

**Legal Bulletin 209**  
**2017 Forms Revisions**

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

This bulletin summarizes revisions to several NWMLS forms, including:

- Purchase and Sale Agreements (Form 20, 21, 23, 25, and 28)
- Financing Addendum (Form 22A)
- Appraisal Addendum (Form 22AA)
- Low Appraisal Notice (Form 22AN)
- Buyer's Sale of Property Contingency Addendum (Form 22B)
- Optional Clauses Addendum (Form 22D)
- Evidence of Funds Addendum (Form 22EF)
- Buyer's Pending Sale of Property Contingency Addendum (Form 22Q)
- Well Addendum (Form 22R)
- Island County Noise Disclosure (Form 22W)
- Modification to Closing Date Addendum (Form 22Y)
- Condominium Resale Certificate (Form 27)
- Pre-Inspection Agreement (Form 35P)
- Back-Up Addendum (Form 38A)
- Request for Consent – Contingent Sale (Form 90L)
- Status Change Input Sheet (Form 19) and Unlisted Sale Input Sheets

The bulletin also introduces six new forms:

- Appointment of Subagent (Form 1S)
- Increased Down Payment Addendum (Form 22AD)
- Additional Signer Addendum (Form 22Z)
- Agency Disclosure - Multiple Brokers Addendum (Form 42A)
- Notice of Termination (Well Addendum) (Form 90X)
- Notice of Termination (Septic Addendum) (Form 90Y)

The revised and new forms are currently available on NWMLS's website as **SAMPLE** forms for review purposes only. This bulletin highlights the revisions to the forms. For more information on a particular form, please review the NWMLS forms manual. The forms are available for order in hard copy and will be published for use by the membership on Xpress Forms and Transaction Desk on February 23, 2017.

## **1. Purchase and Sale Agreements (Form 20, 21, 23, 25, and 28)**

### **a. Specific Terms**

Several changes were made to the first page of the purchase and sale agreements. Additional fill-in fields were included to allow the parties to list multiple tax parcel numbers, if applicable. Please note that the purchase and sale agreement must include a legal description of the property in order to be enforceable by either party under the statute of frauds.

“Generator” was added to the list of included items in Specific Term 5. If there is a generator on the property, the parties negotiate whether the generator will be included in the sale.

The “Closing Agent” fill-in fields were modified to allow the parties to insert the name of the closing company (e.g. ABC Title Company) and the name of the individual escrow agent (e.g. John Doe). The option to select a “qualified closing agent of Buyer’s choice” was removed.

Finally, a new field was added for the broker’s personal phone number, in addition to the firm’s phone number. When using Xpress Forms and Transaction Desk, The broker’s phone number will be auto-filled into the form with the other real estate firm and broker contact information.

### **b. Closing and Possession (General Term “f”)**

General Term “f” was revised to include a provision regarding systems and appliances that was previously in the Optional Clauses Addendum (Form 22D). The provision requires the seller to repair or replace any system or appliance that becomes inoperative or malfunctions prior to closing. The revised form also gives the buyer the option to “walk-through” the property within five days of closing to verify that the seller has maintained the property and the systems and appliances as required by the purchase and sale agreement.

### **c. Notices and Delivery of Documents (General Term “k”)**

Revised General Term “k” (Notices and Delivery of Documents) has been combined with General Term “m” (Facsimile and E-mail Transmission). The revised paragraph has also been simplified and modernized.

The provision regarding e-mail delivery still requires that any notice or document be sent to *both* the broker and firm for delivery to be effective. However, the revised form provides that if the broker receiving the notice or document acknowledges receipt in writing, then delivery is effective even though the notice or document was only sent to

the broker and not the firm. The provision makes clear that an “automatic” e-mail reply does not constitute written acknowledgment.

Despite this revision, when using e-mail, brokers should always send notices and documents to both the broker and firm to avoid any claim that the document was not timely and properly delivered.

d. Information Verification Period and Property Condition Disclaimer

General Term “x” (Information Verification Period and Property Condition Disclaimer) has been separated into two separate provisions. The new General Term “w” (Information Verification Period) provides the buyer with ten days to verify all information provided from the seller or listing firm. The new General Term “x” (Property Condition Disclaimer) provides information to the seller and the buyer about the property condition and the parties’ obligation to perform their own due diligence in the transaction.

**2. Financing Addendum (Form 22A) and Notice of Low Appraisal (Form 22AN)**

The Financing Addendum (Form 22A) has been revised to give the parties an option to negotiate a different purchase price in the event the appraisal is less than the purchase price. Under the new Paragraph 7(b)(iii), after the buyer delivers the notice of low appraisal, the seller has the option to respond by proposing a new purchase price that is greater than the appraised value, but less than the current purchase price. The seller’s proposal includes the requirement for the buyer to pay the necessary additional funds (the amount the purchase price exceeds the appraisal) to close the sale.

New Paragraph 7(c)(ii) gives the buyer three days to accept the seller’s proposal to reduce the purchase price. If the buyer accepts the seller’s proposal, the buyer represents that the buyer has sufficient funds to close the sale. The buyer would need to pay additional money down to make up the difference between the appraised value and the new purchase price. In the alternative, the buyer has the option to terminate the agreement.

The Notice of Low Appraisal (Form 22AN) has been revised to include notices for the seller’s proposal to reduce the purchase price and the buyer’s acceptance of the reduced purchase price. The notice form has been separated into three sections for the buyer’s notice of low appraisal, the seller’s response, and the buyer’s reply.

**3. Increased Down Payment Addendum (Form 22AD) – New Form**

The new Increased Down Payment Addendum (Form 22AD) can be used to replace the “Appraisal Less Than Sales Price” provision in the Financing Addendum (Form 22A). If the lender’s appraised value of the property is less than the purchase price, Form 22AD *requires* the buyer to pay additional funds, up to a certain amount,

towards buyer's down payment. The buyer represents that it has sufficient funds (for the additional funds) to close the sale.

If the sum of the appraised value and the additional funds is still less than the purchase price, then the buyer is required to give notice to the seller of that fact (including a copy of the lender's appraisal). Upon receiving that notice, the seller has the option to reduce the purchase price to an amount equal to lender's appraised value plus the buyer's additional funds or terminate the agreement. If the seller terminates the agreement, the earnest money will be refunded to the buyer.

#### **4. Buyer's Sale of Property Contingency Addendum (Form 22B)**

Buyer's Sale of Property Contingency Addendum (Form 22B) makes the agreement contingent on the sale of the buyer's property.

Form 22B requires the buyer to obtain the seller's consent before the buyer accepts an offer to sell the buyer's property that: (a) is contingent on the sale or closing of a second buyer's property; or (b) has a closing date less than 30 or more than 45 days from mutual acceptance. In the revised form, the 45 day timeframe is extended to 60 days. This means that the buyer must obtain the seller's consent before the buyer accepts an offer that has a closing date less than 30 or more than 60 days from mutual acceptance.

Form 90L (Request for Consent – Contingent Sale) has also been updated to reflect the new timeframe of 30 to 60 days.

In addition, Form 22B has been revised to provide that if the buyer accepts an offer to sell the buyer's property that requires the seller's prior consent, but does not obtain the seller's consent, then the seller has the option to terminate the agreement. The prior version of the form provided for an automatic termination of the agreement under that scenario. In the revised form, if the seller does not timely terminate the agreement, the transaction will move forward.

Finally, Form 22B has been revised to prohibit the buyer from modifying the closing date for the sale of the buyer's property without the seller's written consent. This is because a change to the closing date of the buyer's property, will necessarily change the closing date of the seller's property.

#### **5. Optional Clauses Addendum (Form 22D)**

The Optional Clauses Addendum (Form 22D) has been revised to remove the systems/appliances provision that is now contained within the purchase and sale agreement. The form also separates the seller's cleaning obligation and the personal property provision into two separate paragraphs. Under the new Paragraph 3 (Seller Cleaning), the parties have the option to require the seller to clean the interiors of any

structures and remove all trash, debris, and rubbish from the property prior to the buyer taking possession.

New Paragraph 4 (Personal Property) requires the seller to remove all personal property from the premises, unless otherwise agreed by the parties (e.g., a specific item included in the sale). Any personal property left behind becomes the property of the buyer.

Many homeowners' associations charge fees when a property is sold, sometimes referred to as a "move-in" or "move-out" fee. New Paragraph 9 (Homeowners Association Transfer Fee) has been added to make clear who is responsible for paying any association transfer fees. Paragraph 9 provides that if there is a transfer fee imposed by the association, the fee shall be paid by the party as provided for in the association documents. If the association documents do not provide which party is responsible for the fee, the parties must negotiate who pays the fee.

## **6. Evidence of Funds Addendum (Form 22EF)**

The revised Evidence of Funds Addendum (Form 22EF) contains a definition of "Contingent Funds," which are funds that the buyer does not currently have, but expects to receive from another source prior to closing (e.g. a gift from a family member). The revised form also clarifies that if the buyer's "Contingent Funds" are not available by closing, the buyer is in default. Other non-substantive revisions were made to clarify and simplify the form.

## **7. Buyer's Pending Sale of Property Contingency Addendum (Form 22Q)**

Buyers Pending Sale of Property Contingency Addendum (Form 22Q) has been revised to clarify that the purchase and sale agreement for the sale of the buyer's property must be attached to the agreement. The revised form removes the requirement to insert a closing date, as the closing date is set forth on the first page of the agreement. The form also provides that the buyer may not extend the closing date for the sale of the buyer's property, without the seller's prior written consent, if such extension would delay the closing of the seller's property.

Revised Form 22Q has also been modernized to require notice from the buyer within two days of learning that the sale of the buyer's property has failed (as opposed to 12 hours). Other language in the form was simplified and clarified.

## **8. Well Addendum (Form 22R)**

The revised Well Addendum (Form 22R) removes the requirement related to a "health district certificate of compliance," as many municipalities no longer provide those certificates. Instead, the seller is required to provide the buyer any and all documents in

the seller's possession related to the well. The form advises the buyer to conduct all inspections to ensure that the well and water supply is satisfactory.

**9. Island County Noise Disclosure (Form 22W)**

The Island County Noise Disclosure (Form 22W) has been revised to include the City of Oak Harbor noise disclosure requirement (previously contained in Form 22X). The Oak Harbor Noise Disclosure (Form 22X) has been removed from publication. This revision minimizes the number of forms brokers need to use for property located in Oak Harbor.

**10. Modification to Closing Date Addendum (Form 22Y)**

The revised Modification to Closing Date Addendum (Form 22Y) allows the parties to change the closing date in the agreement to a different date. The prior form only permitted an extension of the closing date. The form also allows the parties to change other dates in the agreement and include any additional terms.

**11. Additional Signer Addendum (Form 22Z) – New Form**

The new Additional Signer Addendum (Form 22Z) accommodates transactions where there are more than two sellers or two buyers that need to execute the purchase and sale agreement. A third or fourth buyer/seller can execute the new form, which incorporates all of the terms and conditions of the purchase and sale agreement. The form should not be used if there are not more than two buyers or two sellers that need to sign.

**12. Condominium Resale Certificate (Form 27)**

The Condominium Resale Certificate (Form 27) has been revised to remove sections of the form that are not required by RCW 64.34.425 (Resale of Unit). The prior version of the form required information related to completion of construction, conversion, and zoning. The revised form now mirrors the requirements of the Condominium Act (RCW 64.34).

**13. Pre-Inspection Agreement (Form 35P)**

The revised Pre-Inspection Agreement (Form 35P) includes a section for the selling broker's name, firm name, e-mail address, and phone number. This contact information will assist listing brokers who may be facilitating multiple pre-inspections for the same property.

#### **14. Back-Up Addendum (Form 38A)**

The Back-Up Addendum (Form 38A) has been updated to clarify that the closing date in the form supersedes the closing date on the first page of the purchase and sale agreement.

#### **15. Appointment of Subagent (Form 1S)**

In the listing agreement, the seller authorizes the listing firm to appoint a listing broker to act as the seller's agent. The listing agreement provides that no other brokers affiliated with the listing firm are agents of the seller, except to the extent that the listing firm appoints other brokers to act on the seller's behalf as and when needed. If the firm appoints another broker to represent the seller, this broker is considered a "subagent" under RCW 18.86.020(1)(b).

Listing firms regularly appoint subagents to represent the seller when the listing broker is out of town or otherwise unavailable for an extended time. The new Appointment of Subagent (Form 1S) can be used for the listing firm to appoint a subagent to represent the seller. The appointment can be made for the duration of the listing agreement or for a limited time.

#### **16. Agency Disclosure - Multiple Brokers Addendum (Form 42A)**

The new Agency Disclosure - Multiple Brokers Addendum (Form 42A) accommodates situations when more than one broker represents the buyer or the seller.

RCW 18.86.030(1)(g) requires that brokers ". . . disclose in writing to all parties to whom the broker renders real estate brokerage services, before the party signs an offer in a real estate transaction handled by the broker, whether the broker represents the buyer, the seller, both parties, or neither party." In the purchase and sale agreement, Specific Term 15 (Agency Disclosure) in conjunction with General Term "t" (Agency Disclosure) satisfy the disclosure requirement. However, the purchase and sale agreement only provides for the disclosure of one broker for each party.

Form 42A can be used to disclose agency for a co-listing broker or a listing subagent. Or Form 42A can be used to disclose agency for a co-selling broker if more than one broker represents the buyer (e.g., the buyer is represented by a "team"). Note that RCW 18.86.020 provides that a broker is a buyer's agent unless (a) the broker represents the seller under a written agency agreement (e.g. the listing agreement); (b) the broker has been appointed to represent the seller as a subagent; or (c) the broker represents the seller under a written agency agreement and the broker represents the buyer pursuant to a written agency agreement (e.g. buyer agency agreement) – then the broker is a dual agent.

Please note that Form 42A is an addendum to the purchase and sale agreement and is designed to work in conjunction with the agency disclosure provision in that agreement. Form 42 (Agency Disclosure) is not an addendum to the purchase and sale agreement and is intended for use in transactions where NWMLS forms are not used (e.g. transactions where a builder or bank purchase and sale agreement is used).

In addition, the Status Change Input Sheet (Form 19) and Unlisted Sale Input Sheets (e.g. Form 1-ULS and Form 10-ULS) have been revised to include the option to add a “co-selling firm” and “co-selling broker” when inputting a sold property. If the buyer is represented by more than one broker, as disclosed in the purchase and sale agreement using the new Agency Disclosure - Multiple Brokers Addendum (Form 42A), the listing firm should include both the selling broker and the co-selling broker when changing the status to sold for listed properties. For unlisted sales, the broker inputting the sale should include both the selling broker and co-selling broker, if applicable.

## **17. New Notice Forms**

Two new notice forms provide for termination of the purchase and sale agreement pursuant to the Well Addendum (Form 22R) and the Septic Addendum (Form 22S). The two new forms are: Notice of Termination (Well Addendum) (Form 90X) and Notice of Termination (Septic Addendum) (Form 90Y).

## **18. 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 February 23, 2017. NWMLS will remove the old version of the forms at the same time. You should recycle your old forms to prevent any inadvertent use.