

**WHAT ELSE DO WE NEED?
Purchase & Sale Agreement Addenda**

Instructor: Sabrina Jones-Schroeder, J.D.

This is a six (6) hour course focusing on the addenda which might be added to a Purchase & Sale Agreement - the foundation of the transaction between buyers and sellers of real estate.

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About the Author/Instructor
Sabrina Jones-Schroeder, J.D.

Sabrina is the Designated Broker and owner of EXIT Real Estate Professionals real estate firm in Spokane, Washington providing real estate services to the greater Spokane area.

As the Designated Broker, Sabrina created a 16 course training program for new brokers covering many aspects of a real estate career. She also teaches numerous courses to new and seasoned brokers in her Professionalism Series at EXIT Real Estate Professionals. Sabrina has taught for the Spokane and Washington Associations of REALTORS® since 1997.

Sabrina graduated Magna Cum Laude from Gonzaga University in 1992 with Bachelor of Arts Degrees in Political Science and Spanish and a concentration in Women's Studies (during which time she began her real estate career). She graduated Cum Laude from Gonzaga University School of Law in 1995 and is a member of the Washington Bar Association having passed the Washington bar exam in 1995.

Sabrina has an enthusiasm for the real estate industry that is unparalleled in many people (as evidenced in her decision not to engage in a traditional law practice). She started in the business in 1990 (with a three-year sabbatical to attend law school) and has spent time as an active listing and selling broker, as well as in sales associate recruiting, retention, management and training.

Sabrina is a knowledgeable and energetic (and often entertaining) speaker with much information to share.

CURRICULUM AND LEARNING OBJECTIVES

I. Introduction (.5 Hour)

Upon completion of this section, the student will be able to:

- 1) Understand the general purpose of the Purchase & Sale Agreement and addenda to a real estate transaction.
- 2) Understand the importance of thorough drafting in transactions including using appropriate checklists.

Type of Instruction: Lecture
Equipment and Materials: Booklet & Handouts
Assignment: Read booklet, discuss, take notes

II. Spokane MLS Addenda (.5 Hour)

Upon completion of this section, the student will be able to understand the importance of using two regional forms including the Spokane Addendum and the Spokane Buyer Representation Agreement.

Type of Instruction: Lecture & Group Discussion
Equipment and Materials: Booklet & Handouts
Assignment: Read booklet, discuss, take notes

III. Statewide Forms (4.5 Hours)

Upon completion of this section, the student will be able to:

- 1) Understand the Seller Disclosure Statement including seller responsibilities and buyer rights with regard to rescission of the transaction.
- 2) Draft a contingency to best protect their client's best interests where a standardized form is not available.
- 3) Understand in what transactional circumstances it is appropriate to add various statewide addenda (from Form 22A to Form 89), as well as how to fill these forms out to fully protect their client's best interests.

Type of Instruction: Lecture & Group Discussion
Equipment and Materials: Booklet
Assignment: Read booklet, discuss, take notes

IV. 90 Series of Notices (.5 Hour)

Upon completion of this section, the student will be able to understand when it is appropriate to use one of the 90 series of notices in order to terminate a transaction versus a Form 51 - Rescission of Purchase & Sale Agreement and how the Form 50 - Authorization to Disburse Earnest Money factors into the process.

Type of Instruction: Lecture & Group Discussion

Equipment and Materials: Booklet

Assignment: Read booklet, discuss, take notes

I. Introduction:

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).

Feel free to use the **PSA Transaction Forms Cheat Sheet** if it helps you to keep you to keep your transaction organized.

II. SPOKANE FORMS

SPOKANE ADDENDUM – Form SAR-SA (pages 8-9): 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, etc..

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, soil conditions and archeological resources.

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, other indoor organic compounds and potential archeological sites on a property.

By initialing the form, Seller acknowledges they have the sole responsibility for disclosing to 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 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 10-11): 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 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.

II. Statewide Forms:

THE LAW OF REAL ESTATE AGENCY PAMPHLET (pages 1-7): give to all Buyers and Sellers.

This form can be found in the pamphlets folder in TransactionDesk. This document summarizes and restates the agency law of the state of Washington.

When is the latest possible time the agency pamphlet can be given to your client? _____

Note: This must be the first document in all of the forms and documents your client receives in any electronic signing system the licensee uses.

WIRE FRAUD ALERT (page 12): 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.

SELLER DISCLOSURE STATEMENT – IMPROVED PROPERTY – Form 17 (pages 13-18): Use on all residential transactions (one to four living units).

The Seller Disclosure Statement (SDS – Form 17 for residential 1-4 unit properties) is **NOT** to be referenced in the PSA. The SDS is, by law, **NOT** part of a PSA. Therefore, the SDS itself should be completed by Seller, and provided to a Buyer at or before the time the PSA is completed (e.g., in Associated Docs in the MLS) and should always be kept separate from the PSA documents (i.e., sent in a separate email or at a minimum sent as a separate attachment – never lumped in with all the other transaction documents). Also available for use are the Seller Disclosure Statement – Unimproved Property (Form 17C) and the Seller Disclosure Statement – Commercial (Form 17Comm).

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

Upon receipt, 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 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 19)** to give notice of rescission if displeased with SDS.

Some contingencies are built into the **RESIDENTIAL REAL ESTATE PURCHASE AND SALE AGREEMENT – Form 21 (pages 20-25)**, 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, 22K, 22T, 35, SAR-SA). This Section is not adequate in space to state the full text of intended provisions. Otherwise, except as provided by law, Buyer's obligations are not subject to contingencies. Most of

the contingencies 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.

- A. Drafting Contingencies:** Use the appropriate contingency addendum or if necessary draft the contingency on an **ADDENDUM/AMENDMENT TO PSA – Form 34 (page 98)** 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 in the event the contingency is not satisfied or waived.

Licensees should rarely draft contingencies and only with the approval of their Managing Broker or Designated Broker (and perhaps even legal counsel). The following forms are an exhaustive list and cover the vast majority of the contingencies that a licensee will need to add to a buyer's offer.

FINANCING ADDENDUM – Form 22A (pages 26-28): Use on all transactions where Buyer will be obtaining lender financing (versus cash transaction or Seller financed) unless Buyer does not wish to make their offer contingent on the ability to secure financing. Buyer's reliance on financing must, however, at a minimum be disclosed such as through the use of the **Evidence of Funds Addendum (Form 22EF – page 60)**.

1. Loan Application/Waiver of Contingency.

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

PRACTICE TIP: If 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 Buyer the right to do less. Do not write "as lender requires" as this binds Buyer to whatever the lender requires (e.g., "We can give you a loan, but you will need to put 50% down!").

*Note: If 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 62)**.*

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

If Buyer fails to make application for financing within the agreed upon time, changes the type of loan or lender without 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 30)** to gain Seller's consent if a change of loan type or lender is needed. "Application" and "lender" are defined in this provision.

This form also includes authorization for Seller and Listing Broker to inquire about the status of Buyer's loan approval with the lender any time prior to closing. Buyer will execute an authorization form if required by their lender, to accomplish this.

2. Financing Contingency. The parties should select "a" or "b" with the default provision being "a".

a. Seller's Notice to Perform (i.e., voluntary waiver).

Seller has a right to give Notice to Perform after the agreed upon time frame (21 days if not filled in). This is the "no bug by Seller" time frame. After the agreed upon time, Seller may give the Notice to Perform (otherwise known as the "fish or cut bait" provision). If Buyer does not waive the financing contingency within 3 days after such notice is given, Seller may then elect to terminate the agreement in which case Buyer will be given a refund of the earnest money. The parties will negotiate whether Buyer's waiver under this paragraph will or will not also constitute a waiver of the low appraisal provisions in paragraph 5 of this contingency addendum.

FINANCING CONTINGENCY NOTICE – Form 22AR (page 34) shall be used to provide Seller's Notice to Perform, Buyer's subsequent waiver or Seller's Termination.

b. Automatic Waiver of Financing Contingency.

If this box is checked, Buyer has the negotiated time frame (21 days if not filled in) to terminate the agreement and receive a refund of the earnest money if they are unable to secure financing within that time period. In order to receive a refund of the earnest money, however, Buyer must provide a denial letter from the lender per paragraph 4 of the contingency. If Buyer does not terminate within the negotiated time frame, the financing contingency is deemed automatically waived. The parties will negotiate whether Buyer's waiver under this paragraph will or will not also constitute a waiver of the low appraisal provisions in paragraph 5 of this contingency addendum.

3. Loan Cost Provisions.

Buyer may ask Seller to contribute toward the Buyer's loan costs. For FHA/RD and VA loans, 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, Seller will pay them nonetheless. If the box is checked at the end of this provision, 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.

4. 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 Buyer if 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 Buyer's application was declined. If Seller terminates under the "fish or cut bait notice" no such letter is required to refund the earnest money to Buyer.

5. Appraisal Less Than Sale Price.

If the appraisal is less than the sale price, Buyer shall notify 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 or reconsideration of 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 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 Buyer. Buyer should use the **NOTICE OF LOW APPRAISAL – Form 22AN (page 33)** to begin the process of working through the low appraisal provisions of this contingency.

6. Inspection.

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

7. FHA/VA/USDA - Appraisal Certificate.

If the agreement is contingent upon government insured financing, 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.

8. VA Amendatory Clause.

If Buyer is obtaining VA financing, Buyer shall not incur any penalty by forfeiture of earnest money or otherwise be obligated to purchase the property if the contract purchase price exceeds the value of the property as established by the VA (e.g., appraisal). Buyer shall, however, have the privilege and option to proceed with the sale in the event of low appraisal.

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 Buyer.

APPRAISAL ADDENDUM – Form 22AA (page 29): 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 30): This is the form Buyer will use to gain 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 31): In this addendum, Buyer contemplates a low appraisal under a Form 22A – Financing Addendum or 22AA – Appraisal Addendum and commits increased down payment (additional funds) necessary to make up the difference between the appraised value and the purchase price (up to a negotiated amount). Buyer represents that Buyer has sufficient funds to close the sale in accordance with this addendum (another “Show Me the Money” moment!). This addendum replaces the “Appraisal Less Than Sales Price” provision in the **Financing Addendum**.

If the appraised value plus Buyer’s additional funds is less than the purchase price, Buyer shall give notice of such fact and Seller may then terminate the agreement or agree to reduce the purchase price to the amount of the appraisal plus Buyer’s additional funds. In the alternative, Buyer may waive the contingency and proceed to closing, but will be obligated to purchase the house at the Purchase Price. 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 32)**.

NOTICE OF LOW APPRAISAL – Form 22AN (page 33): This is the form 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), Seller's Response and the Buyer's Reply.

FINANCING CONTINGENCY NOTICE – Form 22AR (page 34): This is the form Seller would use to initiate the Notice to Perform per paragraph 2 of the **Financing Addendum**, as well as Buyer's subsequent Notice of Waiver and if not, Seller's potential Notice of Termination.

LIMITED WAIVER OF FINANCING CONTINGENCY ADDENDUM – Form 22AW (page 35): 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 36): 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 37): Send with denial letter from lender in order to receive a refund of earnest money per the **Financing Addendum – Form 22A** paragraph 4.

BUYER'S SALE OF PROPERTY ADDENDUM – Form 22B (pages 38-39): Use if Buyer has a property to be sold before closing on Seller's property.

- 1. Contingent on Sale of Buyer's Property.** Buyer will use this contingency addendum if they have not yet sold a property that they need to sell in order to buy Seller's property. The form creates a contingency period during which Buyer must sell their property otherwise the transaction will terminate the earnest money be refunded to Buyer.
- 2. When Seller's Consent is Required on Sale of Buyer's Property.** Seller's consent is required if 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 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 Buyer's offer. If Seller receives an offer they accept, Seller shall give Buyer the **BUMP NOTICE (Notice that Seller Has Accepted Another Offer) – Form 44 (page 40)** after which 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 41). In the **Bump Response**, Buyer has three options: 1) giving notice the contingency is satisfied and Buyer's property has sold, 2) waiving the contingency because Buyer's property has not sold, but Buyer desires to move forward anyway (in which case Buyer also waives all other conditions and contingencies in the transaction) or 2) terminating the agreement because Buyer's property is not sold and Buyer is not prepared to move forward.

5. Contingency Satisfied. Buyer shall give Seller notice within 2 days of entering into an agreement (satisfied the contingency) using the **CONTINGENCY PROPERTY NOTICE – Form 90K (page 42)** and shall send a copy of the PSA for the sale of their property. If Buyer's property sells, the closing of the transaction will be 3 days after the closing of the contingency property (thus the requirement for Seller's consent to a deal that will close outside of the 30-60 day window). If Buyer waives this contingency (e.g., after a bump notice is given), 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 Buyer's waiver.

6. Buyer's Property – Failure to Close. If the contingent property sells, but that transaction fails, Buyer shall give Seller notice within 2 days. If 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 Buyer or 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 and again, waiver under this scenario will constitute waiver of all other contingencies and conditions. If the property is new construction, the closing may be delayed until a certificate of occupancy is granted.

7. Closing Date. The closing date in this contingency supersedes 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 42): 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 Seller will use in dealing with a second/bump Buyer.

BUYER'S REQUEST FOR SELLER'S CONSENT – CONTINGENT SALE –

Form 90L (page 43): 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 44): Use if 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 Seller shall have NO continued marketing rights under this contingency.

BUYER'S PENDING SALE CONTINGENCY NOTICE – Form 90U (page 45): 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 46-49): Use this addendum any time all or any portion of the purchase price is to be financed by 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 an 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 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 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 Buyer is putting no money down (these are very risky), and extremely reluctant to consider a transaction in which Buyer is actually getting a loan in first position which, when combined with the seller financed amount, will exceed the purchase price (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, Seller has the option (if the box is checked and negotiated between the parties) to approve the credit report of Buyer. This section allows 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, Buyer shall pay the cost of a lender's standard title insurance policy insuring 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 50): to be used if the property is in a common interest community.

Identifies the property is part of a common interest community and Seller will provide or Buyer has received a Public Offering Statement or a Resale Certificate whichever is applicable.

COMMON INTEREST COMMUNITY (RCW 64.90) RESALE CERTIFICATE From 27CIC (page 51-54): to be provided to Buyer if the property is part of 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 55-56): 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 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 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 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 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 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 Seller thereafter become the possession of 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 Buyer's assumptions are incorrect. Seller should also fill in the providers of cable and internet.

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 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 Buyer at closing and hold 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 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. Note: the fee shall be paid by the party as provided in the association docs even if a different box is checked.

10. Excluded Items. (check if applicable)

If 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 or Buyer may terminate this agreement if Buyer's spouse does not sign quit claim deed within 5 days of mutual acceptance in which event earnest money shall be refunded to Buyer.
- 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 57): 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 58): Seller shall execute this form (or similar) and provide such to the Closing Agent within 10 days of mutual acceptance 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 Seller is a foreign person unless one of the exceptions in the Act applies. Listing licensees should consider having Seller complete and sign this certification at the time of listing and make available in Associated Docs in the MLS. DO NOT, however, fill in Seller's social security number on the form. This should be provided by Seller to Closing Agent at closing!

BUYER'S FIRPTA NOTICE – Form 90 FIRTPA (page 59): Buyer will use this form to give the "Right to Terminate Notice" if Seller has not provided the FIRPTA certification to the Closing Agent 10 days after mutual acceptance as required by the PSA. Also the form Buyer would use to give notice of termination if Seller does not then provide the FIRPTA certification within 3 days after the "Right to Terminate Notice" is provided and therefore Buyer wishes to terminate the transaction.

EVIDENCE OF FUNDS ADDENDUM – Form 22EF (page 60): 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 & closing costs on financed transactions, as well). This form is also used to disclose a contingent source of funds, but to be clear, this does not create a contingency that Buyer will receive those funds, but rather, simply discloses the contingent source of funds so as to not be in breach of contract 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.

NOTICE OF TERMINATION PURSUANT TO EVIDENCE OF FUNDS ADDENDUM – Form 90EF (page 61): This is the form Seller would use to give notice of termination if Buyer fails provide evidence of non-contingent or contingent funds as required under Form 22EF.

FOR YOUR PROTECTION: GET A HOME INSPECTION – Form 22F (page 62): Use if Buyer is obtaining FHA financing. This form informs Buyer of the difference between a home inspection and an appraisal and encourages Buyer to conduct a home inspection by selecting a trained professional home inspector.

FOR SALE BY OWNER ADDEDNUM – Form 22FSBO (page 63): Use if Buyer is purchasing a For Sale By Owner property. Used to protect Buyer to ensure this is not a distressed property by 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 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 64-65): 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 Seller, Buyer, **and licensees**.

DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS – Form 22J LEASE (page 66): For use if **any** dwelling on the property in a lease situation 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 Lessor, the Tenant, **and the licensees**.

IDENTIFICATION OF UTILITIES – Form 22K (page 67): 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 Seller/listing broker should then fill out the information for the closing agent.

LEASE REVIEW ADDENDUM – Form 22L (page 68): Use if selling multi-family property. This form makes Buyer's offer contingent upon Buyer's review and approval within the negotiated time frame of the leases, books, records and agreement to be provided by 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 Buyer at closing.

NOTICE OF TERMINATION PURSUANT TO LEASE REVIEW ADDENDUM – Form 90LR (page 69): Buyer would use this form to give notice of termination if, upon reviewing the leases, rental agreements and/or other related agreements and documents Buyer disapproves and elects to terminate the agreement.

LAND AND ACREAGE ADDENDUM – Form 22L&A (pages 70-73): 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 Buyer. It references issues that are unique to land and acreage such as:

- a) feasibility and desirability of the property for Buyer's intended use
- b) boundary lines and surveys
- c) perc tests
- d) well tests for quantity and quality
- e) special tax classifications
- f) timber cruises
- g) on-site sewage disposal systems
- h) additional test or inspections that may be required
- i) existing leases or rental agreements
- j) seller's right to harvest crops

Page 2 creates contingencies unique to land & acreage including:

- i) survey
- ii) perc test
- iii) on-site sewage system pumping and inspection
- iv) water quality test
- v) water quantity test (Buyer may make offer contingent on well producing at a specific level during a 4 hour draw down test)
- vi) timber cruise

The contingencies are invoked by checking the box that either 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– Form 22MH (page 74): 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 75): 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 76): 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’s 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 77)**.

SEPTIC ADDENDUM – Form 22S (page 78): 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 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 79)**. Buyer’s satisfaction is subjective under this contingency.

SHORT SALE ADDENDUM – Form 22SS (page 80): 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 Seller will deal with multiple offers, when 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 81)** will be used for all notices having to do with the short sale contingency.

TITLE CONTINGENCY – Form 22T (page 82): Use on all transactions. This addendum conditions the agreement on 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 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 Buyer's notice of disapproval to give notice that Seller will clear all disapproved exceptions and shall have until closing to do so. If not, 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 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 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 83): 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.

SURVEY CONTINGENCY ADDENDUM – FORM 22TS (page 84): This addendum conditions the agreement on Buyer's subjective satisfaction with a survey of the property including boundary lines, location of improvements, easements and other related information. Any survey per this addendum is to be ordered by Buyer, performed by a surveyor of Buyer's choice and at Buyer's expense.

HOMEOWNER INSURANCE ADDENDUM - Form 22VV (page 85): Use on all transactions except vacant land. The homeowner insurance contingency provides Buyer must apply for insurance within the negotiated time fame (5 days if not filled in). 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 (15 days if not filled in). If so, the agreement is terminated and the earnest money is refunded to Buyer.

BUYER'S NOTICE OF TERMINATION (HOMEOWNERS INSURANCE UNAVAILABLE) Form 90VV (page 86): 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. Why would homeowner's insurance be unavailable or unavailable under the terms set forth in the 22VV? _____

MODIFICATION OF CLOSING DATE ADDENDUM – Form 22Y (page 87):

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 88): 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 89-92): 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 93-95):

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

ASSIGNMENT OF BUYER'S INTEREST IN PSA – Form 32 (page 96): 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 97): Use when Buyer is purchasing a cooperative apartment.

ADDENDUM/AMENDMENT TO PURCHASE AND SALE AGREEMENT – Form 34 AKA “Come Sue Me” Form! (page 98): 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 99-100): Use on all residential transactions.

- 1. Inspection Contingency.** In this addendum, the agreement is conditioned upon 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.

Note: Only two people can perform the general home inspection: Buyer themselves, or a licensed home inspector (or someone exempt from licensing) under RCW 18.280. Buy may engage other specialists in addition to the general home inspector such as plumbers, electricians, roofers, etc.

- a. Sewer Inspection.** Buyer and Seller will negotiate up front whether Buyer's inspection may or may not include an inspection of the sewer system.

- 2. Buyer's Obligations.** 1) order the inspection(s), 2) choose the inspector, 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 may ask Seller to make any corrections, regardless of whether they were cited by an inspector.

3. Buyer's Notice. 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 time 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 (this is the only instance in which a portion of the inspection report should be provided to Seller – the inspectors recommendation for further evaluation), or
- 4) propose corrections or modifications to the agreement.

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

4. Inspection Report. Buyer shall not provide the inspection report or portions of the report to Seller unless Seller requests otherwise by checking a box under paragraph 4. If Buyer provides the report or any section of the report, the contingency shall be conclusively deemed waived.

5. Additional Time for Inspections. If the inspector recommends, Buyer shall have additional time for further evaluation of any item by a specialist at Buyer's option and expense.

6. Buyer's Request of Repairs or Modifications.

- a. 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.
- b. Buyer shall have the negotiated time period to reply to Seller's reply to their request for corrections or modifications (assuming Seller did not agree to the proposed corrections and modifications). In this Buyer's Reply, Buyer shall have 3 options:
 - 1) accept Seller's response at which time the contingency is deemed satisfied,
 - 2) agree with 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. Buyer has the initial 10 days to give their inspection notice. Seller has 3 days to give their response. Buyer now has 3 days to reply to Seller's response. It is important to make sure Buyer understands that if they are going to engage in the "whining dance" (attempting to get Seller to do more than Seller offered in their response) then if Buyer's 3-day reply period goes by without any resolution, the contingency is deemed satisfied and Seller does not have to do any corrections or modifications (not even the ones they agreed to do in their initial response).

7. Repairs. If 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.

8. Oil Storage Tanks. Buyer may inspect for oil storage tanks, but can only go so far as to determine the existence of one, but cannot go digging.

9. On-Site Sewage Disposal Systems Advisory. 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.

10. Neighborhood Review Contingency. Buyer may check this box 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.

NOTICE OF SELLER CONSENT INSPECTION REPORT – Form 35C (page 101): Seller may use this form to consent to receiving the full inspection report of those sections of the report related to the requested modifications or repairs (to be used after mutual acceptance if Seller has not already consented to this on the Form 35 – Inspection Contingency).

INSPECTION NOTICE FOR FORM 35 – Form 35R (page 102): Use in the communication of notices in connection with the inspection. This form reflects the options for 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 Buyer and be built upon by Seller and potentially back to Buyer. **Note a repeat of the warning to Buyer that if they provide the inspection report or any portion of the report to Seller without Seller's prior consent, the contingency shall be deemed waived.**

INSPECTION WAIVER ADDENDUM – Form 35W (page 103): Use if Buyer intends to waive the home inspection or would like to conduct a pre-inspection of the property (i.e., Buyer wants to pre-inspect the property prior to making an offer). Based on the findings of Buyer’s pre-inspection, Buyer may also wish to negotiate repairs or modifications to the agreement. This form also contains an on-site sewage disposal system advisory.

INSPECTOR REFERRAL DISCLOSURE – Form 41D (page 104): Licensee should provide this form if licensee is referring a home inspector with whom they have a business or familial relationship.

ESCALATION ADDENDUM – Form 35E (pages 105-106): Use if Buyer wishes to include an escalation clause in their initial offer. This addendum will be used in a competing offer situation where Buyer is willing to pay more than the offered price to beat any competing offer by the indicated escalation amount not to exceed the indicated maximum price.

Page two 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.

Buyer may challenge Seller’s New Purchase Price or whether the offer used to escalate Buyer’s offer was in fact “competing” per the terms of the competing offer paragraph and will use Form 35EN – Escalation Addendum Notice to give notice of either or both challenges.

ESCALATION ADDENDUM NOTICE – Form 35EN (page 107): Buyer will use this form to give notice that either the competing offer does not qualify as a competing offer or the new purchase price calculated by Seller on Form 35E is incorrect and the new purchase price should be calculated as provided on this form. Seller may choose to terminate the agreement in either of these instances. Failure to terminate will result in Buyer being able to purchase the property at the non-escalated Purchase Price in the PSA.

FEASIBILITY CONTINGENCY ADDENDUM – Form 35F (page 108): Use if Buyer wishes to include a catch-all contingency for 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 109): Use to communicate approval or disapproval of feasibility contingency.

NEIGHBORHOOD REVIEW CONTINGENCY ADDENDUM – Form 35N (page 110): 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 111): 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 112): Use if presenting a counteroffer from Seller to Buyer or Buyer to 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 113)** 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 114): Use if 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 Buyer notice within 2 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 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 Seller gives notice that the first sale has failed.

PRACTICE TIP: If 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 115): This form will be used by Seller to let Buyer know that the first sale has failed and therefore back-up Buyer is now the first position Buyer and also used by Buyer to terminate the back-up agreement (e.g., Buyer has found another property prior to being moved into first position by Seller).

SECOND BUYER'S ADDENDUM – Form 39 (page 116): 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 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, 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.

BUYER BROKERAGE FIRM'S COMMISSION ADDENDUM – Form 41C (page 117): To be used when there is no compensation in the listing, additional buyer brokerage firm commission to be paid under a Buyer Representation Agreement or no listing agreement whereby Seller agrees to pay Buyer Brokerage Firm a commission. This form also has a tail clause (safe harbor).

AGENCY DISCLOSURE – MULTIPLE BROKERS – Form 42A (page 118): 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 119): To be used with a PSA when Buyer wants to reserve a lot such as in a new construction development.

AUTHORIZATION TO DISBURSE EARNEST MONEY – Form 50 (page 120): 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 121): Use if the parties wish to rescind the agreement thereby releasing each other of 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 122-123):

Use in the event of a very short early possession situation. If Buyer and Seller have agreed 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 124-125):

Use in the event of a very short delayed possession situation. If Buyer and Seller have agreed 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 127-132)** 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 126): 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 Buyer/tenant purchase the property from Seller within the negotiated time frame.

MOVE-IN / MOVE-OUT ADDENDUM TO LEASE/RENTAL AGREEMENT – Form 68A (pages 133-141): 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 142): To be used in conjunction with the rental agreement to set out provisions to allow a tenant to keep a pet or pets on the property.

ADDENDUM TO LEASE/RENTAL AGREEMENT – Form 68C (page 143): Use to draft any additional provisions that need to be added to a lease/rental agreement.

LEASE/RENTAL AGREEMENT NOTICE – Form 68N (page 144): Use to draft any required notice to be given from Tenant or Lessor in conjunction with any lease or rental agreement.

ASSIGNMENT OF LEASE OR RENTAL AGREEMENT – Form 69 (pages 145): Use when Buyer is purchasing a property subject to a lease or rental agreement. Seller will assign the lease and rental agreements to Buyer, as well as transfer any tenant deposits.

OPTION TO BUY REAL ESTATE – Form 75 (pages 146-148): Use if the parties are negotiating an option. This addendum should be used as a jump off point for 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 149): Used by a licensee or firm to receipt Buyer's earnest money (even if the earnest money will then be delivered to closing agent).

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

90 – Blank Notice (page 150)

90B – Notice of Termination for Failure to Pay Earnest Money (page 151): 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 152): Generic failure to close by closing date through no fault of Buyer with Buyer demanding refund of earnest money.

90D – Failure to Close - Notice of Termination by Seller – Seller to Keep Earnest Money (page 153): Notice by Seller that the sale failed to close by

closing date through no fault of 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 154): Notice by Seller that the sale failed to close by closing date through no fault of Seller, Seller elects to terminate and is entitled to remedies as provided in the Agreement.

MULTI-FAMILY REAL ESTATE PSA – Form 20 (pages 155-160)

MANUFACTURED HOME PSA (Home on Leased Land) – Form 23 (pages 161-165)

90N – Notice of Termination (Disapproval of Park Rules and Regulations - Form 23) (page 166): 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 167): 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 168-173)

CONDOMINIUM PSA – Form 28 (pages 174-179)

CONDOMINIUM RESALE CERTIFICATE – Form 27 (pages 180-183): To be filled out by Seller (or likely a representative of the HOA) and provided to Buyer in a condo transaction.

90R – Notice of Termination - Resale Certificate Unacceptable - Form 28 (page 184): 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 – Form 126 (page 185): Licensees may submit suggested changes to the forms directly to NWMLS.