

Legal Bulletin No. 220
Revisions to the Residential Landlord Tenant Act
and the Seller Disclosure Act

By Northwest Multiple Listing Service
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1. Introduction

This bulletin summarizes revisions to the Residential Landlord Tenant Act (RCW 59.18) (“RLTA”) and related changes to NWMLS’s lease and rental forms. The bulletin provides general information about the revisions to the RLTA and does not address specific scenarios that may arise with the landlord/tenant relationship. If a landlord or tenant has questions about their rights or obligations under the RLTA, you should advise them to talk to an attorney.

This bulletin also summarizes revisions to the Seller Disclosure Act (RCW 64.06) and the related changes to the Seller Disclosure Statement – Improved Property (Form 17) and the Seller Disclosure Statement – Unimproved Property (Form 17C).

The revised forms are currently available on NWMLS’s website as SAMPLE forms for review purposes only. The forms will be published for use on Transaction Desk and Xpress Forms on August 16th.

2. Revisions to the Residential Landlord Tenant Act

House Bill 1236, effective in May 2021, adds a new section to the RLTA related to the duration of a tenancy, notices necessary to terminate a tenancy, and similar requirements. Note that the practical application of these changes has been delayed by the COVID-19 eviction moratorium and the related “bridge proclamation.”

The new section is complicated with many different variables depending on the terms of the rental agreement. The most significant change is that the revised law restricts a landlord’s ability to end a tenancy *without* cause, unless the rental agreement contains certain terms. Examples of “cause” include tenant’s failure to pay rent, tenant committing waste or nuisance on the property, or tenant’s continued possession of the property under several different circumstances (e.g. notice that the property has been condemned as uninhabitable). There are sixteen specific “for cause” scenarios outlined in the statute.

In short, a landlord may not – without cause – evict a tenant, refuse to continue a tenancy, or end a periodic tenancy (e.g. month-to-month tenancy), except in the following circumstances:

- a. Scenario No. 1
 - i. Landlord and tenant entered into a rental agreement that provides for the tenancy to continue for an indefinite period (e.g. month-to-month) after the agreement expires;
 - ii. The original rental agreement was between six and twelve months; and
 - iii. Landlord provides tenant before the end of the initial lease period at least 60 days advance written notice ending the tenancy.
- b. Scenario No. 2
 - i. Landlord and tenant entered into a rental agreement that does not provide for the tenancy to continue for an indefinite period (e.g. month-to-month) after the agreement expires;
 - ii. The original rental agreement was for twelve months or more and the parties have continuously and without interruption entered into successive rental agreements of six months or more;
 - iii. Landlord provides tenant before the end of the initial lease period (or renewal period) at least 60 days advance written notice that the tenancy will be deemed expired at the end of such period; and
 - iv. The tenancy has not been for an indefinite period on a periodic (e.g. month-to-month) basis at any point since the inception of the tenancy.

There are many other revisions to the RLTA in House Bill 1236, including the circumstances that constitute “cause” as a reason to terminate a tenancy. This bulletin is not a comprehensive review of those revisions and only focuses on the changes that directly affect NWMLS’s lease and rental forms.

3. Lease/Rental Agreement (Form 68)

The Lease/Rental Agreement (Form 68) has been revised to remove the “month-to-month” option as a term for the tenancy. This is because under the recent revisions to the RLTA, a landlord can only terminate a month-to-month tenancy for cause. In addition, the form can only be used for tenancies of at least six months, as shorter tenancies can only be terminated for cause. Form 68, consistent with the revisions to the RLTA, requires a landlord to give a tenant 60 day notice prior to the expiration of the agreement.

4. Rental Agreement (Buyer Occupancy Prior to Closing) (Form 65A)

The Rental Agreement (Buyer Occupancy Prior to Closing) (Form 65A) has been revised to remove this “living arrangement” from the RLTA. A buyer taking possession prior to closing is exempt from the RLTA under RCW 59.18.040(2). In the prior version of Form 65A, the landlord and tenant agreed to have the RLTA apply and govern their relationship. Part of the reason for that was the risk in Form 65A that the buyer moves into the property, defaults under the purchase and sale agreement, and fails to close.

The RLTA, in conjunction with the Unlawful Detainer Statute (RCW 59.12), give the property owner the ability to evict the tenant. Due to the recent changes to the RLTA and the restrictions on terminating short-term tenancies, the RLTA has been removed from Form 65A and the property owner's remedies to evict the tenant are limited to those in the Unlawful Detainer Statute (RCW 59.12).

Please note that Form 65A provides notice to the parties regarding the many risks involved with granting a buyer possession prior to closing. The seller should consult with an attorney before entering into such an agreement.

5. Rental Agreement (Seller Occupancy After Closing) (Form 65B)

The Rental Agreement (Seller Occupancy After Closing) (Form 65B) has been revised to include the following notice at the top of the form:

Notice: There are many risks associated with giving a seller the right to occupy a property as a tenant after closing. If a seller fails to vacate the property upon the termination of this rental agreement, a buyer may have limited rights to remove the seller from the property. A buyer should consult with an attorney before entering into an agreement that provides a seller with occupancy after closing.

This notice is similar to the notice that has been at the top of Form 65A for many years. However, unlike a buyer taking possession prior to closing, a seller staying in the property after closing is not exempt from the RLTA. This makes the recent changes to the RLTA and the restrictions on terminating short-term tenancies more challenging for a seller's occupancy after closing.

A buyer may only be able to terminate a Form 65B tenancy "for cause" if the seller fails to vacate the property at the end of the short-term rental. Accordingly, a buyer should consult with an attorney prior to entering into such an agreement.

As a reminder, both Form 65A and 65B are only intended for short-term rental scenarios. Brokers should use Form 68 for longer-term agreements.

6. Seller Disclosure Act (RCW 64.06)

House Bill 1064, effective January 1, 2022, adds a new question to Section 5 of the Seller Disclosure Statement – Improved Property (Form 17). The new question asks the seller "Does the property currently have internet service?" If the answer is yes, the form also asks the seller for the "provider" of the internet service.

House Bill 1335, effective January 1, 2022, adds the following "Notice to Buyer" to Section 1 of Form 17 with regard to unlawful covenants or deed restrictions:

Covenants or deed restrictions based on race, creed, sexual orientation, or other protected class were voided by RCW 49.60.224 and are unenforceable. Washington law allows for the illegal language to be struck by bringing an action in superior court or by the free recording of a restrictive covenant modification document. Many county auditor websites provide a short form with instructions on this process.

Although not required by the statute, the revised Seller Disclosure Statement – Unimproved Property (Form 17C) will also contain the same notice language.

Please note that the legislation that mandates changes to Form 17 is not effective until January 1, 2022. This means that sellers with active listings, who have already filled out Form 17, do not have to fill out a new form. However, sellers listing property after the revised forms are published (August 16th), should use the revised form so that the seller will not have to fill out a new form if the property is still on the market on January 1, 2022.

7. Availability of Revised 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 forms will be available for use on TransactionDesk and Xpress Forms on August 16th. NWMLS will remove the old version of the forms at the same time. You should recycle your old forms to prevent any inadvertent use.

Again, if a landlord or tenant has questions about their rights or obligations under the RLTA, you should advise them to talk to an attorney.