

**Legal Bulletin 205**  
**July 24, 2015 Financing Forms Revisions**

*By Northwest Multiple Listing Service*  
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**1. Introduction**

This bulletin reviews upcoming revisions to NWMLS financing forms, including the Financing Addendum (Form 22A), the Financing Contingency Notice (Form 22AR), and Automatic Extension of Closing (Form 22 REG Z). The bulletin also introduces several new forms including the Loan/Lender Change Addendum (Form 22AC), Request for Loan Information (Form 22AL), and Loan Information Notice (Form 22AP).

These forms are currently available on NWMLS's website as SAMPLE forms for review purposes only, but are not for use in any transaction. The financing forms will be published for use on Xpress Forms and Transaction Desk on July 24, 2015. Please review this bulletin and the revised forms carefully.

**2. CFPB Changes – October 3, 2015**

New federal rules promulgated by the Consumer Financial Protection Bureau (“CFPB”) are effective October 3, 2015. These rules relate to Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (“RESPA”) (Regulation X) and the Truth In Lending Act (“TILA”) (Regulation Z).

The changes that are most relevant for real estate brokers include:

- Definition of loan “application” (12 CFR 1026(a)(2));
- The lender must provide a “Loan Estimate” to Buyer within three days of application (12 CFR 1026.19(e));
- The lender must provide a “Closing Disclosure” to Buyer at least three days before consummation (i.e. the date the Buyer is contractually obligated for the loan) (12 CFR 1026.19(f));
- The lender must provide a revised “Closing Disclosure” for last minute changes to the APR, the addition of a pre-payment penalty, or a change in the loan product at least three days before consummation (i.e. the date the Buyer is contractually obligated for the loan) (12 CFR 19(f)(2)(i)).

These new CFPB rules are discussed throughout this bulletin as they relate to revisions in the forms.

### **3. Financing Addendum (Form 22A)**

#### **a. Section 1(Loan Application/Waiver of Contingency)**

Section 1 (Loan Application/Waiver of Contingency) of the Financing Addendum (Form 22A) has been revised to incorporate the definition of loan “application” from the new CFPB rules. The revised form provides that “application” means:

The submission of Buyer’s financial information for the purposes of obtaining an extension of credit including Buyer’s name, income, social security number (if required), the Property address, purchase price, and the loan amount.

The definition of “lender,” throughout the addendum has been revised to mean “either the party to whom the application was submitted or the party funding the loan.” This means that timely application can be made to a mortgage company or directly to the lender.

Finally, the provision stating that, if not waived, the financing contingency shall survive closing, has been moved to renumbered Section 3.

#### **b. New Section 2 (Loan Information)**

New Section 2 (Loan Information) sets forth a process where Seller can request that Buyer provide information regarding the status of Buyer’s loan application. The new term states that “any time \_\_\_\_ days (10 days if not filled in) after mutual acceptance, Seller may give notice to Buyer requesting information related to the status of Buyer’s loan application.” The notice may be given using the new Request for Loan Information (Form 22AL).

If Seller properly delivers Form 22AL, then Buyer has “\_\_\_\_ days (3 if not filled in)” to give notice to Seller regarding the status of Buyer’s loan application. Buyer’s notice must be on the new Loan Information Notice (Form 22AP) and must include the date and identity of the entity where Buyer made loan application. The notice also includes a list of the information that Buyer has provided to the lender and a warranty that Buyer has provided all the information requested by the lender to date. Finally, the notice includes authorization from Buyer to allow listing broker and Seller to contact lender to discuss the status of Buyer’s loan application.

If Buyer fails to timely give Seller the Loan Information Notice, then Seller’s rights related to termination under renumbered Section 3 (Seller’s Right to Terminate) are accelerated to the date when Buyer’s notice was due. At that time, Seller will have the option to deliver the Right to Terminate Notice contained in the Financing Contingency

Notice (Form 22AR), and then assuming Buyer does not waive the financing contingency within three days, the Termination Notice in Form 22AR.

The purpose of this new Section 2 (Loan Information) is to keep Seller better informed about the status of Buyer's loan application. Seller will know whether Buyer is taking the necessary steps to obtain the loan. If Buyer does not cooperate and provide Seller with information, Seller will have the option to accelerate the termination process in Section 3 (Seller's Right to Terminate).

c. Section 4 (Loan Cost Provisions)

Renumbered Section 4 (Loan Cost Provisions) was revised to include up to \$300 in costs for FHA/USDA/VA loans that lender is prohibited from collecting from Buyer and the full escrow fee for VA loans – into the negotiated amount that Seller agrees to pay for Buyer's loan and settlement costs. For example, if Seller agrees to pay \$1,000 towards Buyer's loan and settlement costs – up to \$300 for FHA/USDA/VA loans and the full escrow fee for VA loans is included in that amount.

The prior version of the form added those costs to the negotiated amount. Please note that if the parties insert \$0 for Buyer's loan and settlement costs, Seller is still required to pay the FHA/USDA/VA loan and settlement costs.

d. Section 5 (Earnest Money)

Revised Section 5 (Earnest Money) applies if Buyer is unable to obtain financing and gives notice terminating the transaction. The earnest money will be refunded to Buyer after lender (defined as either the party to whom the application was submitted or the party funding the loan) confirms in writing:

- a. the date Buyer applied, including a copy of the Loan Estimate provided to Buyer;
- b. that Buyer possessed sufficient funds to close; and
- c. the reasons Buyer was unable to obtain financing by closing.

The revision to this provision requires Buyer to provide a copy of the Loan Estimate, along with written confirmation of the date Buyer applied for the loan. The new CFPB rules require the entity who received the application to provide Buyer with a Loan Estimate within three days of receiving the application. The timing of the Loan Estimate will confirm the date Buyer made loan application.

The revisions to Section 5 also clarify that if Buyer, after a good faith effort, is unable to obtain financing *by the closing date*, Buyer may terminate the agreement and the earnest money will be refunded to Buyer. Under the new CFPB rules, lender must

provide a “Closing Disclosure” to Buyer at least three days before consummation (i.e. the date the Buyer is contractually obligated for the loan). If lender fails to do so and Buyer cannot timely close, the earnest money will be refunded to Buyer (assuming Buyer has not waived the financing contingency). Of course, the parties can always agree to extend the closing date.

e. Section 9 (Extension of Closing)

The new CFPB rules require a *revised* Closing Disclosure be provided to Buyer three days before consummation for last minute changes to the APR, the addition of a pre-payment penalty, or a change in the loan product. Section 9 (Extension of Closing) has been revised to allow for an automatic extension of closing for up to four days for a new Closing Disclosure to be provided to Buyer should one of these last minute changes occur. Please note there is no automatic extension for the situation where the original Closing Disclosure is simply not provided to Buyer in a timely manner.

Automatic Extension of Closing (Form 22 REG Z) has also been revised to incorporate these changes. This form can be used in situations where Buyer is obtaining a loan to purchase the property, but the purchase and sale agreement is not contingent on Buyer obtaining the loan (i.e. there is no Financing Addendum (Form 22A) included in the agreement).

**4. New Loan/Lender Change Addendum (Form 22AC)**

The new Loan/Lender Change Addendum (Form 22AC) can be used to allow Buyer to change lenders after the time to apply has expired or to change the type of loan, as required by the Financing Addendum (Form 22A). This new form replaces a similar provision that was previously in the Financing Contingency Notice (Form 22AR).

**5. New Request for Loan Information (Form 22AL)**

The new notice form – Request for Loan Information (Form 22AL) – is for Seller to request information about the status of Buyer’s loan application. Seller may give this notice any time after the applicable time period in the Financing Addendum (Form 22A) has elapsed. Buyer then has three days to provide the requested information to Seller or risk that Seller will accelerate the Section 3 termination process.

**6. New Notice of Loan Information (Form 22AP)**

The new Notice of Loan Information (Form 22AP) is for Buyer to use to respond to Seller’s Request For Loan Information. The form contains several critical components:

- a. The date Buyer applied for the loan and the entity where Buyer applied (referred to as lender);
- b. Authorization from Buyer to listing firm, listing broker, and Seller to contact the lender to inquire about the status of Buyer's loan application;
- c. Identification of information that Buyer has provided to lender in order to obtain the loan. Examples include recent paystubs, tax information, account statements, mortgage statements, source of down payment, etc.; and
- d. Confirmation that Buyer has provided all the information that lender has requested as of the date of Buyer's notice.

After Seller's request, if Buyer timely delivers a completed Notice of Loan Information (Form 22AP) to Seller, then Seller will not be able to accelerate termination provision in Section 3 (Seller's Right to Terminate). If, however, Buyer fails to timely respond to Seller's Request for Loan Information (Form 22AL) by delivering a completed Notice of Loan Information (Form 22AP), Seller will have the option to initiate the termination process.

## **7. Availability of Revised Forms**

SAMPLE copies (including both clean and redline copies) of the revised 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 are currently available for order in hard-copy and will be available on Xpress Forms and Transaction Desk for use on July 24, 2015. NWMLS will remove the old version of the forms at the same time. You should recycle your old forms to prevent any inadvertent use.