

STATEWIDE PURCHASE & SALE AGREEMENT AND ALL THOSE ADDENDA!

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This is a 7½ hour course focusing on the Purchase and Sale Agreement which is the foundation of the transaction between the buyers and sellers of real estate. It covers such topics as material terms and requirements of a contract, all the provisions of the statewide Purchase and Sale Agreement and the addenda that compliment the Purchase and Sale Agreement.

Course Certification Number C10549

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COURSE SCHEDULE

8:30 - 10:15	Introduction and discussion of intentions, goals and purposes in properly completing the Purchase and Sale Agreement ("PSA") and begin Specific Terms of the PSA (page 1)
10:15 - 10:30	Break
10:30 - 12:00	Complete Specific Terms of the PSA (page 1)
12:00 - 1:00	Lunch Break
1:00 - 2:45	Begin General terms of the PSA (pages 2-5)
2:45 - 3:00	Break
3:00 - 4:45	Complete General terms of the PSA (pages 2-5) and cover the key PSA Addenda

I. INTRODUCTION

1. **PSA Transaction Forms Cheat Sheet (pages 1-4)**
2. **The general purpose of the Purchase and Sale Agreement (PSA) is to create a predictable agreement that will end in one of two ways - closing or terminate.**

Race Track Analogy: A real estate transaction is like a hurdles race on a race track. Mutual acceptance is the transaction coming out of the starting blocks and closing is the finish line. There will be hurdles as you go down the track. When a situation comes up (i.e., a hurdle) you will either be able to clear that hurdle and the transaction will move one step closer to closing or you will not be able to clear that hurdle ("SMACK") and the transaction will terminate at which point the only issue to work out usually is distribution of earnest money. To assist in clearing all the hurdles, there should be something in every blank (n/a, 0, or line through it). A contract with blank blanks may be a void contract. Also, make sure to work through the entire agreement making sure the appropriate boxes are checked invoking certain provisions.

As a matter of policy, always check boxes and fill in the blanks even if the parties would agree to the parenthetical default so it is clear that the licensee and the client talked about it. As a licensee, you do not want to be in the situation where the client asks, "What happens now?", and you are forced to say, "I don't know!" (the infamous "broker in the headlights" syndrome).

3. **Focus of the PSA:**
 - 1) Not as much on getting the deal to closing, but how to allocate responsibilities, risk and damages if the transaction fails to close.
 - 2) Avoiding trouble for the parties and licensees – a well drafted PSA will help attorneys get licensees out of trouble if it is used as it was intended.
4. **Almost universal truth:** Problems will arise (hurdles will appear) when the buyer complains that something is not as it was represented.

What are some examples of hurdles you might face in a transaction while you are going down the racetrack? _____

What are some examples of hurdles you might face in a transaction after you have crossed the finish line (post closing hurdles)? _____

What can you do when a client calls you with a post closing hurdle? _____

Reference Annie Fitzsimmon's Legal Hotline and Friday Videos from Washington REALTORS®.

Once in a while our clients will look for an out (you know, buyer's and seller's remorse). Failure to fill out the PSA completely may give the party loophole to get out of the deal. Therefore, fill in all the blanks!

5. Alternative property types Purchase and Sale Agreements:

MULTI-FAMILY PSA – Form 20 (pages 159-163): included items are pluralized (e.g., stoves/ranges instead of stove/range), general term z addressing books, records, leases and agreements being made available for inspection to the buyer no later than 10 days after mutual acceptance, buyer shall have 10 days upon receipt to review and approve, buyer to assume and seller to transfer all such leases, etc.

MANUFACTURED HOME PSA – Form 23 (page 164-168): includes information about the manufacturer, serial number and year of the manufactured home, the space number of the rented lot, lot lease information, that the manufactured home is personal property being transferred and how, included items include existing expansion/add-on, buyer review of park rules and regulations, assumption of lease contingency, etc. The licensee will use Form 23 for manufactured homes on leased land where title has not been eliminated (i.e., in a manufactured home park). If title to the manufactured home has been eliminated and it sits on its own land, the licensee should use Form 21 as the manufactured home is now real property. If the manufactured home is on its own land, but title has not yet been eliminated, the licensee should still use Form 21 and include the **MANUFACTURED HOME ADDENDUM – Form 22MH (page 82)** which indicates the seller will use best efforts to get title eliminated prior to closing. As a practical matter, the Form 22MH should be used anytime the property includes a manufactured home whether title has been eliminated or not.

Note: The closing agent on a manufactured home on leased land would likely appreciate receiving a copy of the title to the manufactured home (e.g., title has not yet been eliminated).

VACANT LAND PSA – Form 25 (page 171-175): includes information about the subdivision (specific term 16 and general term w) and feasibility contingency expiration date (on the face of the PSA).

CONDOMINIUM PSA – Form 28 (page 176-180): includes information about the unit number, residential condo development name, condo declaration recording number, parking space number, storage space number, new construction or conversion (for which the licensee will need to attach the **NEW CONSTRUCTION / CONVERSION ADDENDUM – Form 29**), public offering statement, resale certificate (for which the licensee may use the **CONDOMINIUM RESALE CERTIFICATE – Form 27 (page 181-184)** dealing with issues unique to condos and as required for the Condominium Act of the State of Washington), and condominium assessment.

However, on the average residential real estate transaction, the licensees will use the **RESIDENTIAL REAL ESTATE PURCHASE AND SALE AGREEMENT - Form 21 (pages 31-35).**

II. SPOKANE FORMS

But first . . . a couple of Spokane "home grown" forms that can be found in the Spokane folder in Transaction Desk.

SPOKANE ADDENDUM – Form SAR-SA (pages 5-6): Use on all transactions – all property types – listing broker should execute with listing and load into Associated Docs with the Exhibit A, SDS, LBP & 22K.

This addendum seeks to reconfirm the broker's responsibilities per the agency law which is to advise the client to see expert advice on matters related to the transaction that are beyond the broker's expertise. Accordingly, the form suggests the parties seek expert advice and to not use the services of anyone not licensed to perform any service where a license is required by law. For example, the parties are advised to seek expert advice in the following areas (and are given online resources): legal issues, accounting or tax issues, inspections including home inspectors and following up on recommendations by inspectors, contractors, etc., on site sewage disposal systems, wells and soil conditions.

The parties are also advised of important matters to be considered and of other matters that can adversely affect a property including: smoke detectors, carbon monoxide detectors, mold, wood destroying organisms, radon, asbestos and other indoor organic compounds.

By initialing the form, Seller acknowledges the have the sole responsibility for disclosing to the Buyer in writing any known conditions. Buyer acknowledges Buyer is solely responsible for determining whether to inspect for such adverse matters.

Finally, the form authorized the Buyer's lender to release the Closing Disclosure Statement and other consumer disclosures to the firms, brokers and the closing agent.

SPOKANE BUYER REPRESENTATION AGREEMENT – Form SAR-BR

(pages 7-8): should use with all buyers, but **MUST** use when in a dual agency situation.

What are the two potential dual agency situations?

- 1) _____
- 2) _____

This form spells out the commitment from the buyer to their buyer's representative (firm and broker). The agreement spells out the term of the agreement, when the firm is entitled to receive compensation and how much that compensation will be in specific types of situations. It also addresses the ethical situation of not stepping on other licensee's toes by having a buyer confirm they are not in a relationship with another firm or broker. The parties may also negotiate a retainer fee. This form contains provisions with regard to VA transactions and distressed sales, as well as acknowledgements concerning facts affecting the property and acknowledgement regarding advice, inspections and home warranties. Finally, there is a consent to dual agency on page 1, paragraph 3, but to act as a dual agent, the firm must disclose the terms of compensation which is done in the box at the bottom of page 2.

III. STATEWIDE FORMS

THE LAW OF REAL ESTATE AGENCY PAMPHLET (pages 9-15): give to all Buyers and Sellers.

This form can be found in the pamphlets folder in TransactionDesk and should be provided to all buyers before they sign anything. This must be the first document they receive in any electronic signing system the licensee uses. This document summarizes and restates the agency law of the state of Washington.

WIRE FRAUD ALERT (page 16): give to all Buyers.

This form can also be found in the pamphlets folder in TransactionDesk. Given the rise of email wire fraud, this form should be provided to all buyers at the beginning, middle and end of all transactions with the warning they should never wire their funds to close on the basis of an email. Rather, Buyers should always call to confirm wire instructions directly with the closing agent. The CFPB has estimated a loss of nearly \$1 billion in real estate transactions from such scams.

APPOINTMENT OF SUBAGENT (page 17): should be provided to a seller if a licensee is going to be unavailable and another licensee in the listing broker's firm is going to be appointed to represent the seller in the original broker's absence.

SELLER DISCLOSURE STATEMENT – IMPROVED PROPERTY – Form 17

(pages 18-23): Use on all residential transactions (one to four living units).

The Seller Disclosure Statement (SDS – Form 17 for residential 1-4 unit properties or 17C for land zoned residential) is **NOT** referenced in the PSA. The SDS is, by law, **NOT** part of a PSA. Therefore, the SDS itself should be completed by the Seller, and provided to a Buyer at or before the time the PSA is completed (e.g., in Associated Docs in the MLS). See also the **Form 17C – Seller Disclosure Statement – Unimproved Property (pages 24-29)**.

Note: Per the state statute, the Seller must provide the SDS to the buyer within how many days of mutual acceptance? _____

Upon receipt, the Buyer has how many days to rescind the PSA? _____

A copy signed by Seller and Buyer must be retained in the licensee's file. Failure to comply with the Seller's Disclosure Act gives the Buyer a "no cause necessary" rescission right which may cause the transaction to fail to close. Buyers should sign only one of the signature lines on the last page of the SDS. Buyer should use the **NOTICE OF RESCISSION OF AGREEMENT PURSUANT TO RCW 64.06 - Form 90A (page 30)** to give notice of rescission if displeased with SDS.

RESIDENTIAL REAL ESTATE PURCHASE AND SALE AGREEMENT - FORM 21 - SPECIFIC TERMS (page 31):

1. Date:

For reference only, does not signify acceptance. This will be the date to be used on addenda that will be added to the PSA.

MLS No:

Can fill in, but not necessary.

Note: Never include via reference the MLS Data sheet with the PSA!

Offer Expiration Date:

The date for acceptance of an offer (unless sooner withdrawn) may be stated by the offering Buyer. Counteroffers drafted on a **COUNTEROFFER ADDENDUM Form 36 (page 117)** can also set specific expiration dates. If no date is stated (or if the offer is countered on the face of the PSA which is discouraged), the counteroffer carries a two-day period for acceptance (still subject to being withdrawn sooner).

Failure to accept within the time required will cause the offer or counteroffer to lapse. Withdrawal of an offer or counteroffer prior to acceptance requires a written notice delivered or transmitted by fax or email to the other side (race to the fax machine or scanner story). The appropriate form to use to withdraw an offer or counteroffer is the **WITHDRAWAL OF OFFER OR COUNTEROFFER – Form 36A (page 118)**.

Mutual acceptance is considered achieved when one side has accepted all terms and provisions presented by the other side ("meeting of the minds") and then has delivered the accepted PSA to the last offeror ("mutual acceptance"). Any change in the terms of an offer or counteroffer is considered a counteroffer except insertion of or change to the Seller's name and Seller's warranty of citizenship status.

PRACTICE TIP: In noting mutual acceptance, when the licensee sending back the mutually agreed offer fills out a fax cover sheet or sends an email, he or she should note on the cover sheet (or in the body of the email) the date of mutual acceptance. Confirm via phone call or ask for a reply to the email from the other licensee so the licensees and parties are on the same page with regard to the mutual acceptance date. If there is a dispute, work it out ASAP. The use of a mutual acceptance date form may be useful, but "Just sayin' it so, don't make it so." Mutual acceptance by definition is the event when the PSA and all addenda are delivered to the last offering party indicating consent. Should a licensee make note on such a form of a date that is not the actual date of delivery, the actual date of delivery will trump the licensee's written mutual acceptance date.

Note: The parties to a PSA contract must acknowledge all the material terms in order for the PSA to be binding. The material terms to a PSA could be referred to as the 4 P's: Parties, Property, Purchase Price and Payment Method.

2. Buyer:

The **complete and proper legal names** for the prospective Buyer(s). Include middle initials for individuals if those should be included in the final closing documents. If an entity, include the full legal name of the entity.

Indicate the **legal status** of the Buyer(s) (e.g., "an unmarried person", "a married couple", "as tenants in common", "a Washington corporation"). Choose this status from the drop down menu in TransactionDesk.

Practice Tip: Ask your client, "How would you like your name to appear on legal documents?" (the goal is to make it clear - if we can do something to help out the lender, closing agent or title company, then be as specific as possible in drafting the PSA).

- 1) **Individuals:** The marital status of each individual should be specified (e.g. "an unmarried person" or "a married couple").

If community property is to be sold, the participation (i.e. signatures) of both spouses is required. A proper **power of attorney** may be used for this purpose.

If a married person is selling separate property, confirmation of a lack of any interest on the part of the non-participating spouse will generally be required - a **quit claim deed** is commonly executed at closing for this purpose (a power of attorney cannot be used for this purpose).

If spouses are purchasing real property as community property, participation or consent of both spouses is required. Neither spouse has the right to unilaterally commit community funds to the purchase of real estate.

If a married buyer is purchasing real property as separate property, but community funds will be required to make the down payment or purchase payments, consent of the non-participating spouse is required. Consent should be obtained at the time the PSA is written, and will also require execution of a document at closing - typically a quit claim deed.

Practice Tip: If a quit claim deed will be required, draft this as a contingency to protect the buyer. On the Optional Clauses Addendum - Form 22D, paragraph 12. Other or on an Addendum - Form 34 write "Seller may terminate this agreement if the buyer's spouse does not sign a quit claim deed within 5 days of mutual acceptance (or whatever time frame is necessary or appropriate). If the buyer's spouse does not so sign the quit claim deed, the agreement shall terminate and the earnest money shall be refunded to the buyer."

If a married buyer is purchasing real property as separate property, using only separate funds, consent of the non-participating spouse may not be technically required. As a practical matter, confirmation of non-involvement and available separate property to complete the

transaction will be required. It is likely that the title company will still require execution of a quit claim deed.

- 2) **Entities:** If the seller or buyer is an entity, the exact name and entity form should be stated. Different rules apply regarding approval of the PSA by different entities. In general, the following rules apply:

General Partnerships - absent an agreement, assume all partners must sign to bind the partnership to buy or sell partnership property. Problem: many partnerships have partnership agreements which alter the rule, so ask for a copy of the partnership agreement.

Limited Partnerships - the general partner or partners have powers like those in a general partnership, limited partners have no effective control rights - again, however, ask for a copy of the partnership agreement and see what it says regarding approval of purchases and sales.

Corporations - act through written corporate resolutions adopted at meetings. If you are not familiar with the corporation, ask for a copy of the corporate resolution which confirms the authority of the signer to bind the corporation.

Limited Liability Companies - these are governed by the provisions of company agreements, often called operating agreements. These usually specify whether there are one or more managers, or a group of members, or a requirement that all members sign any agreement to buy or sell property. Ask for a copy of the agreement.

Trusts - operate under the provisions of a written trust agreement. Generally, the signatures of all trustees will be required unless the trust specifies otherwise.

Additional potential pitfalls:

If the buyers think they want to purchase or operate in an entity form or in some relationship with one another, but have not decided what entity form or legal relationship to use (e.g. buyers deciding whether to form a corporation or partnership, individuals deciding whether to buy as tenants in common, joint tenants, etc.) do not attempt to advise them on this issue. This is an issue they should take to their legal and tax advisors. This is a clear duty under the agency law which mandates that we tell our clients to see expert advise on matters relating to the transaction that are beyond our area of expertise which arguably is limited to marketing, negotiation and facilitating the transaction to closing.

Identification of, and proper execution of the PSA by, the parties who are buying and selling is necessary in order to create a binding contract. Additional issues may arise in identifying proper parties and assuring proper authorization. In particular, any time the legal system is involved, special handling and processing rules may apply (e.g. divorce, bankruptcy, guardianships, death - with or without a probate, incompetence without a durable power of attorney, and similar matters).

Exercise:

1. What if the buyer is purchasing alone, but is married?

BUYER: _____

Note: In this situation, the closing agent will require a quit claim deed from the non-participating spouse because the transaction creates a community debt. Washington is a community property state - community property law applies to the sale or purchase of all real property even if the purchaser is from a non-community property state. If non-participating spouse does not give consent, the deal is voidable at the option of that spouse - even after the deal has closed! May not need quit claim if there is a pre-nuptial agreement or a community property agreement. If need quit claim, get ASAP because PSA is also voidable (e.g., non-participating spouse can void up until closing even if they agreed to sign the quit claim at closing). Can have non-participating spouse sign copy of PSA and write "non-participating spouse" beneath their signature (but still have them sign quit claim at closing).

Community property laws dictate that in purchasing or selling real property, the law of the state where the property is located will govern. When purchasing personal property, the law of the state where the purchaser resides will govern.

2. What if the buyers are brother and sister where the brother is married purchasing without his spouse and the sister is not married?

BUYER: _____

3. What if the buyers are from out of town, only one spouse is here looking at property and he or she finds a house and wants to write an offer - can only one spouse sign the PSA? _____

BUYER: _____

How will you deal with the fact that the other spouse is out of town?

1. _____
2. _____
3. _____

If only one spouse signs, the transaction is vulnerable. Should get signatures of both spouses (at least a fax, email or e-signature) or have an appropriate power of attorney in place.

Initialing and signing under a power of attorney exercise: Jane Q. Doe has John Q. Doe's power of attorney. How will she initial and sign on his behalf?

Initials	Date	Signature	Date
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4. What if the licensee is signing on behalf of a Buyer who does not want to be identified until signed around?

BUYER:

- Notes:*
- 1) *can add "undisclosed principal, a single person and a licensed real estate licensee."*
 - 2) *Licensee needs a written agreement with the undisclosed principal. Principal must be in existence at the time of the agreement (e.g., cannot be a soon to be formed corporation) and the nominee must have actual authority to sign (prove by making the principal sign and initial a copy of the final offer and leave it in the file – shows principal/buyer consented to the deal).*

Why have a nominee?

- 1) *principal/buyer's notoriety/celebrity status may injure his or her negotiating position; or*
- 2) *relational problems between the seller and the principal/buyer – feuding farmers*

3. Seller:

The complete names of the Sellers may not be known or available to the selling licensee and may need to be confirmed and completed when the offer is submitted. Addition of the Seller's name by the listing licensee will

not be considered a counteroffer. Look at the SDS in the Associated Docs to see what name the listing broker used.

4. Property:

Legal Description attached as Exhibit A.

The legal description is the most important of the three property descriptors and will create a void contract if incorrect, incomplete or missing altogether. Anything labeled Exhibit A that is in fact a complete and proper legal description will be acceptable and will tighten down this loophole for both Buyer and Seller (and may prevent deposits into the licensee's real estate education fund.)

Listing Broker process:

- 1) When going out on a listing appointment, listing licensee might consider ordering a print, map and docs which will include the last recorded deed from the title company of their choice.
- 2) When the listing licensee secures the listing, they should call the title company as approved by the Seller and order a preliminary commitment for title insurance. If listing licensee did not order the last recorded deed earlier, he or she should ask for it as soon as the Seller signs the listing (likely the title company will provide it without the listing broker even needing to ask for it).
- 3) If the licensee has the Exhibit A from the preliminary title commitment for title insurance which is the best source of the legal description, licensee should load that Exhibit A (**NOT** the entire commitment) into associated docs. If the listing licensee does not have the preliminary title commitment yet, listing licensee should use the last recorded deed labeled "Exhibit A" and upload that into Associated Docs. In a pinch (and shame on the listing broker for creating the pinch), the parties could sign something taken from the county assessor's website if a transaction is being signed over a weekend and the preliminary title commitment Exhibit A and the last recorded deed "Exhibit A" are unavailable.

Practice Note: this is a good time to upload the Seller Disclosure Statement (SDS) – Form 17, Lead Based Paint Addendum (LBP) – Form 22J, Identification of Utilities - Form 22K, the SAR-SA (Spokane Addendum), etc. to Associated Docs, as well.

- 4) Make a note in Agent Remarks in the MLS, "Title opened with ABC Title Company."

Important Practice Note: If the last recorded deed is used as the "Exhibit A" for a mutually accepted PSA, when the preliminary title commitment arrives, both brokers should check and double check the last recorded deed "Exhibit A" for accuracy. If it is accurate, no need for further action. If it is not accurate, the parties should sign the updated Exhibit A from the preliminary title commitment. Similarly, if the property hasn't sold when the preliminary commitment for title insurance comes in, the listing licensee should swap out the last recorded deed "Exhibit A" for the actual Exhibit A from the preliminary title commitment in Associated Docs.

Buyer Broker process:

- 1) Check MLS for Exhibit A (in whatever form) in associated docs. If it is there, print out (or attach or incorporate into the transaction documents) and have buyer initial and date the Exhibit A, as well as any other associated docs if applicable and available. If it is not there, go find a legal description somewhere (e.g., call the title company for a last recorded deed).
- 2) Write in the title company as stated in the Agent Remarks unless there is a compelling reason to change.

What is the most reliable source of a legal description? _____

Note: The last recorded deed is the second best choice if Exhibit A from a preliminary title commitment is not available.

Tax Parcel Number: As identified in MLS data sheet or from tax records (e.g., 12345.6789). The PSA provides space for up to 3 parcel numbers.

Street Address: As identified in the MLS data sheet (e.g., 1234 E. Main Street, Spokane (city), Spokane, (county), WA (state) 99123 (zip))

5. Included Items:

Attached items are generally considered part of the real property and included in the sale. Built-in appliances should be considered included regardless of whether boxes are checked, but the best practice is to check all applicable boxes on page 1 in the interest of clarity. List other items to be transferred that would generally be considered personal property (e.g. appliances which are not built-in such as the microwave, bar stools, riding lawn mower, etc.) If there is a potential for dispute or uncertainty whether an item is "attached" and will stay with the property and the Buyer wants the Seller to leave it, list it - "When in doubt, write it out!" Several items

- are listed in General Term c. and need not be listed on page one of the PSA if in the included items paragraph.

Note: The PSA constitutes the full understanding of the parties (see General Term m. "Integration and Electronic Signatures"), even though unattached items may be shown as available amenities in the MLS property data sheet, flyer, etc., failure to list them in the PSA probably means they aren't included in the deal.

Excluded Items: Excluded items should be dealt with in the **OPTIONAL CLAUSES ADDENDUM - Form 22D (pages 67-68)** under paragraph 10 Excluded Item(s) on page 2 of that form.

PRACTICE TIP: If the Seller intends to keep something that is considered an included item (e.g., the dining room chandelier, master bedroom curtains that match the bedding or Aunt Mildred's prized rose bush), suggest the Seller remove the item before marketing the property. If the Seller cannot or will not remove the item, use this 3 step approach to excluding items:

- 1) exclude the item(s) in the MLS,*
- 2) tag the item(s) on the property, and*
- 3) exclude the item(s) in the Optional Clauses Addendum.*

Note: Unintended omissions of either included or excluded items can be costly to you and your client because prior understandings and agreement are wholly replaced by the provisions of the PSA. Failure to get this part of the PSA right may result in a deposit into your real estate education fund!

6. Purchase Price:

The total price, inclusive of the earnest money deposit, should be inserted.

7. Earnest Money:

In numbers, specify the amount of earnest money. 1% earnest money seems to be customary in our market though is totally negotiable between the parties. Then check the box specifying the form(s) of the deposit and, if a Note, attach a copy of the executed original. Use the **EARNEST MONEY PROMISSORY NOTE – Form 31 (page 103)** if the Buyer cannot give you a check, cash, cashier's check or wire the funds. Notes due "at closing" are not favored because if the transaction never closes, the earnest money is never technically due and if the Buyer has defaulted, it will be difficult to get the earnest money to give to the Seller. Special provisions apply by law with respect to deposits greater than \$10,000 (Buyer must submit a W-9 to have earnest money submitted into an interest bearing trust account in their name). Finally, specify who is to hold the earnest money by checking the appropriate box.

Notes: 1) Earnest money must be deposited within 24 hours of mutual acceptance of the agreement under the Washington Administrative

Code (WAC) unless otherwise agreed. The PSA provides 2 days for delivery of the earnest money by the Buyer to the selling broker or closing agent (if not collected before mutual acceptance) and an additional 3 days for selling broker to then deposit the earnest money or deliver it to the party holding the earnest money.

- 2) *Cash must be deposited immediately, even if still engaged in negotiations (have designated or managing broker or bookkeeper count, or at least count in the presence of another person).*
- 3) *Promissory note is not preferred because the broker/designated broker is then left to collect on the note; notes do not usually have interest unless there is a default (in no case can the interest rate be greater than the usury rate in Washington). Make promissory notes due ASAP, but date specific. Explain to Seller that broker will assign note to Seller and that broker will not be liable to collect on the note.*

*PRACTICE TIP: The best business practice is to collect earnest money at the time of offer even though the PSA allows 2 days after mutual acceptance for Buyer delivery. Licensee should receipt any collected earnest money check using **RECEIPT FOR EARNEST MONEY - Form 89 (page 153)** and provide a copy for Seller but whiteout or redact the account/routing numbers before sending. Both listing and selling firm are now required to maintain copies of the firm's receipts, as well as the receipt from the closing agent if the closing agent is holding the earnest money. Confirmation that earnest money was delivered is likely not sufficient, but in fact DOL auditors are looking for confirmation of DEPOSIT in transaction files.*

Note that an earnest money check is to be held uncashed until Buyer or buyer's broker receives a copy of the final agreement (mutual acceptance).

8. Default:

Generally, if either the Buyer or Seller defaults, the non-defaulting party may seek specific performance or damages, or the Seller may elect to retain the Buyer's earnest money as liquidated damages. If the Seller's election of remedies is checked on page 1 of the PSA, then Seller shall have an election of remedies in the event of Buyer default. If the forfeiture of earnest money box is checked on page 1 of the PSA, the Seller's sole remedy in the event of Buyer's default is the forfeiture of earnest money. The Seller may not, however, retain more than 5% of the purchase price. The exclusive remedy provision does not, however, restrict a Seller's right to also retain other amounts which have been agreed to be non-refundable such as early possession rent or extension fees which have been referred to as such. As a general rule, however, Sellers should not agree to restrict their remedies to forfeiture of earnest money in situations where damages other than loss of market time are

likely. For example, a Buyer granted early possession of property who then defaults will likely leave rent and utilities unpaid; repairs, cleaning and maintenance undone; and may require the Seller to evict them. These costs should be recovered in addition to the default remedy and forfeiture of earnest money alone will not be adequate.

PRACTICE TIP: If the Forfeiture of Earnest Money box is checked, as a listing licensee, you must have the "worst case scenario" conversation with your Seller, "Seller, worst case scenario, if the Buyer walks away the day of closing, will the earnest money make you whole?" If not, consider countering higher earnest money or the Election of Remedies.

Also note, if Buyer is paying no earnest money, the parties must agree to the election of remedies lest they create an illusory contract with no remedy (if the forfeiture of earnest money box is checked and there is no earnest money, there is no remedy in the event of buyer default – therefore an illusory contract).

Finally, if neither box is checked, the default would be the election of remedies as the Seller has not negotiated a limit to his or her remedies.

Disputes regarding earnest money may lead to interpleader in court, but the expense associated with interpleader makes this one of the least desirable alternatives for the parties. Forfeited earnest money may also be used to reimburse the brokers for expenses paid on behalf of the parties before disbursing the balance.

9. Title Insurance Company:

Buyer's broker should consult the listing to see if title has already been opened by the listing broker. If so, unless there is a compelling reason to do so, buyer's broker should not suggest a different title company lest the Buyer incur the cost of any cancellation fees by the Seller's title company.

10. Closing Agent:

Specify the closing company (e.g., title company, escrow company, closing attorney, etc.) first and then, if desired, specify an individual closing agent (e.g., ABC title Company – Cal Closer).

11. Closing Date:

The closing date is the earliest date which is agreeable to both parties for completion of the transaction (crossing the finish line). General Term f. provides definitions of "closing" and "possession". Closing will occur on recording and availability of seller's proceeds (if any). Possession is not considered delivered until the Seller has taken their garbage and possessions with them. Note on line 72 Buyer is entitled to possession at 9:00 pm on the stated possession date. Some disputes have arisen

regarding whether a Buyer is entitled to possession at the beginning of the day of closing, or at the end of the day or at the specific time of funding, recording and availability of Seller's proceeds (sometime during the middle of the day).

If the parties include such language as "no later than" or "on or before" the language is irrelevant and cannot be used to compel either party to close sooner than the specified date.

Possession Date:

Typically, "possession" is to transfer "on closing". This may not always be realistic if the property is Seller occupied. Discourage early possession, but if early possession must occur, use an early possession rental agreement which has been prepared after 1994 which is a lease agreement (e.g., **RENTAL AGREEMENT – BUYER OCCUPANCY PRIOR TO CLOSING – Form 65A (pages 128-129)**) and part of the PSA and provides for unlawful detainer proceedings in the event of Buyer's default. As an aside, if a lease agreement is part of the PSA, it is exempted from the Washington Landlord Tenant Act. Note that early possession does not entirely shift the risk of a casualty loss to Buyer. Therefore, the Seller needs to maintain homeowner's insurance and be sure their insurance agent is apprised of the pending sale and early possession arrangements to assure that there is no lapse in coverage. Additionally, the Buyer needs to advise their insurance agent that they are taking early possession, as the Buyer's personal property may not be covered by the Seller's homeowner policy. It may be necessary for the Buyer to obtain a special endorsement on their homeowner's policy or a renter's policy in order to protect their personal belongings during the early possession rental period. If possession is to be delivered after closing, remember to specify a per day "rent" charge for each day possession is retained, and use a late possession addendum (e.g., **RENTAL AGREEMENT – SELLER OCUPANCY AFTER CLOSING – Form 65B (pages 130-131)**). Buyer is entitled to receive the keys to the property as of the day of closing even if Seller is to remain after closing. If possession is to be retained more than a few days, a standard residential lease should be entered, as this relationship **will** be governed by Washington's Residential Landlord Tenant Act.

- Notes: 1) *Always explain the difference between signing, closing and possession to your client. Many clients have been upset expecting keys the day they sign their closing documents only to find out they have to sleep in their U-Haul for a day or two until the deal closes.*
- 2) *Closing date is a set date, only earlier by mutual agreement of the parties.*

- 3) *Always specify a closing date. Never, for example, 30 days after contingencies are met, because what if the contingencies are never met, or delayed for a long time?*
- 4) *Seller has no obligation to extend beyond the closing date. In fact, if the Seller allows the closing date to pass and by his or her actions indicates they are willing to extend, the time for closing will now be within a reasonable time as a fact finder sees it (estoppel argument).*

12. Services of the Closing Agent for the Payment of Utilities:

The parties should indicate if the closing agent should prorate the lienable utilities at closing. In most instances, the parties will have the closing agent do this. If so, the parties will execute an **IDENTIFICATION OF UTILITIES ADDENDUM – Form 22K (page 76)** which will identify the utilities for the closing agent.

Practice Tip: The listing broker should consider preparing this form - filling out the utility companies including name and addresses and having the Seller sign it - at the time of listing and placing it in Associated Docs for the Buyer to sign at the time of offer. This information is now available on the parcel information at the County's Website – Scout.

13. Charges/Assessments Levied Before but Due After Closing:

There are really three types of assessments:

- 1) Assessments that have been assessed and are due at or before closing. The Seller will likely pay these unless specifically negotiated otherwise.
- 2) Assessments that are pending, but not yet charged or due prior to closing. The Buyer will be responsible for these, but to the extent the Seller is aware of them, the Seller should make full disclosure of them.
- 3) Assessments that have been assessed, but are not due to be paid in full until after closing (e.g., sewer assessment the Seller has been making payments on as part of their utility bill which can be assumed by the Buyer, thus not due to be paid in full until some time after closing). This provision of the PSA will determine who will pay this type of assessment - either assumed by the Buyer or prepaid in full by the Seller at closing.

Note: As a buyer's agent, a licensee should NEVER check the "assumed by Buyer" box even if the Buyer is planning to assume say the sewer assessment. In doing so, the buyer has agreed to assume ALL assessments. Rather, the buyer's broker should always check the "prepaid in full by Seller at Closing" and specify elsewhere in the PSA the Buyer is to assume the sewer assessment.

14. Seller Citizenship (FIRPTA):

As Buyer (and their broker!) can be ultimately held liable for taxes due on the sale of property if the Seller does not pay them because they are not a taxable entity in the United States, it is incumbent upon the Buyer to determine the Seller's citizenship status early on in the transaction. Closing agents will now routinely have the Seller sign a FIRPTA certification at the time of closing re-certifying this citizenship status. A listing broker may want to have the Seller sign a **FIRPTA Certification – Form 22E (page 70)** at the time of listing and provide in Associated Documents to facilitate the checking of this box for the buyer's broker.

15. Agency Disclosure:

Complete agency disclosure requires completion by the selling broker of the information in this provision (i.e., checking the appropriate boxes), as well as identification of the selling and listing firms and brokers at the bottom of page 1 of the PSA.

16. Addenda:

Some contingencies are built into the PSA, such as title marketability. Other contingencies such as financing, inspections, well and septic, etc. are to be described in addenda referenced in Section 16 and attached to the PSA. The buyer's broker should list the addenda by number on the lines provided (e.g., 22A, 22D, 22EF, 22T, 22VV, 35, SAR-SA). This Section is not adequate in space to state the full text of other intended provisions. Otherwise, except as provided by law, Buyer's obligations are not subject to contingencies. Most of the contingencies a Buyer may want to include are set out in the preprinted addenda provided under the statewide set of forms. Occasionally, a contingency may be required to be drafted. If the contingency is legally complex (and many are), the licensee should consider referring the client to an attorney for the drafting of the contingency.

- A. Drafting Contingencies:** Use the appropriate contingency addendum or if necessary draft the contingency on an **ADDENDUM/AMENDMENT TO PSA – Form 34 (page 106)** and address 7 specific areas:
1. Subject of the contingency.
 2. Standard for approval.
 3. Who pays for it?
 4. Time for satisfaction.
 5. Effect of silence – what happens if nothing is ever said?
Use the silence shall be deemed satisfaction clause
("Silence shall be deemed satisfaction of this contingency.")

6. Continued marketing/removal period.
7. What happens to the earnest money after termination by Buyer if contingency is not satisfied or waived.

*Note: Reminder, even though the Form 17 or 17C is now generally required in the sale of residential properties, as well as land zoned residential, as mentioned earlier, it is **not** to be referenced in the PSA. The SDS is, by law, not part of a PSA. Therefore, it should never be referenced on line 16. As a practical matter, any addenda listed in section 16 must be provided to the lender, and the Buyer and Seller generally never want an underwriter to see the SDS. Similarly, the Buyer Representation Agreement – Form SAR-BR and the Inspector Referral Form – Form 41D which are between the Buyer and their broker and do not involve the Seller should not be listed on the lines in the Addenda provision*

Signatures and Contact Information:

All information at the bottom of page 1 should be completed. Complete signatures and dates from all parties should be obtained. Addresses, phone numbers and e-mail information are extremely helpful in eliminating unnecessary delays as the transaction progresses toward closing. At a minimum, note the parties' address as certain processes contained in the PSA provisions require deliver of notices to the addresses listed on page 1 of the PSA. Note it is best business practice to fill in both sets of brokers' and firms' emails (total of four email addresses), as well, to take full advantage of email transmission as set out in general term k.

GENERAL TERMS (pages 2-5 of the PSA, pages 32-35):

a. Purchase Price.

Earnest money is credited to the Buyer at closing. Buyer represents Buyer has sufficient funds to complete the transaction and is not relying on any contingent source of funds, including loans, sale of other property, gifts, retirement funds or future earnings. If the Buyer needs one or more of these contingent sources of funds to complete the transaction, failure to disclose this contingent source of funds means the Buyer takes a risk. In other words, unless the Buyer has the cash in hand, a contingency may be in order. Be sure to advise Buyer that wire transfers or cashier's checks will be needed. Private checks, three party checks, and drafts or warrants will all delay disbursement because of the time necessary to clear the closing agent's trust account. A wire fraud alert provision was added in July, 2019.

PRACTICE TIP: Buyer's broker should ask at this time in reviewing the PSA with the Buyer where the Buyer's funds to close are coming from. In other words, "Buyer, do you have your down payment and closing costs not being covered by the Seller in the bank?" Said differently, "Show me the money!" If not, consider

*drafting a contingency, but at a minimum disclose the contingent source of funds. The **EVIDENCE OF FUNDS ADDENDUM – FORM 22EF (page 71)** can be used for this purpose.*

Note the absence of a provision for stating the method of payment of the purchase price. Absent other provisions, the price is to be paid in cash. Commonly included provisions are lender financing (**FINANCING ADDENDUM – Form 22A – pages 36-38**) or seller financing (**SELLER FINANCING ADDENDUM – Form 22C – pages 58-61**). Additional payment methods include assumption of existing financing, sales made "subject to" existing financing, wrap around seller/underlying lender combination financing. In these scenarios, the licensee will still use the Payment Terms Addendum Form 22C.

Seller financing terms and instruments are not as standardized and therefor require significant care. To be mutually binding, agreement must be reached in the PSA on all essential terms. Essential terms with regard to seller financing have been determined to include: the principal amount; the interest rate; the date interest commences; the amounts, timing and place for payments; dates and amounts for any balloon payments; final payment dates; rights and/or penalties for prepayment; "due on sale or encumbrance" provisions; grace period and default interest rate provisions. Use of the **SELLER FINANCING ADDENDUM – Form 22C** will greatly assist in covering the essential terms for financing.

b. Earnest Money.

Here are the provisions regarding Buyer's delivery (2 days) and Broker's delivery/deposit (3 days) of earnest money. You will also find the provisions for earnest money deposits in excess of \$10,000 including the right of the holder of earnest money to withhold banking fees from money to be returned to the Buyer. This paragraph also includes instructions to the closing agent: 1) provide written verification of receipt of earnest money and notice of any dishonor of any earnest money check, and 2) instructing the holder of earnest money to commence an interpleader action after going through a very specific process per RCW 4.28.080. The holder of the earnest money can withhold the costs of the interpleader action up to \$500.

c. Included Items.

This paragraph lists those items that are included in the sale of the property in addition to the items that were checked on page 1. Note the verbiage "items located in or on the property." The Seller may not swap out the stainless steel appliances for the avocado green ones taken out of a rental property! Note also some generic terms such as window treatments (if it is treating a window it must stay or be excluded) and irrigation fixtures. If any item in this paragraph is leased or encumbered,

the Seller agrees to acquire and clear title at or before closing.

d. Condition of Title.

Title is to be "marketable" at closing. This is not the same as absolutely clean or perfect title, but is title which is free from reasonable doubt and one which a reasonably informed and intelligent buyer would be willing to accept. Note the matters which are not considered to render title unmarketable so long as they do not materially affect the value of the property or interfere with Buyer's intended use. Buyer's intended use, therefore, needs to be determined, and the title commitment should be ordered as soon as possible (if not already ordered by the listing broker). Copies of the documents controlling potential use which are not going to be cleared from title, such as CC&R's, restrictions and easements should be provided to the Buyer for review and consideration, especially if the Buyer intends to change the existing structures or use at the property.

Title is to be conveyed via statutory warranty deed (instructions to the closing agent).

e. Title Insurance.

The Agreement provides for an ALTA form of Homeowner's Policy of Title Insurance. Herein lies the provision that the Buyer must pay for the cancellation fee if they choose a different title insurance company than the one the Seller has chosen. If the title insurance company will not issue the Homeowner's Policy, the parties agree to the lesser policy of coverage (the Standard Owner's Policy). The title insurance company is to send a copy of the preliminary commitment for title insurance to the brokers and the parties. If title is not insurable, the Buyer's remedy is to terminate the transaction and receive a refund of their earnest money. The Buyer shall have no right to specific performance or damages as a consequence of Seller's inability to provide insurable title.

f. Closing and Possession.

The sale shall be closed by the closing agent on the closing date. If the closing date falls on a Saturday, Sunday, legal holiday, or day when the county recording office is closed, the closing agent shall close the sale on the next business day. Closing is defined in this provision as the day when the transaction is recorded and sale proceeds, if any, are available to the seller).

PRACTICE TIP: Do not use the word "funding" in the PSA paperwork. It is confusing and means different things to different people. Stick with the defined term, "closing."

The PSA obligates the Seller to use best efforts to maintain the property

until Buyer is provided possession. If Seller fails to maintain the property, or if an accident causes material damage, the Buyer may cancel the deal. Insignificant damage is not intended to provide a basis for termination (normal wear and tear). Unfortunately, there is no "bright line" test to determine what is normal wear and tear. In general, however, those are items and conditions which a reasonably prudent person would consider to be significant in deciding whether to enter into or continue with the transaction on those terms would be considered material. If an appliance, system, etc. become inoperative prior to closing, the Seller agrees to repair or replace with an appliance or system of equal quality. A very important right associated with confirming the absence of material damage is the walk through within 5 days prior to possession. This walk through is used to confirm that there is no material damage which was not present when the offer was made or which was previously concealed. This section also provides the Seller will not enter into nor modify any leases or agreements, service contracts or other agreements which affect the property with terms extending beyond closing without the Buyer's consent.

This provision also provides the Buyer and Seller will execute a **RENTAL AGREEMENT - Occupancy Prior to Closing (Form 65A – pages 128-129)** or **RENTAL AGREEMENT - Seller Occupancy After Closing (Form 65B – pages 130-131)** as applicable and contact their respective insurance companies to assure appropriate policies are in place if early or delayed possession is being negotiated.

Finally, this section provides information about the state statutes (RCW 19.27.530 & 43.44.110) governing the Seller's obligation to install carbon monoxide alarms in accordance with the state building code, as well as a smoke detection device and that the brokers and firms are to be held harmless from any claim resulting from Seller's failure to install CO alarm(s) or smoke detector(s) in the property.

g. Section 1031 Like-Kind Exchange.

The parties agree in this provision to cooperate with the other party's 1031 Exchange as long as they incur no liability in doing so and if they are reimbursed any costs associated with doing so. Notwithstanding the assignment provision of the PSA, the parties agree to the assignment of the transaction to the exchange facilitator for the purposes of completing the exchange.

h. Closing Costs and Prorations and Charges and Assessments.

Seller and Buyer will each pay one-half of the escrow fee unless otherwise agreed or required by government regulations (e.g., VA or FHA loan). Taxes, rents, interest and lienable HOA dues are prorated. Buyer agrees to pay Buyer's loan costs unless otherwise agreed (i.e., a seller

contribution as set out in the **FINANCING ADDENDUM – Form 22A (pages 36-38)**). Be sure to inform the parties of estimated closing costs: the Buyer of their estimated cash to close requirements, and the Seller of their estimated proceeds. Ask to see a copy of the Buyer's Loan Estimate they received from their loan officer. Any delinquencies or encumbrances that will remain after closing (e.g., assumable sewer assessment) shall be brought current by the closing agent. Buyer agrees to pay for remaining fuel in the fuel tank provided Seller gets a written statement as to the quantity and current price thereof from the supplier. Closer shall prorate the lienable utilities per **IDENTIFICATION OF UTILITIES – Form 22K (page 76)**.

Buyer is advised to verify the existence of any other charges and assessments that may be charged against the property after closing. Assessments shall be paid pursuant to the provisions set out in Specific Term No. 13.

i. Sale Information.

This provision authorizes either listing or selling broker to report the sale to the appropriate MLS. The parties also authorize the affiliate service providers to give information pertinent to the transaction to the brokers. Note, the affiliate service providers may be limited by statute to how much they can disclose (e.g., a lender must not disclose confidential information about the Buyer, and the listing broker will not be entitled to it notwithstanding this provision).

j. Seller Citizenship and FIRPTA.

Seller warrants the Seller's citizenship status for US income taxation purposes marked on page 1 of the PSA is correct. Seller agrees to execute a FIRPTA certification (**CERTIFICATION UNDER THE FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA") – Form 22E (page 70)** or similar form) at closing. If the seller is a foreign person (e.g., does not have a US tax identification number of some type), closing agent will hold funds in order to pay appropriate taxes. If not, Buyer (and broker!) may become responsible for the tax liability.

k. Notices and Delivery of Documents.

Any notice per the PSA must be in writing. Notice to the Seller must be signed by at least one Buyer and will be deemed to be given when received by the Seller, their broker or at their broker's office. Notice to the Buyer must be signed by at least one Seller and is deemed to be given when actually received by the Buyer, their broker or their broker's office. Actual receipt by the Buyer's broker of the Form 17 (SDS), Lead Based Paint Addendum, Public Offering Statement or Resale Certificate, HOA docs pursuant to Optional Clauses Addendum, or a preliminary commitment for title insurance pursuant to the Title Contingency Addendum shall be

deemed delivery to the Buyer. Notices do not require the signature of the other party.

The brokers have no responsibility for notices beyond calling the party or causing the notice to be delivered to the address noted on page 1 of the PSA. Parties are requested to keep their brokers advised of their whereabouts in order to receive prompt notification of notices.

Facsimile (fax) transmission of any notice or document shall be delivery. E-mail transmission of any notice or document (or directly link to such notice of document such as forwarding an AuthentiSign email with a link to the final version) shall constitute delivery when:

- 1) the email is sent to both the brokers' and their firms' emails listed on page 1 of the PSA; or
- 2) the receiving broker sends written acknowledgement of receipt of the email even if it is not delivered to the firm email.

Practice Tip: It is still best business practice to email documents and notices to both the firm and the broker emails because if the receiving broker does not give you written verification of receipt, you have not accomplished delivery if not delivered to the firm, also.

In either scenario (fax or E-mail) The parties agree to sign an original if requested by either party or the closing agent.

I. Computation of Time.

Time periods begin the day after the event commencing the time period (do not count the trigger date) and expire at 9:00 pm of the last calendar day of the specified time period. Except for the possession date, if the last day is a Saturday, Sunday or legal holiday (defined in RCW 1.16.050), the time period shall then expire on the next business day (e.g., if the 10th day of the home inspection period falls on a Saturday, Sunday or legal holiday, the Buyer has until Monday at 9:00 pm to provide their inspection notice). Any period of time 5 days or less shall count only business days. If the parties agree that an event will occur on a specific calendar date, the event shall then occur on that date except closing which will occur on the next business day if the calendar date is a weekend day, holiday or day when the recording office is closed.

If the parties attach the legal description (Exhibit A) after mutual acceptance, mutual acceptance will nonetheless be the date the mutual acceptance of an offer or counteroffer was delivered.

"Time is of the essence" is a very significant provision in written contracts meaning that the times and dates specified in the contract must be observed with specificity. Even minor deviations or delays do not have to

be accepted or tolerated by the other parties. The contract will be subject to modification by the conduct of the parties, however, if the time lines are not honored and the parties demonstrate by their actions that the deadlines are not intended to be given effect. The risks and consequences to the parties in not observing and adhering to stated dates (including extending dates by addendum when required), can be severe.

m. Integration and Electronic Signatures.

Specifying that the PSA is fully integrated is intended to mean that there are no agreements or understandings outside of the written provisions of the PSA. However, this clause is intended to make it clear that all prior negotiations and information (including the MLS data sheets, flyers, etc.) are replaced by the PSA. Be sure to act in a manner which is consistent with this requirement and document and incorporate understandings and agreements into the PSA. This provision affords some protection to parties from purported oral agreements and understandings which were not made part of the Agreement, but also penalizes careless parties who forget to list significant oral agreements and understandings which the parties have reached.

This provision also allows for signatures in electronic form to have the same legal effect and validity as a handwritten signature.

n. Assignment.

The Buyer may not assign the agreement without the Seller's consent unless the parties have agreed to an "and/or assigns" clause. Note, if the Seller does not want to sell to someone (e.g., feuding farmer scenario), they should not accept an and/or assigns clause as they will be "stuck" with the assignee. Similarly, if the Buyer knows they will want to assign the contract to someone (e.g., a parent buying a house for a child where the child may or may not be on the loan), then they should include an "and/or assigns" clause lest the seller withhold consent and then they are on the hook to buy the property.

A real estate broker who signs the PSA, but reserves the right to assign is taking the responsibility of a party as of the time of acceptance, a greater risk than the broker may appreciate. As an alternative, the person signing the PSA may act as a nominee - a limited agent for a specific purpose. If the buyer is acting as nominee, this should be specified (e.g. "Jonathan Q. Doe, as nominee on behalf of an undisclosed principal, with no liability to nominee.") Note that there is more risk in acting as a buyer with the right to assign than as a nominee acting on behalf of a principal.

o. Default.

If the Forfeiture of Earnest Money box was checked on page 1, the only remedy to the Seller in the event of Buyer's default is the forfeiture of

earnest money up to 5% of the sale price. If the election of remedies box was checked, in the event of Buyer's default the Seller may 1) keep the earnest money as liquidated damages, 2) sue for actual damages, 3) sue for specific performance, or 4) pursue other remedies available at law or equity.

p. Professional Advice and Attorney's Fees.

Buyer and Seller are advised to seek the advice of an attorney and CPA. Should they do so, they will pay the costs of such review. However, if either party sues the other concerning this agreement, or if a party holding the earnest money commences an interpleader action, the prevailing party is entitled to reasonable attorney's fees and expenses.

q. Offer.

Seller has until the offer expiration date to accept the Buyer's offer unless it is sooner withdrawn. Acceptance shall not be effective until a signed copy is actually received by the Buyer, their broker or at the office of their broker. If the offer is not accepted within the offer expiration time period, the offer lapses and the earnest money is refunded to the Buyer.

r. Counteroffer.

Any change in the terms presented in the Buyer's offer shall be considered a counteroffer (with the exception of the insertion of or change to the Seller's name or warranty of citizenship status). Buyer has until the offer expiration date to accept the Seller's counteroffer unless it is sooner withdrawn. Acceptance shall not be effective until a signed copy is actually received by the Seller, their broker or at the office of their broker. If the counteroffer is not accepted within the offer expiration time period, the offer lapses and the earnest money is refunded to the Buyer.

s. Offer and Counteroffer Expiration Date.

If no date is specified, the offer or counteroffer shall expire 2 days after the offer or counteroffer is delivered unless sooner withdrawn.

t. Agency Disclosure.

The parties authorize the designated broker to be a dual agent in in-house dual agency transactions. The parties authorize the broker and designated broker to both be dual agents in pure dual agency transactions. The parties acknowledge receipt of the pamphlet, "The Law of Real Estate Agency." Good practice encourages having the Agency Law Pamphlet signed by the Buyers and Sellers, as well, though is not required.

u. Commission.

The parties agree to pay the commission in accordance with any commission agreement to which they are a party. The listing firm shall

split the total commission with the selling firm per the listing agreement. The parties consent to the firms receiving compensation from both parties. The parties agree the closing agent shall pay the commission at closing out of their funds or proceeds. In any action to enforce the commission, the prevailing party is entitled to receive attorney's fees and expenses. The parties agree that the licensees are third party beneficiaries to this transaction.

Commission is generally to be controlled by the listing agreement and the advertised share to be paid to cooperating selling brokers. Requested deviation from the advertised share should only be requested in unusual situations and must be agreed upon between the brokers (to do otherwise may constitute a violation of the MLS Agreement and ethics violation).

*Note: Under the Agency Law, if a licensee is acting as a dual agent, full disclosure of compensation (paid by all parties) must be made. The only place for the buyer's agent to make this disclosure is on the **BUYER REPRESENTATION AGREEMENT – Form SAR-BR (pages 7-8)**.*

v. Cancellation Rights/Lead-Based Paint.

If a residential dwelling was built on the property prior to 1978, and the Buyer receives the **DISLCOSURE OF INFORMATION ON LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS – Form 22J (pages 74-75)** after mutual acceptance, the Buyer has the right to rescind the transaction for 3 days after receipt of the Form 22J. Don't forget to give the Buyer the Lead-Based Paint Pamphlet, as well.

w. Information Verification Period.

Buyer shall have 10 days after mutual acceptance to verify all the information from the Seller or listing licensee related to the property. Buyers should be encouraged to take advantage of this opportunity. Discovery within the investigation period that information provided in marketing the property was inaccurate may provide a basis for terminating the PSA.

x. Property Condition Disclaimer.

Buyer and Seller agree that information comes from the parties, not any broker. Parties are responsible for performing their obligations, not the brokers. The brokers are not required to independently investigate or confirm information from the parties unless they agree to do so in writing. If the broker agrees to conduct an independent investigation it should be spelled out specifically in a separate addendum and referenced on an addendum (e.g., "Selling Broker will contact health district to request information on whether property is hooked to sewer and provide response to Buyer."). Note that the broker is not claiming to be the source of the information or the expert who assesses its significance. None of these

provisions mean that the brokers are relieved of their duties to note and disclose adverse material facts which become known to them and which are not apparent or readily ascertainable.

Brokers do not guarantee the value, quality or condition of the property. The provision goes on to point out things may be defective with the property, brokers do not have expertise in finding these items, and the Buyer is advised to retain the services of an inspector qualified to find these defective products, materials or conditions. Brokers may assist in locating and selecting these third party service providers, but brokers cannot guarantee or be held responsible for these service providers.

FINANCING ADDENDUM – Form 22A (pages 36-38): Use on all transactions where the Buyer will be obtaining lender financing (versus cash transaction or Seller financed).

1. Loan Application/Waiver of Contingency.

Identify the type of financing the Buyer will be obtaining (all that are possible if it is unknown at the time of offer). Fill in the blank regarding the Buyer's down payment, as well.

PRACTICE TIP: If the Buyer does not know how much they are going to put down (e.g., they have 20% down, but may choose a lesser down payment financing option), write "up to 20%" giving the Buyer the right to do less. Do not write "as lender requires" as this binds the Buyer to whatever the lender requires (e.g., "We can give you a loan, but you will need to put 50% down!").

*Note: If the Buyer is receiving FHA financing, do not forget to have them initial and date the **FOR YOUR PROTECTION: GET A HOME INSPECTION – Form 22F (page 72)**. There is no initial and date line, so create one.*

Buyer will make loan application within the negotiated time frame (so many days after mutual acceptance).

If the Buyer fails to make application for financing within the agreed upon time, changes the type of loan or lender without the Seller's prior consent the financing contingency is deemed waived. A waiver under this paragraph will also waive the low appraisal provisions. Buyer should use the **LOAN/LENDER CHANGE ADDENDUM TO PSA – Form 22AC (page 40)** to gain Seller's consent if a change of loan type or lender is needed. "Application" and "lender" are defined in this provision.

2. Loan Information.

The Seller may make a request of the Buyer, just once, after the negotiated time period, for the Buyer to provide to the Seller the Loan Information Notice which will give a status update of the Buyer's loan. If

the Buyer fails to provide the Loan Information Notice, the Seller's right to termination in section 3 is accelerated. **REQUEST FOR LOAN INFORMATION – Form 22AL (page 43)** and **LOAN INFORMATION NOTICE – Form 22AP (page 44)** should be used to facilitate this loan information provision.

3. Seller's Right to Terminate.

Seller has a right to give a Right to Terminate Notice after the agreed upon time frame. This is the "no bug by the Seller" time frame. After the agreed upon time, the Seller may give the Right to Terminate Notice (otherwise known as the "fish or cut bait" provision). If the Buyer does not waive the financing contingency within 3 days after such notice is given, the Seller may then elect to terminate the agreement in which case the Buyer will be given a refund of the earnest money.

FINANCING CONTINGENCY NOTICE – Form 22AR (page 46) shall be used to provide notice of intent to terminate and all other required notices.

4. Loan Cost Provisions.

The Buyer may ask the Seller to contribute toward the Buyer's loan costs. For FHA/RD and VA loans, the Seller contribution shall **include** any non-allowable costs including Buyer's closing agent fee on a VA loan and if the non-allowables are more than the amount requested, the Seller will pay them nonetheless. If the box is checked at the end of this provision, the Buyer shall pay the Buyer's share of the escrow fee for a VA loan as Buyer may pay no more than 1% of the amount of the loan.

5. Earnest Money.

If Buyer has not waived the contingency and is unable to obtain financing after a good faith effort, then the agreement shall terminate and the earnest money shall be refunded to the Buyer if the Buyer provides a decline letter from the lender that states: 1) the date of application, 2) that Buyer had sufficient funds to close the sale and 3) the reason the Buyer's application was declined. If the Seller terminates under the "fish or cut bait notice" no such letter is required to refund the earnest money to the Buyer.

6. Inspection.

Seller will permit any inspections required by lender, but is not obligated to pay for such inspections.

7. Appraisal Less than Sale Price.

If the appraisal is less than the sale price, the Buyer shall notify the seller within 3 days of notification of the low appraisal (including with that notice a copy of the appraisal). Seller has 10 days after notification to either reduce the price of the house, pay for a new appraisal (the new appraiser

must be approved by the lender), propose a compromise (e.g., reduce the price to an amount more than the appraised amount in which case the buyer will pay the balance in cash) or give notice or rejection of that low appraisal. Buyer may then either waive the contingency or terminate the transaction in which event the earnest money will be refunded to the buyer. Buyer should use the **NOTICE OF LOW APPRAISAL – Form 22AN (page 45)** to begin the process of working through the low appraisal provisions of this contingency.

8. FHA/VA/RD Appraisal Certificate.

If the agreement is contingent upon government insured financing, the buyer shall not be obligated to purchase if they do not receive a statement setting forth the appraised value. The purpose of the appraisal is to determine the maximum value the government will insure and does not warrant the condition or value of the property. Seller and Buyer shall also execute a document setting forth the prior provision known as the amendatory clause as required by the lender.

9. Extension of Closing.

In the event a) the APR varies from the APR initially disclosed to buyer in the Good Faith Estimate provided by the lender by .125% or more in a fixed rate loan or .250% in an adjustable rate loan, b) there is a change in the loan product or c) there is an addition of a prepayment penalty, the Closing Date shall be extended for up to four (4) days to accommodate the requirements of Regulation Z of the Truth in Lending Act upon notice from the buyer.

APPRAISAL ADDENDUM – Form 22AA (page 39): Stand alone appraisal provisions to be used for example with a cash buyer who still desires an appraisal. These low appraisal provisions mirror the low appraisal provisions in the **Financing Addendum**.

LOAN/LENDER CHANGE ADDENDUM – Form 22AC (page 40): This is the form the Buyer will use to gain the Seller's consent to a change in the type of loan or the lender per the **Financing Addendum**.

INCREASED DOWN PAYMENT FOR LOW APPRAISAL ADDENDUM – Form 22AD (page 41): In this addendum, the Buyer contemplates a low appraisal, lets the seller know that they will pay the additional cash necessary to make up the difference between the appraised value and the purchase price (up to a negotiated amount). This addendum replaces the "Appraisal Less Than Sales Price" provision in the **Financing Addendum**. Notices that need to be given with regard to this addendum shall be given using the **Notice for Increased Down Payment for Low Appraisal Addendum – Form 22ADN (page 42)**.

REQUEST FOR LOAN INFORMATION – Form 22AL (page 43): This is the form the Seller will use to request an updated of the Buyer's loan status per Section 2 of the **Financing Addendum**.

LOAN INFORMATION NOTICE – Form 22AP (page 44): This is the form the Buyer will use to respond to the Seller's **Request for Loan Information – Form 22AL** whereby the Buyer discloses the following: 1) the date the Buyer made application, 2) the name of the lender, 3) the information the Buyer has provided to the lender thus far in the process and 4) a warranty the Buyer has provided all information that has been requested of the the Buyer.

NOTICE OF LOW APPRAISAL – Form 22AN (page 45): This is the form the Buyer and Seller will use in navigating the low appraisal provisions of the **Financing Addendum** including the Buyer's Notice (accompanied by a copy of the appraisal), the Seller's response and the Buyer's reply.

FINANCING CONTINGENCY NOTICE – Form 22AR (page 46): This is the form the Seller would use to initiate the right to terminate notice per section 3 of the **Financing Addendum**, as well as the Buyer's potential waiver and Seller's potential notice of termination.

LIMITED WAIVER OF FINANCING CONTINGENCY ADDENDUM – Form 22AW (page 47): Use if Buyer wishes to waive the financing contingency with the exception of the low appraisal provisions.

BUYER'S NOTICE OF WAIVER OF FINANCING CONTINGENCY – Form 90H (page 48): Use if Buyer wants to waive their financing contingency (e.g., on competing transactions where Buyer must disclose they are getting a loan, but wishes to waive the contingency to strengthen their offer).

BUYER'S NOTICE OF TERMINATION (FINANCING UNAVAILABLE) – Form 90I (page 49): Send with denial letter from lender in order to receive a refund of earnest money per the **Financing Addendum – Form 22A** paragraph 5.

BUYER'S SALE OF PROPERTY ADDENDUM – Form 22B (pages 50-51): Use if Buyer has a property to be sold before closing on the Seller's property.

1. Contingent on Sale of Buyer's Property. The Buyer will use this contingency addendum if they have not yet sold a property that they need to sell in order to buy the Seller's property. The form creates a contingency period during which the Buyer must sell their property otherwise the transaction will terminate the earnest money be refunded to the Buyer.

2. When Seller's Consent is Required on Sale of Buyer's Property. Seller's consent is required if the Buyer desires to accept an offer on their

property which is contingent on the second buyer's sale of their property or if the closing of the Buyer's property will be outside of a 30-60 day window.

- 3. Loan Application.** Buyer and Seller will negotiate when the Buyer's time period for loan application will start (either after mutual acceptance or after satisfaction of this contingency).
- 4. Property Remains on Market (continued marketing provision).** The Seller shall continue to market the property to find another offer that might replace the Buyer's offer. If the Seller receives an offer they accept, the Seller shall give the Buyer the **BUMP NOTICE (Notice that Seller Has Accepted Another Offer) – Form 44 (page 52)** after which the Buyer has the negotiated time period to waive or satisfy the contingency (the bump period). Buyer's response shall be on the **BUMP RESPONSE – Form 46 (page 53)**. In the **Bump Response**, the Buyer has three options: 1) giving notice the contingency is satisfied and the Buyer's property has sold, 2) waiving the contingency because the Buyer's property has not sold, but the Buyer desires to move forward anyway or 2) terminating the agreement because the Buyer's property is not sold and the Buyer is not prepared to move forward.
- 5. Contingency Satisfied.** Buyer shall give the Seller notice within 2 days of entering into an agreement (satisfied the contingency) using the **CONTINGENCY PROPERTY NOTICE – Form 90K (page 54)** and shall send a copy of the PSA for the sale of their property. If the Buyer's property sells, the closing of the transaction will be 3 days after the closing of the contingency property (thus the requirement for the Seller's consent to a deal that will close outside of the 30-60 day window). If the Buyer waives this contingency (e.g., after a bump notice is given), the Buyer waives all other contingencies that are part of the transaction (including financing and inspection) and the closing shall occur 30 days after the date of the buyer's waiver.
- 6. Buyer's Property – Failure to Close.** If the contingent property sells, but that transaction fails, Buyer shall give the Seller notice within 2 days. If the Buyer does not give this notice in a timely manner, then Buyer shall be in default and the default and attorney's fees provisions shall apply. If there is time remaining on the original contingency period, the contingency will be reinstated. If not, the agreement will terminate and earnest money refund to the Buyer or the Buyer has the option to waive the contingency and move ahead and close. The closing shall then be 30 days after buyer's notice of the waiver. If the property is new construction, the closing may be delayed until a certificate of occupancy is granted.

7. Closing Date. The closing dates in this contingency supersede the closing date in the PSA.

8. Other. Buyer and seller may negotiate other provisions here such as delaying time frame for home inspection, etc.

CONTINGENCY PROPERTY NOTICE – Form 90K (page 54): Use to transmit notice that Buyer's contingency property has sold, or that the sale failed to close and whether Buyer intends to terminate the agreement or reinstate the contingency or waive the contingency. Again note such a waiver will waive all remaining contingencies (e.g., inspection and financing), as well. This is also the form a Seller will use in dealing with a second/bump Buyer.

BUYER'S REQUEST FOR SELLER'S CONSENT – CONTINGENT SALE – Form 90L (page 55): Use to transmit any notices required or permitted in the Sale of Buyer's Property Contingency Addendum such as Seller's consent to a delayed closing, etc.

BUYER'S PENDING SALE OF PROPERTY CONTINGENCY ADDENDUM – Form 22Q (page 56): Use if the Buyer has already sold their home, but that sale has not yet closed. The provisions in this contingency are very similar to the provisions of Form 22B except the Seller shall have NO continued marketing rights under this contingency.

BUYER'S PENDING SALE CONTINGENCY NOTICE – Form 90U (page 57): Use to transmit notice that the pending sale has failed and whether Buyer will waive contingency or transaction will terminate and earnest money be refunded to Buyer.

SELLER FINANCING ADDENDUM – Form 22C (pages 58-61): Use this addendum any time all or any portion of the purchase price is to be financed by the Seller. All material terms for the method of paying the total purchase price must be contained in the PSA. Failure to agree upon material terms may render the PSA unenforceable in the event a party has a change of heart.

1. General Terms: This section covers such general issues as:

- A. the use of the property (residential dwelling)
- B. the Washington State DFI waiver that may or may not be required
- C. the use of Limited Practice Board (LPB) forms that shall be attached to the Agreement as a blank form
- D. Buyer and Seller should seek counsel of and attorney to review the terms of the Agreement with a negotiated time frame for written notice of disapproval from either side to the other. If Buyer and Seller agree to unique terms, they shall have their respective attorneys review the Agreement. There is then an affirmative duty

to give notice of approval from both sides, otherwise the transaction terminates and earnest money is refunded to the Buyer.

- E. Seller understands Seller's security interest in the Property may be inferior to a third party's interest in the Property, such as a prior lender.

2. Payments to Seller and Method of Payment: This provision spells out the Buyer's down payment, interest rate and when interest starts accruing (on closing or other), payments to the seller and whether the parties will execute a promissory note and deed or trust or a real estate contract.

Sellers should be very cautious of transactions in which the Buyer is putting no money down (these are very risky), and extremely reluctant to consider a transaction in which the Buyer is actually getting a loan in first position which, when combined with the Seller financed amount, will exceed the purchase price (the Seller is unsecured on a portion of their "loan" and is taking a great risk that at least a portion of the purchase price will not be received).

The interest rate must be specified. If this is a private consumer transaction (i.e., Buyer is purchasing for personal or family use), the maximum interest rate will probably be governed by usury laws (the maximum interest rate a private Seller may charge under these statutes is 12% except in periods of time when interest rates are extremely high, such as during the early 1980's). If the transaction is not governed by usury limitations, Sellers still need to consider some fairness limitations under doctrines used by courts, including procedural and substantive unconscionability rules.

Promissory Note and Deed of Trust: In general, if the property is subject to existing encumbrances which are not to be paid at closing, use the same type of instrument for the junior encumbrance as that which was used for the existing obligation. If Seller is to carry back financing in second position behind a third party lender, a note and deed of trust will be required because the lender will not give a loan to a Buyer who is not in title;

These provisions also specify: security, agreement to use LPB Form 28A, Deed of Trust LPB Form 22 or 22A, due date, default and default interest, prepayment and no further encumbrances.

Real Estate Contract: Or the parties may agree to a real estate contract. Acreage which is used primarily for agricultural purposes should be sold on contract - deeds of trust covering farm land cannot be foreclosed non-judicially in Washington. In the event of Buyer default, real estate contracts can generally be forfeited more quickly than deeds of trust can

be non-judicially foreclosed.

3. Assumed Underlying Obligations and Method of Payment:

- A. Buyer shall assume the noted obligations (optional provision).
- B. If consent of the holder of the underlying obligation is required, this provision shall control.
- C. Seller wrap of existing loan provisions (optional).
- D. Cash down to existing loan provisions including type of loan, loan amount and payments, seller warranty that the loan is assumable, Buyer review period and seller review period (optional).

4. Other Terms:

The remaining checkbox provisions are designed to cover the items declared to be material terms in seller financing by Washington court decisions. One item which should always be stressed and recommended is the use of an escrow contract collection account - the service provided is very well worth the expense (see provisions in A which include agreement upon a collection account, escrow provisions, taxes and insurance).

Note under paragraph B, the Seller has the option (if the box is checked and negotiated between the parties) to approve the credit report of the Buyer. This section allows the Seller to be aware of their right to check into the creditworthiness of a potential Buyer to whom they are being asked to extend credit.

Finally, under paragraph C, the Buyer shall pay the cost of a lender's standard title insurance policy insuring the Seller's security interest and pay for the extended policy as long as the cost of the policy doesn't exceed 10%.

COMMON INTEREST COMMUNITY ADDENDUM – Form 22CIC (page 62): to be used if the property is in a common interest community.

Identifies the property is in a common interest community and the Seller will provide a Public Offering Statement or a Resale Certificate whichever is applicable.

COMMON INTEREST COMMUNITY (RCW 64.90) RESALE CERTIFICATE

From 27CIC (page 63-66): to be provided to the Buyer if the property is in a Common Interest Community prepared by the association's officer or its authorized agent.

The CIC Resale Certificate covers such topics as: right of refusal/restrains on alienation; assessment, delinquent assessments; delinquent association obligations; fees; anticipated expenditure, repairs or replacement cost; reserve study; unsatisfied judgments and legal actions; insurance; existing uses, alterations or improvements; declarant;

environmental, health and building code; leasehold estate; restrictions on amounts upon sale; pending sales or encumbrance of common elements; restrictions on use, occupancy and lease; warranties and warranty claims; age restrictions and exhibits.

OPTIONAL CLAUSES ADDENDUM – Form 22D (pages 67-68): Use on all transactions of all property types. This addendum covers many helpful provisions for the parties as well as the licensees in the transaction. Do not forget to check the box if the parties want to include the provision as part of the agreement.

1. Square Footage/Lot Size/Encroachments. (always check)

A clause that protects the brokers by reminding the Buyer that the brokers are making no representations regarding square footage of improvements, lot size, boundaries, encroachments, etc. and Buyer should do their own due diligence to confirm such information to their own satisfaction.

2. Title Insurance. (rarely, if ever check either box)

This provision points out that the Buyer and Seller have already agreed to the homeowner's insurance provision in Form 21. The parties may agree that the parties may elect to choose either the Standard Form Owner's Policy of Title Insurance or the Extended Coverage Title Insurance. In that event the Buyer will be responsible for the additional premium and any survey as required by the insurance company. This would be used mostly with commercial transactions. Note: It is likely that the Buyer will rarely, if ever, check either box.

Note: Three types of insurance coverage:

- 1) *owner's policy (least expensive),*
- 2) *homeowner's policy (the premium will be approximately 10% more expensive than the owner's policy), and*
- 3) *extended coverage (most expensive).*

The PSA calls for the middle coverage (homeowner's policy). Most likely, the default coverage is appropriate for most if not all situations.

3. Seller Cleaning. (always check)

Instruction to the seller to clean the interiors of any structures and remove all trash, debris and rubbish from the property prior to Buyer taking possession.

4. Personal Property. (always check)

Unless otherwise agreed, Seller shall remove all personal property from the Property prior to the Possession Date. Any items left by the Seller thereafter become the possession of the Buyer to do with as he or she pleases (keep, sell, dispose of, etc.).

5. Utilities. (always check)

Buyer should check off those utilities they believe the property is served by. Seller should counter if the Buyer's assumptions are incorrect.

6. Insulation – New Construction. (check if new construction only)

Seller/builder shall disclose the type, thickness and R-Value of the insulation in the walls and ceiling, as well as any other insulation data.

7. Leased Property Review Period and Assumption. (check if applicable)

Buyer acknowledges that Seller leases the checked box items (propane tank, security system, satellite dish and operating equipment, or other). Seller shall provide Buyer a copy of the lease within the negotiated time frame. Buyer has the negotiated time frame to disapprove of the leases otherwise, the lease(s) shall be assumed by the Buyer at closing and hold the Seller harmless from and against any further obligations. Caution, however, all such leases may not be assumable and this should be determined as soon as possible.

8. Homeowner's Association Review Period. (check if property is located within a homeowner's association)

Seller shall provide to Buyer the following documents (if available) within the negotiated time period following mutual acceptance; 1) rules & regulations including architectural guidelines, 2) bylaws, covenants, conditions and restrictions (CC&Rs), 3) Association meeting minute for the past 2 years, 4) board of director meeting minutes for the past 6 months, and 5) financial statements for the prior 2 years and current operating budget.

Buyer has the negotiated time period to review the documents provided by seller (or consider if no documents are provided at all). If Buyer does not give notice of disapproval, then the HOA review period is deemed satisfied. If Buyer disapproves in writing, then the agreement is terminated and the earnest money is refunded to the Buyer.

9. Homeowner's Association Transfer Fee.

The parties will negotiate who will pay the transfer fee if one is to be charged by the HOA.

10. Excluded Items. (check if applicable)

If the Seller intends to keep any items (e.g., dining room chandelier, master bedroom curtains or Aunt Millie's prized rose bush in the front yard), this is the place to exclude those items. Note Seller shall repair any damage caused by the removal of such items (e.g., holes in the wall left by removing the flat screen television and mounting hardware).

11. Home Warranty. (check if applicable)

Acknowledgement by both parties that home warranty plans are available that provide additional protection and benefits to both Buyer and Seller. Buyer may choose to order a one-year home warranty and then designate the home warranty provider and options, as well as ask Seller to contribute to the payment for such warranty.

12. Other (otherwise known as the mini Form 34 – blank addendum).

(check if adding provisions) - Examples of other optional clauses:

- 1) Seller may terminate this agreement if the Buyer's spouse does not sign quit claim deed within 5 days of mutual acceptance.
- 2) Seller to have carpets professionally cleaned and shall provide invoice of such prior to closing.
- 3) Agreement is subject to Buyer's 1031 Exchange.
- 4) Disclose if one of the brokers is related to one of the parties (e.g., Listing Broker is related to Seller).
- 5) Disclose if one of the parties is a licensed broker (e.g., Buyer is a licensed real estate broker in the state of Washington).

BUYER'S NOTICE OF TERMINATION (HOMEOWNERS' ASSOCIATION

REVIEW – FORM 22D) – Form 90W (page 69): This is the form a Buyer would use to give notice of termination after reviewing the HOA information (or realizing that none may be forthcoming) and making demand for refund of earnest money.

FIRPTA CERTIFICATION – Form 22E (page 70): This is a form a closing agent will use if the Seller is not taxable entity in this country to make sure to comply with federal tax laws (Section 1445 of the U.S. Internal Revenue Code) that a Buyer of a U.S. real property interest must withhold tax if the Seller is a foreign person unless one of the exceptions in the Act applies.

EVIDENCE OF FUNDS ADDENDUM – Form 22EF (page 71): This form should be added to all transactions so that Buyer's offer is contingent upon Buyer providing evidence of Buyer's funds to close (not just on cash transaction, but proof of Buyer's down payment, as well). This form is also used to disclose a contingent source of funds, but be clear, this does not create a contingency that the Buyer will receive those funds, but rather, simply discloses the contingent source of funds so as to not be in default of the "Buyer represents Buyer has sufficient funds to close and is not relying on any contingent source of funds" provision in general term a of the PSA.

FOR YOUR PROTECTION: GET A HOME INSPECTION – Form 22F (page 72): Use if the Buyer is obtaining FHA financing. This form informs the Buyer of the difference between a home inspection and an appraisal and encourages the Buyer to conduct a home inspection by selecting a trained professional home inspector.

FOR SALE BY OWNER ADDEDNUM – Form 22FSBO (page 73): Use if Buyer is purchasing a For Sale By Owner property. Used to protect the Buyer to ensure this is not a distressed property by the Seller representations below:

- 1. Distressed Home:** Seller must check a box that the property is or is not a distressed home. Distressed home is defined as an owner occupied, 1-4 units where the Seller 1) is in process of foreclosure or in danger of foreclosure because Seller (a) has defaulted on a mortgage or (b) is at least 30 day's delinquent on a loan secured by the property or (c) Seller is likely to default on such mortgage or loan within 4 months due to lack of funds; or 2) at risk of loss due to non-payment of taxes.
- 2. Closing Date is Not Within 20 Days of a Foreclosure Sale:** Seller warrants the closing date is not within 20 days of a advertised or docketed foreclosure sale.
- 3. Possession Date:** Possession date shall be the closing date.

DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS – Form 22J (pages 74-75): Use if **any** dwelling on the property was built prior to 1978. Make sure the form is completely executed with all appropriate boxes checked and all signatures, initials and dates completed by the Seller, the Buyer, **and the licensees**.

IDENTIFICATION OF UTILITIES – Form 22K (page 76): Use on all transactions unless waiving the services of the closing agent to prorate the lienable utilities. Listing licensee should complete this form at the time of listing and make available to the buyer's agent in the MLS associated docs along with the Exhibit A, SDS, LBP, SAR-SA, etc. The buyer's broker should generate this addendum if it is not available prior to drafting the offer, and the Seller/listing broker should then fill out the information for the closing agent.

LEASE REVIEW ADDENDUM – Form 22L (page 77): Use if selling multi-family property. This form makes the Buyer's offer contingent upon the Buyer's review and approval within the negotiated time frame of the leases, books, records and agreement to be provided by the Seller within the negotiated time frame. It also provides that Buyer is solely responsible for obtaining required consents to assume any such contracts. Deposits and rents will also be prorated to delivered to the Buyer at closing.

LAND AND ACREAGE ADDENDUM – Form 22L&A (pages 78-81): Use if the transaction involves raw land or homes with acreage. The acknowledgements and available contingencies will eliminate many of the common mistakes and oversights which occasionally arise after closing land transactions. The first page of the addendum is information for the Buyer. It references issues that are unique to land and acreage such as:

- 1) feasibility and desirability of the property for Buyer's intended use
- 2) boundary lines and surveys
- 3) perc tests
- 4) well tests for quantity and quality
- 5) special tax classifications
- 6) timber cruises
- 7) on-site sewage disposal systems
- 8) additional test or inspections that may be required
- 9) existing leases or rental agreements
- 10) seller's right to harvest crops

Page 2 creates contingencies unique to land & acreage including:

- 1) survey
- 2) perc test
- 3) on-site sewage system pumping and inspection
- 4) water quality test
- 5) water quantity test (Buyer may make offer contingent on well producing at a specific level during a 4 hour draw down test)
- 6) timber cruise

The contingencies are invoked by checking the box that either the Buyer or Seller shall pay the costs of such contingencies. Also, note an amount of time for completion of such contingencies may also be negotiated.

The next two pages contain optional provision for land and acreage transactions including: feasibility study, irrigation and water, assignment and assumption of leases, attorney review, accessories, CRP program, document review period, additional inspections, and tax designation issues.

MANUFACTURED HOME ADDENDUM (Title to Be Eliminated) – Form 22MH

(page 82): Use with manufactured homes that are on their own land (not on leased land in a park) being purchased in the transaction via the Form 21. The form deals with issues unique to manufactured homes such as the property description of the manufactured home, title elimination issues and the Department of Labor & Industries compliance inspections. For manufactured homes on leased land, use the **Manufactured Home PSA – Form 23**.

ATTORNEY REVIEW ADDENDUM – Form 22RA (page 83): Use if either party or both would like to make their offer contingent upon an attorney's review of the agreement.

WELL ADDENDUM – Form 22R (page 84): Use if property is served by a well and the parties are not using the **Land & Acreage Addendum – Form 22L&A**.

The provisions include number of connections, Seller representations, well documents review period, a well inspection contingency and local requirements.

Buyer may terminate the agreement by disapproving the well report by using the **BUYER'S NOTICE OF TERMINATION (WELL ADDENDUM) – Form 90X (page 85)**.

SEPTIC ADDENDUM – Form 22S (page 86): Use if property is served by an on-site sewage system (OSS) and the parties are not using the **Land & Acreage Addendum – Form 22L&A**. The addendum addresses what type of OSS (private or shared), seller representations, maintenance records, county or city inspection requirements, inspection and pumping of the OSS and the Buyer's right to attend the inspection and the OSS inspection contingency.

Buyer may terminate the agreement by disapproving the septic report by using the **BUYER'S NOTICE OF TERMINATION (SEPTIC ADDENDUM) – Form 90Y (page 87)**.

SHORT SALE ADDENDUM – Form 22SS (page 88): Use on any transaction that will be a short sale. The form defines short sales, provides that the transaction is contingent upon lender approval of the short sale and Seller's acceptance of any lender terms, how the Seller will deal with multiple offers, when the Buyer may terminate the transaction, how time will be computed for specific contingencies, the implications of the short sale and that **NOTICE PURSUANT TO SHORT SALE ADDENDUM - Form 90SS (page 89)** will be used for all notices having to do with the short sale contingency.

TITLE CONTINGENCY – Form 22T (page 90): Use on all transactions. This addendum makes the agreement conditioned on the Buyer's review of the preliminary commitment for title insurance. Buyer is to obtain the easements, CC&R's, etc. and determine that they are consistent with the Buyer's intended use. Buyer has the negotiated time period from either mutual acceptance or receipt of the prelim (whichever box is checked) to give written notice of the disapproval and reasons therefore. Buyer may disapprove exceptions that are contained in the prelim, but may not object to matters not contained therein. E.g., Buyer hopes the property is served by a view covenant which does not show on the prelim. Buyer may not object because something they hoped would be there is not.

Seller shall have the negotiated time period after receipt of the Buyer's notice of disapproval to give notice that the Seller will clear all disapproved exceptions and shall have until closing to do so. If not, the Buyer may terminate the transaction and receive a refund of the earnest money. Buyer may not sue for damages or specific performance. For example, Buyer incurred \$2,000 in costs having contractor and engineer come out to check out the property to determine where they will build the house. The prelim reveals an easement across the property

where the Buyer wants to build. If Seller cannot get the easement cleared, Buyer may walk and get earnest money back, but Buyer cannot sue for the \$2,000 in costs or force the Seller to clear the easement.

If Buyer receives a supplemental title report that discloses new exceptions, the times periods in this contingency shall repeat. Seller must still provide marketable title.

TITLE CONTINGENCY NOTICE – Form 90T (page 91): Use this form to negotiate the Form 22T title insurance contingencies: Buyer's notice of disapproval of title exceptions, Seller's response to notice of disapproval of title exceptions, and Buyer's notice of termination.

HOMEOWNER INSURANCE ADDENDUM - Form 22VV (page 92): Use on all transactions except vacant land. The stand-alone insurance contingency provides the Buyer must apply for insurance within the negotiated time frame. The Buyer has the negotiated time frame to give notice of Buyer's inability to obtain an insurance binder on the terms set forth in the contingency. If so, the agreement is terminated and the earnest money is refunded to the Buyer.

BUYER'S NOTICE OF TERMINATION (HOMEOWNERS INSURANCE UNAVAILABLE) Form 90VV (page 93): The companion notice form to the 22VV, Buyer will use this form to give notice of termination due to insurance being unavailable per the terms of homeowner's insurance contingency.

MODIFICATION OF CLOSING DATE ADDENDUM – Form 22Y (page 94): Use when the parties desire to modify (move earlier or extend) the closing date. Other dates may need to be extended as well in paragraph 2 and other provisions may be added in paragraph 3 (e.g., "In exchange for Seller's agreement to an extension of the closing date, Buyer shall pay a \$1,000 non-refundable extension fee which shall be immediately paid and released to seller upon signing of this addendum.").

ADDITIONAL SIGNER ADDENDUM – Form 22Z (page 95): This addendum is to be used where there are multiple Buyers or Sellers whose signatures and initials cannot fit on the PSA.

PRESALE ADDENDUM – Form 26 (pages 96-99): Use when dealing with new construction. This addendum deals with issues unique to new construction such

- as:
- 1) CC&R's
 - 2) architectural review committee approval
 - 3) plans and specifications
 - 4) decoration selections, upgrades or changes
 - 5) location of home and site characteristics
 - 6) clearing the property
 - 7) landscaping

- 8) warranty
- 9) pre-closing inspection ("walk-through")
- 10) closing date/completion of improvements
- 11) ownership of plans and specifications
- 12) questions during construction and notice of delays
- 13) access to property prior to closing
- 14) conflicts between this addendum and other aspects of the PSA

PRESALE ADDENDUM – OPTIONAL CLAUSES – Form 26A (pages 100-

102): Use this addendum when dealing with new construction in addition to the Presale Addendum. This form deals with additional optional clauses that are unique to new construction such as:

- 1) additional information regarding selections, upgrades and changes
- restoration fee account
- 2) additional information regarding landscaping
- 3) seller's replication of a previous project
- 4) standard owner's policy of title insurance
- 5) extended title insurance
- 6) customer service
- 7) oak floors, driveways and sidewalks
- 8) condition of drywall and siding
- 9) remedies – arbitration
- 10) waiver of financing
- 11) price increase due to delay
- 12) conflict
- 13) seller's purchase of lot
- 14) recordation of plat
- 15) title company and escrow fees
- 16) non-refundable construction retainer

EARNEST MONEY PROMISSORY NOTE – Form 31 (page 103): Use when Buyer will not be providing an earnest money check or cash (or other form of earnest money) or cannot deliver the earnest money in a timely fashion. This form addresses when the earnest money note will come due.

Note: Be sure to make this date specific and not upon closing as if closing does not occur, the earnest money never technically comes due and the seller will have no remedy unless the election of remedies box was checked on page 1 of the PSA.

ASSIGNMENT OF BUYER'S INTEREST IN PSA – Form 32 (page 104): Use when Buyer will be assigning their rights in an existing PSA to another Buyer. Assignee assumes the obligations of the assignor and holds assignor harmless of all claims or liability. Assignor to deliver all documents to assignee.

COOPERATIVE APARTMENT ADDENDUM – Form 33 (page 105): Use when Buyer is purchasing a cooperative apartment.

ADDENDUM/AMENDMENT TO PURCHASE AND SALE AGREEMENT – Form 34 AKA “Come Sue Me” Form! (page 106): This addendum should be used sparingly as in doing so a broker takes on the added liability of drafting terms (instead of filling in the blanks of attorney approved forms) and will be held to the higher standard of a practicing attorney.

Note: Be sure to reference this form on page 1 of the PSA if using.

INSPECTION ADDENDUM TO PSA – Form 35 (pages 107-108): Use on all residential transactions.

In this addendum, the agreement is conditioned upon the Buyer's subjective satisfaction with inspections on the property including but not limited to structural, mechanical and general condition of the improvements, compliance with building and zoning codes, hazardous materials, pest inspection and soils/stability inspection. Do not forget to check this box, however, or the broker may have unwittingly forfeited their Buyer's right to an inspection.

Note: Only two people can perform the inspection: the Buyer themselves, or a licensed home inspector (or someone exempt from licensing).

Buyer and Seller will negotiate up front whether Buyer may or may not have sewer system scoped.

Buyer's obligations: 1) order the inspection(s), 2) choose the inspector (could be anyone, but Buyer is solely responsible for interviewing and choosing this person), and 3) pay for the inspection(s). Buyer shall restore the property to the same condition it was prior to the inspection(s) and is responsible for any damage as a result of such inspection(s). Buyer is not obligated to provide a copy of the inspection report unless they are invoking their right to additional inspection(s) in which case they must give a copy of the written recommendation by the inspector of the additional inspection(s). **The Buyer shall not, however, provide the inspection report or portions of the report to the Seller unless Seller requests otherwise.** The Buyer may ask the Seller to make any corrections, regardless of whether they were cited by an inspector.

Buyer has 4 options upon the end of the negotiated inspection period (Buyer's Notice):

- 1) approve the inspection and waive the contingency,
- 2) disapprove the inspection and terminate the agreement,
- 3) request further inspection(s) in which case the inspection period will be extended by the negotiated time period and shall commence on the day after the notice of additional inspection(s) is given, or

- 4) propose corrections or modifications to the agreement.

If the Buyer fails to give any notice at the end of the inspection time period, the contingency is deemed waived.

Seller must give notice within the negotiated time period and has 4 options upon receipt of a notice for corrections or modifications from the Buyer (Seller's Response):

- 1) agree to the corrections or modifications at which time the contingency is now satisfied,
- 2) agree to some of the corrections or modifications,
- 3) reject all corrections or modifications, or
- 4) offer different or additional corrections or modifications.

Buyer shall have the negotiated time period to reply to the Seller's reply to their request for corrections or modifications (assuming the Seller did not agree to the proposed corrections and modifications). In this, the Buyer's Reply, Buyer shall have 3 options:

- 1) accept the Seller's response at which time the contingency is deemed satisfied,
- 2) agree with the Seller on other remedies (e.g., resolve in further negotiations), or
- 3) disapprove the inspection and terminate the agreement receiving a refund of their earnest money.

Note: Assuming the parties go with the default time lines, keep in mind the 10-3-3 three-step dance which is the inspection negotiation dance. The Buyer has the initial 10 days to give their inspection notice. The Seller has 3 days to give their response. The Buyer now has 3 days to reply to the Seller's response. It is important to make sure the Buyer understands that if they are going to engage in the "whining dance" (attempting to get the Seller to do more than the Seller offered in their response) then if the Buyer's 3-day reply period goes by without any resolution, the contingency is deemed satisfied and the Seller does not have to do any corrections or modifications (not even the ones they agreed to do in their initial response).

If the Seller has agreed to corrections, the work must be done in a "commercially reasonable manner" (duct tape is not an appropriate fix for a leaking trap) and the work must be completed within the negotiated time frame prior to closing and the Buyer may have the corrections re-inspected at buyer's expense. If Buyer agrees to pay for any repairs prior to closing the parties are advised to seek the counsel of an attorney to review the terms of that agreement. Buyer may inspect for oil storage tanks, but can only go so far as to determine the existence of one, but cannot go digging.

Buyer is advised to have special inspections of the on-site sewage system as they are subject to strict governmental regulation and occasionally malfunction or even fail.

Buyer may check box #2 to condition the agreement on the subjective satisfaction with a neighborhood review during the negotiated time period. The neighborhood review is of such things as schools, proximity to bus lines and shopping, traffic patterns, noise, parking, etc. to include the existence of sex offenders.

If the Buyer conducted a pre-inspection and will move forward in the transaction without further inspection, check box #3.

If the Buyer is going to waive the inspection, check box #4.

PRACTICE TIP: Either box #1, 3 or 4 should be checked.

PRE-INSPECTION AGREEMENT – Form 35P (page 109): Use if Buyer would like to conduct a pre-inspection of the property (i.e., the Buyer wants to pre-inspect the property prior to making an offer). The provisions are very similar to the provisions of the **Inspection Addendum - Form 35** including **the Buyer shall not, however, provide the inspection report or portions of the report to the Seller unless Seller requests otherwise.**

INSPECTION NOTICE FOR FORM 35 – Form 35R (page 110): Use in the communication of notices in connection with the inspection. This form reflects the options for the Buyer and Seller pursuant to the three step dance described above: Buyer's notice, Seller's response to Buyer's request for modification or correction and Buyer's reply to Seller's response. This form will originate with the Buyer and be built upon by the Seller and potentially back to the Buyer.

INSPECTOR REFERRAL DISCLOSURE – Form 41D (page 111): Licensee should provide this form if licensee is referring a home inspection with whom they have a business or familial relationship.

ESCALATION ADDENDUM – Form 35E (page 112): Use if Buyer wants to include an escalation clause in their initial offer. This addendum will be used in a competing offer situation where the Buyer is willing to pay more than the offered price to beat any competing offer by the indicated amount not to exceed the indicated maximum price.

The bottom of the addendum is a handy worksheet for the listing licensee to use in the calculation of the escalated purchase price when invoking the escalation provision.

FEASIBILITY CONTINGENCY ADDENDUM – Form 35F (page 113): Use if Buyer wishes to include a catch-all contingency for the Buyer to check out the property to make sure it is satisfactory for their intended use. There is a feasibility in the 22L&A (Land & Acreage Addendum), as well, but this is a stand alone contingency to be used when the 22L&A is not appropriate.

FEASIBILITY CONTINGENCY NOTICE (NOTICE OF DISAPPROVAL / APPROVAL) – Form 90P (page 114): Use to communicate approval or disapproval of feasibility contingency.

NEIGHBORHOOD REVIEW CONTINGENCY ADDENDUM – Form 35N (page 115): This addendum is a stand alone neighborhood review contingency for the Buyer to check out the neighborhood. The provisions are the same as the neighborhood review portion of the Inspection Addendum - Form 35.

NOTICE OF TERMINATION PURSUANT TO NEIGHBORHOOD REVIEW – Form 90M (page 116): Buyer will use to give notice of termination due to disapproval of neighborhood if the agreement was contingent upon such review.

COUNTEROFFER ADDENDUM – Form 36 (page 117): Use if presenting a counteroffer from the Seller to the Buyer or the Buyer to the Seller. Paragraph 1 is a counter of the purchase price. Paragraph 2 (other) is a counter of any other terms (e.g., excluding items, appliances, closing date, etc.). Licensees should get in the habit of using a counteroffer addendum in lieu of crossing off and initialing changes on the face of the PSA as the agreement may become illegible with multiple faxing, difficult to interpret, etc.

*PRACTICE TIP: When your client signs a counteroffer addendum, have them also sign a **WITHDRAWAL OF OFFER OF COUNTEROFFER - Form 36A (page 118)** so that in the event they want to withdraw an offer or counteroffer, you have it in your file and where time is of the essence (race to the scanner story) you do not need to track down your client. Remember, offers and counteroffers may only be withdrawn in writing.*

BACK-UP ADDENDUM – Form 38A (page 119): Use if the Buyer's offer will be in back-up position to a first offer. This addendum will either be generated by the Buyer's agent if they know their offer will be in back-up position, or by the listing licensee in countering an offer that will be in back-up position.

Buyer acknowledges that the property is already sold and that this agreement is subject to the first sale. Seller may change the terms of the first offer. Seller is not bound to the back-up Buyer unless the first sale fails. Seller agrees to give the Buyer notice within 3 days of the first sale failing. If the first sale fails, the parties negotiate a closing date in terms of days after delivery of notice that the first sale has failed. The parties will negotiate an expiration of the back-up offer after which the back-up agreement will terminate and the earnest money will be

refunded to the Buyer. Buyer will receive a refund of the earnest money upon expiration of closing of the first sale. Time periods in the back-up offer do not commence until the seller gives notice that the first sale has failed.

PRACTICE TIP: If the Buyer does not want their earnest money to be deposited until they are moved into first position (e.g., the first sale has failed), note this under paragraph 8 (other).

BACK-UP ADDENDUM NOTICE – Form 38B (page 120): This form will be used by the Seller to let the Buyer know that the first sale has failed and therefore the back-up Buyer is now the first position Buyer and by the Buyer to terminate the back-up agreement (e.g., Buyer has found another property prior to being moved into first position by the Seller).

SECOND BUYER'S ADDENDUM – Form 39 (page 121): Use in conjunction with acceptance of a bump offer pursuant to the **Sale of Buyer's Property Contingency - Form 22B.**

Buyer acknowledges Seller has already accepted a contingent offer which gives the Seller the right to continue to market the property. Seller may require the second bump Buyer to remove certain noted contingencies before they will give the bump notice to the contingent Buyer (e.g., approval of Form 17, inspection, neighborhood review, approval of condo resale certificate, financing, etc.). Once Seller receives notice that the second bump Buyer's contingencies are removed, Seller shall give notice to the first Buyer. If the second bump Buyer attempts without legal cause to withdraw or cancel, the Buyer will be in breach of the contract and subject to the default and attorney's fees provisions.

If the first contingent Buyer waives or satisfies the contingency, the second bump agreement shall terminate and second bump Buyer shall receive a refund of their earnest money. If the first contingent Buyer does not remove their contingency, then the second bump agreement shall close according to the terms of the agreement.

COMMISSION DISBURSEMENT FORM – Form 40 (page 122): Instructs the closing agent to disburse commissions per the form.

SELLING FIRM'S COMMISSION – Form 41C (page 123): To be used when there is no listing agreement whereby Seller agrees to pay Selling Firm a commission. This form also has a tail clause (safe harbor).

AGENCY DISCLOSURE – MULTIPLE BROKERS – Form 42A (page 124): For use where the client will be working with multiple brokers (e.g., a team) to modify the Agency Disclosure provisions on page 1 of the PSA.

RESERVATION AGREEMENT – Form 43 (page 125): To be used with a PSA when Buyer wants to reserve a lot in a new construction development.

AUTHORIZATION TO DISBURSE EARNEST MONEY – Form 50 (page 126): Authorizes the holder of earnest money to disburse the earnest money per the parties' request (e.g., earnest money being released to a seller/builder). This form will also be used after mutual acceptance if the transaction has failed to direct the party holding the earnest money to disburse the funds as agreed to by the parties.

RESCISSION AGREEMENT – Form 51 (page 127): Use if the parties wish to rescind the agreement thereby releasing each other or any further liability. It also directs the holder of earnest money to release the earnest money as provided in the form. Finally, it provides the commission is still payable if within 6 months after the rescission the sale is then completed provided the commission will be reduced by any commission paid to another member of the MLS.

RENTAL AGREEMENT (Buyer Occupancy Prior to Closing) – Form 65A (pages 128-129): Use in the event of a very short early possession situation. If the Buyer and the Seller have agreed the Buyer may take early possession (which generally should be discouraged as early and delayed possession are "INHERENTLY EVIL!"), the parties should execute this form to spell out the terms of the early occupancy such as rent, term and termination, insurance, utilities, improvements, application of the Landlord-Tenant Act, subletting or assignment, release of real estate firms, attorney's fees, smoke detectors, carbon monoxide alarms, lead-based paint and mold disclosure.

RENTAL AGREEMENT (Seller Occupancy After Closing) – Form 65B (pages 130-131): Use in the event of a very short delayed possession situation. If the Buyer and the Seller have agreed the Seller may remain in the property after closing (which generally should be discouraged as early and delayed possession are "INHERENTLY EVIL!"), the parties should execute this form to spell out the terms of the delayed occupancy such as rent, possession, term, insurance, utilities, improvements, subletting or assignment, release of real estate firms, attorney's fees, smoke detectors, carbon monoxide alarms, lead-based paint and mold disclosure.

*Note: If the early or delayed occupancy is to be for more than a few days, the parties should execute a full rental agreement such as the **LEASE/RENTAL AGREEMENT – Form 68 (pages 133-138)** which deals more in depth with rental issues such as lease vs. month-to-month, possession, rent, utilities, occupancy/subletting, security deposit, maintenance, inspection/sale, late rent charges/NSF check, non-refundable fee, pets, renters insurance, carbon monoxide alarms, smoke detector, agency disclosure, attorneys' fees, waiver of subrogation, local ordinances, compliance with laws, CC&R's and rules & regulations, lead-based paint, and mold. Note, if the lease is for more than one*

year, it requires notarization. The Lease/Rental Agreement also includes a page of Rules.

LEASE/RENTAL COMMISSION AGREEMENT – Form 67 (page 132): Use to confirm commissions to be paid when broker negotiates lease and/or lease option on a property to include an up front fee, as well as a fee should the Buyer/tenant purchase the property from the Seller within the negotiated time frame.

ADDENDUM TO LEASE/RENTAL AGREEMENT – Form 68C (page 139): Use to draft any additional provisions that need to be added to the lease/rental agreement.

MOVE-IN / MOVE-OUT ADDENDUM TO LEASE/RENTAL AGREEMENT – Form 68A (pages 140-148): To be used in conjunction with the rental agreement to describe the condition, cleanliness and existing damage to the premises and furnishings. No deposit may be collected unless the lessor and tenant fill out and sign this check list.

PET ADDENDUM – Form 68B (page 149): To be used in conjunction with the rental agreement to set out provisions of having pets on the property.

ASSIGNMENT OF LEASE OR RENTAL AGREEMENT – Form 69 (pages 150): Use when Buyer is purchasing a property subject to a lease or rental agreement. Seller will assign the lease and rental agreements to the Buyer, as well as transfer any tenant deposits.

OPTION TO BUY REAL ESTATE – Form 75 (pages 151-152): Use if the parties are negotiating an option. This addendum should be used as a jump off point for the Buyer and Seller to start coming to terms on the option. As options are legally complex, a real estate attorney should be consulted in drafting the final option paperwork. The contains provisions such as option or lease option, purchase price, legal description, option/time limit, notice of exercised option, closing, time if of the essence, purchase and sale agreement, commission, agency disclosure, and title insurance.

RECEIPT FOR EARNEST MONEY – Form 89 (page 153): Used by firm to receipt Buyer's earnest money (even if the earnest money will then be delivered to closing agent).

90 SERIES OF NOTICES: Use the appropriate notice, if applicable, after mutual acceptance.

90 – Blank Notice (page 154)

90B – Notice of Termination for Failure to Pay Earnest Money (page 155): Notice by Seller to Buyer because Buyer failed to timely deliver earnest money pursuant to the PSA.

90C – Failure to Close - Notice of Termination by Buyer (page 156): Generic failure to close by closing date through no fault of the Buyer with Buyer demanding refund of earnest money.

90D – Failure to Close - Notice of Termination by Seller – Seller to Keep Earnest Money (page 157): Notice by Seller that the sale failed to close by closing date through no fault of the Seller, Seller elects to terminate and is entitled to retain earnest money as Seller’s sole remedy.

90E – Failure to Close - Notice of Termination by Seller – Seller to Elect Remedies (page 158): Notice by Seller that the sale failed to close by closing date through no fault of the Seller, Seller elects to terminate and is entitled to remedies as provided in the Agreement.

MULTI-FAMILY PSA – Form 20 (pages 159-163)

MANUFACTURED HOME PSA – Form 23 (pages 164-168)

90N – Notice of Termination (Disapproval of Park Rules and Regulations - Form 23) (page 169): Notice by Buyer of disapproval of manufactured home park rules and regulations pursuant to Form 23 – Manufactured Home PSA.

90O – Notice of Termination (Unable to Assume Lease - Form 23) (page 170): Notice by Buyer they are unable to assume the lease of the lot for the manufactured home pursuant to Form 23 – Manufactured Home PSA.

VACANT LAND PSA – Form 35 (pages 171-175)

CONDOMINIUM PSA – Form 28 (pages 176-180)

CONDOMINIUM RESALE CERTIFICATE – Form 27 (pages 181-184): To be filled out by the Seller (or likely a representative of the HOA) and provided to the Buyer in a condo transaction.

90R – Notice of Termination (Resale Certificate Unacceptable - Form 28) (page 185): Notice by Buyer of disapproval of Resale Certificate pursuant to Condominium Purchase & Sale Agreement – Form 28 - and demands return of earnest money.

NWMLS SPEAK-UP (page 186): Licensees may submit suggested changes to the forms directly to NWMLS.