

Legal Bulletin 216
2019 Forms Revisions

By Northwest Multiple Listing Service
June 10, 2019

1. Introduction

This bulletin summarizes revisions to many NWMLS forms and introduces one new form. Many of the revisions were made for clarification purposes and are not substantive changes.

The revised forms are currently available on NWMLS's website as SAMPLE forms for review purposes only. For more information on a particular form, please review the NWMLS Forms Manual. The forms will be published for use on Xpress Forms and Transaction Desk on July 1, 2019. The revised forms are listed below.

- Listing Agreements (Form 1A and 1B)
- Seller Disclosure Statements (Form 17 and 17C)
- Purchase and Sale Agreements (Form 20, 21, 23, 25, and 28)
- Financing Addendum (Form 22A)
- Appraisal Addendum (Form 22AA)
- Increased Down Payment for Low Appraisal Addendum (Form 22AD)
- Notice for Increased Down Payment Addendum (Form 22ADN) – new
- Low Appraisal Notice (Form 22AN)
- Seller Financing Addendum (Form 22C)
- Optional Clauses Addendum (Form 22D)
- FIRPTA Certificate (Form 22E)
- Evidence of Funds Addendum (Form 22EF)
- Identification of Utilities Addendum (Form 22K)
- Land and Acreage Addendum (Form 22LA)
- Manufactured Home Addendum (Form 22MH)
- Well Addendum (Form 22R)
- Septic Addendum (Form 22S)
- King County Septic Addendum (Form 22S-King)
- Thurston County Septic Addendum (Form 22S-Thurston)
- Inspection Addendum (Form 35)
- Pre-Inspection Agreement (Form 35P)
- Withdrawal of Offer or Counteroffer Form (Form 36A)
- Back-Up Addendum Notice (Form 38B)
- Buyer's Agency/No Agency Agreement (Form 41A and 41B)
- Rental Agreements (Form 65A and 65B)
- Lease/Rental Agreement (Form 68)
- Assignment of Lease/Rental Agreement (Form 69)
- Buyer's Pending Sale Contingency Notice (Form 90U)

1. Listing Agreements (Form 1A and 1B)

The listing agreements were revised to more clearly incorporate the listing input sheets into the contract. The listing input sheets contain the list price, property information, and other pertinent information about the listing.

Paragraph 10 (Property Condition and Insurance) has been revised to clarify that brokers are responsible for any damage or injury caused by the broker's gross negligence or willful misconduct.

2. Seller Disclosure Statements (Form 17 and 17C)

The Seller Disclosure Statement for Improved Property (Form 17) and for Unimproved Property (Form 17C) were updated to reflect upcoming revisions to the Seller Disclosure Act (RCW 64.06). The changes to the forms relate to smoke detection devices and notices about proximity to working forest and the availability of oil tank insurance.

Please note that the legislation that mandates changes to these forms is not effective until January 1, 2020. This means that sellers with active listings do not have to fill out a new form. However, sellers listing property after the revised forms are published (July 1st), should use the revised form so that the seller will not have to fill out a different form if the property is still on the market on January 1, 2020.

3. Purchase and Sale Agreements (Form 20, 21, 23, 25, and 28)

The purchase and sale agreements have been revised as follows:

- New provision to advise the parties to use caution when wiring funds due to increased risk of wire fraud.
- New term to prohibit the seller from conveying or reserving any oil or mineral rights after mutual acceptance.
- New requirement that the seller provide at least one smoke detection device to the buyer (if the property does not have one) – consistent with revisions to RCW 43.44.110 (effective July 1, 2019).
- Clarification in the attorneys' fees provision that the prevailing party in an interpleader action is entitled to attorneys' fees.
- Clean-up of the offer/counteroffer provisions for consistency purposes.
- Add acknowledgment for the buyer related to short term rentals.

2. Financing and Related Forms

The Financing Addendum (Form 22A) has been revised to give the parties the option to require a VA buyer to pay the buyer's share of the escrow fee. In addition, revisions to the form clarify the process for a buyer with a FHA, VA, or USDA loan to

proceed with the transaction in the event of an appraisal less than the purchase price. Corresponding changes have been made to the Notice of Low Appraisal (Form 22AN). Finally, a provision has been added to Form 22A requiring the parties to execute a FHA, VA, or USDA amendatory clause, as required by the lender.

The Appraisal Addendum (Form 22AA) now includes a provision stating that, if the buyer disclosed that the buyer is obtaining a loan, the seller shall permit inspections required by the lender. A similar provision was added to the Evidence of Funds Addendum (Form 22EF), along with a checkbox for buyer to disclose that buyer is obtaining a loan. Note that Form 22EF is not a contingency form, but rather more of a disclosure form for the buyer to provide evidence of non-contingent funds and/or to disclose that buyer is relying on contingent funds. General Term “a” of the purchase and sale agreement requires the buyer to disclose if the buyer is relying on any contingent source of funds for the purchase.

The Increased Down Payment for Low Appraisal Addendum (22AD) has been clarified to provide that, if the buyer waives the financing contingency, the seller may not terminate the agreement under the provisions in Form 22AD. In addition, a new notice form – Notice for Increased Down Payment for Low Appraisal Addendum (22ADN) – was created for the notices required by Form 22AD.

The Seller Financing Addendum (Form 22C) has been renamed to more accurately describe the form (the prior title was the Payment Terms Addendum). Also, the form was clarified to only require a Department of Financial Institutions (“DFI”) waiver if the property is currently used as a residential dwelling. A contingency was added for the buyer if the seller fails to timely obtain and give notice that the seller obtained a waiver from DFI. Finally, the down payment section has been reformatted and simplified to be more user friendly.

3. Inspection Addendum (Form 35) and Pre-Inspection Addendum (Form 35P)

The Inspection Addendum has been revised to state that the buyer shall not provide the inspection report, or portions of the report, to the seller unless the seller requests a copy, or as required to deliver notice of additional inspections. The Pre-Inspection Addendum (Form 35P) was revised to include a similar provision. There were also a few minor clean-up revisions made to other sections of Form 35.

4. Septic Addendum (Form 22S) and Well Addendum (Form 22R)

The Septic Addendum (Form 22S) was revised to clarify that when performing the inspection, the inspector determines if pumping is necessary. The default timeframe in the King County Septic Addendum (Form 22S-King) for how long a septic inspection is valid was changed from 12 to 6 months to be consistent with King County regulations. The Thurston County Septic Addendum (Form 22S-Thurston) was revised to clarify that a “Time of Transfer Evaluation Report” is also required by Thurston County.

The Well Addendum (Form 22R) was revised to include a contingency for the buyer to review any well documents provided by the seller. A sentence was added giving the buyer the right to attend the inspection. A new provision advises the buyer that water supply requirements and water use limits vary by jurisdiction and advises that buyer consult with an expert regarding these matters.

5. Land and Acreage Addendum (Form 22LA)

The Land and Acreage Addendum has been revised to include several new buyer acknowledgments related to water quality tests, on-site sewage systems, lease agreements that extend beyond closing, and the seller's right to harvest crops. In addition, some of the contingencies in the form related to property surveys, perc tests, on-site sewage systems, and water quality testing have been updated. The section dealing with water rights has been revised as well as the paragraph related to the Conservation Reserve Program ("CRP").

6. Manufactured Home Addendum (Form 22MH)

The Manufactured Home Addendum (Form 22MH) has been revised to include an option for title elimination and a second option for the transfer of the manufactured home as personal property. The title elimination provision requires the seller to eliminate title and provide notice to buyer that title has been eliminated before closing. Either way, the form advises the buyer to inspect the manufactured home for compliance with Department of Labor and Industries ("L&I") regulations.

7. Buyer Agency Agmt. (Form 41A) and Buyer No Agency Agmt. (Form 41B)

The "tail provision" in both the Buyer Agency Agreement (Form 41A) and the Buyer No Agency Agreement (Form 41B) has been modernized to reflect current practices. As a reminder, although not required, there are many benefits of using these forms, including establishing a contractual relationship with your client and agreeing on compensation for your services.

8. Lease/Rental Forms

Rental Agreement – Buyer Occupancy Prior to Closing (Form 65A) and Rental Agreement – Seller Occupancy After Closing (Form 65B) have both been updated to address tenant holdover issues. Please note that these forms are intended to be used for very short rental periods. For longer rental time, you should use the more comprehensive Lease/Rental Agreement (Form 68).

The Lease/Rental Agreement (Form 68) has been revised to address an issue with the application of the last month's rent. In addition, the "pay or vacate" timeframe has

been revised to fourteen (14) days to reflect a change to the Residential Landlord Tenant Act (RCW 59.18) effective July 28, 2019.

The Assignment of Lease or Rental Agreement (Form 69) was revised to address the transfer of tenant deposits. In addition the notary blocks have been removed from the form, as there is no notary requirement for an assignment.

9. Other Form Clarifications

Minor changes were made to the following forms, as noted below:

- FIRPTA Certificate (Form 22E) – clarified that closing agent must withhold 10% tax for sales between \$300,000 and \$1,000,000, if applicable.
- Optional Clauses Addendum (Form 22D) – clarified that the seller must remove personal property not later than the Possession Date.
- Identification of Utilities Addendum (Form 22K) – added space for the utility's e-mail or website (optional) and clarified that fax numbers are optional
- Withdrawal of Offer or Counteroffer (Form 36A) – modernized form and made formatting improvements
- Back-Up Addendum Notice (Form 38B) – updated title of form and added section for the buyer's notice of termination
- Buyer's Pending Sale Contingency Notice (Form 90U) – revised form to make specific reference to Buyer's Pending Sale of Property Contingency Addendum (Form 22Q)

10. Availability of Revised and New Forms

SAMPLE copies (including both clean and redline copies) of the revised and new forms are available on NWMLS's website for your review. Please note that you should not use the SAMPLE copies of the forms for any transactions.

The revised and new forms are currently available for order in hard-copy and will be available for use on Xpress Forms and Transaction Desk on July 1, 2019. NWMLS will remove the old version of the forms at the same time. You should recycle your old forms to prevent any inadvertent use.