the revisions to the forms are substantive, including changes to the listing agreements, the buyer representation agreements, and the purchase and sale agreements. Other substantive changes to the forms include relatively minor revisions to the financing forms, the short sale forms, the septic and well forms, and the optional clauses form. The most significant revisions were made to the Payment Terms Addendum (Form 22C), which is used for seller financing. All of the substantive revisions are fully explained in this bulletin.

The revised forms will be available in hard-copy for order and distribution later this month and will be available on Xpress Forms on July 1, 2010. Beginning July 1st, you should use the new forms and recycle any copies of the prior version of the forms. You should not replace any existing agreements with the new forms or use the new forms prior to July 1st.

“Read-only” versions of the revised forms discussed below will be published in conjunction with this bulletin. A list of all of the revised forms is attached to this bulletin and includes revisions to NWMLS’s “internal forms” for use only by NWMLS members. Please take the time to read this bulletin and the revised forms carefully.

1. Listing Agreements – Form 1A (Exclusive Sale) and 1B (Exclusive Agency)

The amendments to RCW 18.85 allow the designated broker to delegate certain duties to a “managing broker,” including the maintenance of transaction records and the supervision of other brokers. The revised listing agreements take this possibility into account in Paragraph 2, the agency disclosure and dual agency paragraph. The listing agreements establish an agency relationship between the seller and the individual Listing Broker and any “Supervising Broker” who supervises the Listing Broker’s performance as the seller’s agent. The “Supervising Broker” includes the designated broker and may include a branch manager or managing broker depending on whether the designated broker has delegated certain responsibilities to them.

The amendments to RCW 18.85 establish a license for a “real estate firm” or “firm” and provide that any commissions are paid to the firm. The revised listing agreements make clear that the contract is between the seller and the firm and all commissions are payable to the firm. The other revisions to the form remove superfluous language and simplify existing provisions.

2. Buyer Agreements – Form 41A (Agency) and 41B (No Agency)

The revisions to the buyer representation agreements parallel the revisions to the listing agreements. The agency disclosure and dual agency paragraph in Form 41A establish an agency relationship between the seller and the Selling Broker and any Supervising Broker who supervises the Selling Broker's performance as the buyer's agent.

3. Purchase and Sale Agreements – Forms 20, 21, 23, 25, and 28

The most evident changes to the purchase and sale agreements are on the first page. Beginning on July 1st, real estate licensees will be uniformly referred to as "brokers" instead of "salespersons." Accordingly, in the purchase and sale agreements, the term "Listing Agent" was changed to "Listing Broker" and the term "Selling Licensee" was changed to "Selling Broker." Similarly, the terms "Listing Broker" and "Selling Broker" were changed to "Listing Firm" and "Selling Firm." These same changes were made to all NWMLS forms that use these terms.

On July 1st, real estate firms may register "assumed names" with the Department of Licensing. If a firm registers an assumed name, the firm may conduct the firm's business using either the firm's name or the firm's registered assumed name. Therefore, the revised purchase and sale agreements include a line for the Listing Firm's and Selling Firm's names and the Listing Firm's and Selling Firm's assumed name, if one is used. If a firm conducts the firm's business using an assumed name in a particular transaction, the purchase and sale agreement should reflect both the firm's name and the firm's assumed name. This will allow the buyer and seller to identify if the Selling Broker and Listing Broker work for the same firm.

Other additions to page one of the purchase and sale agreements include a field for the e-mail addresses of the Selling Broker and Listing Broker and the insertion of the word "firm" in front of the fax number for both brokers. In order for the facsimile transmission of a document to be effective, the document needs to be faxed to the firm, not the individual broker.

Paragraph "b" of the revised purchase and sale agreements provides that the Selling Broker is required to deposit or deliver Earnest Money within three days of mutual acceptance. The requirement to deposit or deliver Earnest Money within three days of receipt was deleted. Also, the amount that the buyer and seller authorize a party who commences an interpleader action to deduct from the Earnest Money was increased from \$250 to \$500.

Finally, the agency disclosure paragraph was revised to accommodate the revisions to RCW 18.85 with respect to a real estate firm and a designated broker delegating duties to a branch manager or managing broker.

4. Financing Forms – Form 22A, Form 22AR, and Form 22AA

The revisions to Form 22A (Financing Addendum) clarify three questions that arose after the last revisions to the form. Revised Paragraph 1(b) makes clearer that the buyer needs to get the seller's written consent to change the type of loan at any time, even within the loan application period. If the buyer does not get the seller's consent, the buyer waives the financing contingency. Before this revision, the form could be read to imply that the buyer could change loan types without the seller's written consent during the loan application period, which is inaccurate.

The revision to Paragraph 2(a) makes clearer that the seller may deliver the "Right to Terminate Notice" at any time after the 30 day period expires (assuming the default time period). In other words, the seller does not have to deliver the "Right to Terminate Notice" on day 30.

The revision to the Loan Costs Provision – Paragraph 3 – includes language from the old version of Form 22A to clarify that the amount that the seller agrees to pay for "Buyer's Loan and settlement costs" can be applied to "prepaids, loan discount, loan fee, interest buy down, financing, closing, or other costs allowed by lender."

A sentence has been added to Form 22AR (Financing Contingency Notice) to provide for a time period for the buyer to apply for a new type of loan or to apply to a new lender, provided that the seller consents to change the type of loan or lender. If the buyer fails to timely apply, the seller's consent is void.

Finally, the revisions to Form 22AA (Appraisal Addendum) place a time limit on the buyer's appraisal contingency. Under the new provision, if the buyer does not timely give notice to the seller of a low appraisal, then the buyer waives the appraisal contingency.

5. Optional Clauses Addendum – Form 22D

Revised Form 22D (Optional Clauses Addendum) includes an option to allow for the e-mail delivery of transaction documents. If the buyer and the seller agree, the e-mail transmission and retransmission of any signed original document is the same as the delivery of the original. Form 22D contains a field for e-mail addresses for the Selling Broker, Selling Firm, Listing Broker, and Listing Firm. For delivery to be effective, the document must be sent to both the Selling Broker and Selling Firm or the Listing Broker and Listing Firm.

If the document is sent to both the applicable e-mail addresses identified in Form 22D, then delivery is effective. The party receiving the e-mail does not have to acknowledge receipt of the e-mail for delivery to be effective. This paragraph applies to the delivery of all transaction documents, including the acceptance of offers and counteroffers, rescissions, notices, seller disclosure statements, resale certificates, preliminary commitment for title insurance, etc.

Please note that the Firm e-mail address on Form 22D is the “Listing Firm Authorized E-mail Address” or the “Selling Firm Authorized E-mail Address.” Each firm must determine which e-mail address to use for the “Firm Authorized E-mail Address” and make sure the firm’s brokers use that e-mail address on the form. NWMLS is pursuing options related to “auto-populating” the e-mail addresses in Form 22D on Xpress Forms and creating an option for members to have a secondary e-mail address on file with NWMLS to use for auto-populating Form 22D. NWMLS will provide notice to the membership when any additional functionality is available.

The other revisions to Form 22D are to Paragraph 2 and 3. These paragraphs now include a phrase to remind the parties that the default title insurance clause in the purchase and sale agreement provides for a homeowner’s policy of title insurance. This language was inserted to prevent the selling broker from inadvertently downgrading the buyer’s title insurance, paid for by the seller, from the homeowner’s form of policy in the purchase and sale agreement to the standard form of policy in Form 22D.

6. Short Sale Forms – Form 22SS and 90SS

Revised Form 22SS (Short Sale Addendum) provides for a 60 day default period (instead of 30 days) for the seller to obtain “Lender Consent.” The revised form requires that the seller give notice to the buyer if seller becomes aware that seller’s creditor(s) did not consent to the agreement or if the seller decides not to accept any conditions imposed seller’s creditor(s). The seller must give the notice within two days of whichever is applicable.

In addition, revised Form 22SS requires that the parties use Form 90SS (Notice Pursuant to Short Sale Addendum) for all notices required by Form 22SS. This includes Notice of Lender Consent, Notice of No Lender Consent, and Notice of Termination by the buyer. Form 90SS has been revised to include these three notices.

Please note that in a short sale transaction, mutual acceptance occurs when the agreement is signed and delivered by the parties (buyer and seller). The fact that the transaction is subject to approval by the seller’s creditor(s) in Form 22S has no affect on the date of mutual acceptance. In Paragraph 5 of Form 22S, the parties agree to compute time from the date the seller gives notice of Lender Consent. This applies to all the timelines in the agreement (except for the short sale contingency), including inspection, financing, the deposit of earnest money, etc. The fact that the parties agree to compute time from the date of Lender Consent, does not mean that the parties have not reached mutual acceptance.

7. Septic Addendum – Form 22S

The revisions to Form 22S (Septic Addendum) relate to three separate issues. First, new Paragraph 3 requires the seller to deliver maintenance records, if available, to the buyer within 10 days (the default time period) of mutual acceptance. This is

consistent with the requirement in WAC 246-272A-0270. Second, new Paragraph 4 requires the seller to comply with any local regulations or ordinances that may require the seller to conduct an inspection of the septic system prior to the sale of the property. Finally, new Paragraph 5 gives the parties an option to negotiate how long the seller's prior inspection of the septic system will satisfy the inspection requirement in Form 22S (the default is 12 months). The prior version of the form did not give the parties the option to negotiate that time period and provided that the inspection was good for 12 months. Similar changes were also made to the county specific septic addenda.

8. Well Addendum – Form 22R

Revised Form 22R contains only one minor change. If requested by the buyer's lender or any governmental authority, Paragraph 3 requires the seller to provide a health district certificate of compliance to the buyer. The current form requires the seller to provide the certificate within 10 days (assuming the default time period) of *mutual acceptance*. The revised form requires the seller to provide the certificate within 10 days (assuming the default time period) of the *request* by the lender or governmental authority.

9. Payment Terms Addendum – Form 22C

Form 22C, used for seller financing, has been completely revised. The form has been reformatted so that it is easier to use and understand. New sections have been added related to the seller's review of buyer's finances, taxes and insurance, seller and buyer review periods, seller's warranty regarding loan assumption, and attorney review. Also, there are new terms to correspond with the most recent versions of the Limited Practice Board ("LBP") forms.

Please note that transactions involving seller financing are complicated and often require special expertise. You are advised to seek the advice of counsel, and you should advise your clients to seek the advice of counsel, particularly the seller, when representing parties in such transactions.

10. Forms Availability

Many of the revised forms are currently available for order and distribution in hard-copy. NWMLS will not issue refunds or credits for any remaining stock of the prior forms. Please prepare to distribute the new forms in your office along with a copy of these instructions to all agents. The revised forms will be available on Xpress Forms on July 1, 2010. NWMLS will remove the old version of the forms at the same time.

REVISED FORMS

Form 1A	Exclusive Sale and Listing Agreement
Form 1B	Exclusive Agency Sale and Listing Agreement
Form 1A SWF	Statewide Exclusive Sale and Listing Agreement
Form 1B SWF	Statewide Exclusive Agency Sale and Listing Agreement
Form 2	Letter of Authorization
Form 11	Referral Agreement
Form 12	New Construction Notice of Sale
Form 16A	Business Opp. Exclusive Sale and Listing Agreement
Form 16B	Business Opp. Exclusive Agency Sale and Listing Agreement
Form 18	Amendment to Excl. Sale/Listing Agreement
Form 19	Status Change Input Sheet
Form 20	Multi-Family Purchase and Sale Agreement
Form 21	Residential Purchase and Sale Agreement
Form 22A	Financing Addendum
Form 22AA	Appraisal Addendum
Form 22AR	Financing Contingency Notice
Form 22B	Buyer's Sale of Property Contingency Addendum
Form 22C	Payment Terms Addendum
Form 22D	Optional Clauses Addendum
Form 22J	Disclosure of Info. on Lead-Based Paint and Hazards
Form 22K	Identification of Utilities Addendum
Form 22LA	Land and Acreage Addendum
Form 22Q	Buyer's Pending Sale of Property Contingency
Form 22R	Well Addendum
Form 22S-King	King County Septic Addendum
Form 22S	Septic Addendum
Form 22SS	Short Sale Addendum
Form 22UU	Kitsap County Septic Addendum
Form 22WW	Pierce County Septic Addendum
Form 23	Manufactured Home PSA
Form 24	Commercial/Investment PSA
Form 25	Vacant Land Purchase & Sale Agreement
Form 26	Presale Addendum
Form 26A	Presale Addendum - Optional Clause
Form 27	Condominium Resale Certificate
Form 28	Condominium Purchase & Sale Agreement
Form 30	Business Opportunity PSA
Form 31	Earnest Money Promissory Note
Form 33	Cooperative Apartment Addendum
Form 34	General Addendum
Form 35	Inspection Addendum
Form 35E	Escalation Addendum
Form 35F	Feasibility Contingency

REVISED FORMS

Form 36	Counter-Offer Addendum
Form 36A	Withdrawal of Offer or Counteroffer
Form 38B	Notice to Back-Up Buyer that First Sale has Failed
Form 40	Commission Disbursement Form
Form 41A	Buyer's Agency Agreement
Form 41B	Buyer's Agreement No Agency
Form 41C	Selling Broker's Commission
Form 41D	Inspector Referral Disclosure
Form 42	Agency Disclosure
Form 43	Reservation Agreement
Form 44	Notice to Remove Contingency ("Bump Notice")
Form 46	Notice from Contingent Buyer to Seller ("Bump Reply")
Form 50	Authorization to Disburse Earnest Money
Form 51	Rescission of Purchase and Sale Agreement
Form 52	Conditional Release of Listing
Form 63	Exclusive Lease / Rental Listing Agreement
Form 65A	Rental Agreement (Occupancy Prior to Closing)
Form 65B	Rental Agreement (After Closing)
Form 75	Option to Buy Real Estate
Form 80	Password Non-Disclosure Agreement
Form 81	Listing Input Authorization
Form 83	Personal Information Form
Form 89	Receipt for Earnest Money
Form 90A	Notice of Rescission of Agreement Pursuant to Form 17
Form 90SS	Notice of Termination Pursuant to Form 22SS
Form 101	Tour Notice
Form 104	Membership Application
Form 106	Associate Membership Application
Form 108	Authorized Signature
Form 110	Downloading Agreement
Form 112	Application for Inactive Membership
Form 114	Subscription Agreement
Form 120	Urea-Formaldehyde Disclosure Statement
Form 121	License Fee Exemption Request
Form 122A	Broker/Broker Assistant/Clerical Change
Form 126	Speak-Up Form
Form 127A	Firm/Associate Agreement
Form 127B	Firm/Associate Agreement (With B & O Formula)
Form 131	Check Off List - Broker Leaving Real Estate Firm
Form 150	Interpleader Complaint and Summons
Form 180	Discipline Complaint
Form 184	Discipline Notice of Appeal
Form 185	Discipline Response