

Legal Bulletin No. 223
2023 Forms Revisions

By Northwest Multiple Listing Service
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1. Introduction

This bulletin summarizes revisions to many NWMLS forms and introduces several new forms. The revisions include substantive updates to the Purchase and Sale Agreements, the Financing Addendum, the Appraisal Addendum, the Buyer's Sale of Property Contingency, the Inspection Addendum, the Well Addendum, the rental forms, and several other forms. Many of the form revisions are minor clarifications.

The revised forms are currently available on NWMLS's website as SAMPLE forms for review purposes only. The forms will be published for use on Transaction Desk and Xpress Forms on July 11, 2023. The revised forms include the following:

- Listing Agreements/Addenda (Form 1A, 1B, 1C, 16A, 16B, 16C, 63, 63A)
- Purchase and Sale Agreements (Form 20, 21, 23, 25, 28)
- Financing Addendum (Form 22A)
- Appraisal Addendum (Form 22AA)
- Notice of Low Appraisal (Form 22AN)
- Buyer's Sale of Property Contingency Addendum (Form 22B)
- Seller Financing Contingency (Form 22C)
- Lead Based Paint Disclosures (Form 22J and Form 22J-Lease)
- Land and Acreage Addendum (Form 22LA)
- Well Addendum (Form 22R)
- Title Contingency Addendum (Form 22T)
- Resale Certificates (Form 27 and 27CIC)
- Inspection Addendum (Form 35)
- Seller Request – Inspection Report (Form 35C)
- Feasibility Contingency Addendum (Form 35F)
- Pre-Inspection Agreement (Form 35P)
- Inspection Response Form (Form 35R)
- Second Buyer's Addendum (Form 39)
- Compensation Disbursement (Form 40)
- Buyer Brokerage Compensation Addendum (Form 41C)
- Bump Response (Form 46)
- Rental Agreement (Buyer Occupancy Prior to Closing) (Form 65A)
- Rental Agreement (Seller Occupancy After Closing) (Form 65B)
- Lease/Rental Agreement (Form 68)
- Buyer's Contingency Property Notice (Form 90k)
- Buyer's Request for Seller's Consent (Form 90L)

New forms include:

- Notice of Low Appraisal for Form 22AA (Form 22AAN)
- Notice of Appraisal Work Order (Form 22AWO)
- Well Addendum Response (Form 22RN)
- Sewer Inspection Addendum (Form 22SI)
- Notice to Second Buyer (Form 39N)
- Notice of Termination (Information Verification Period) (Form 90Z)

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

There are several significant changes to the purchase and sale agreements.

a. Included Items

Specific Term 5 (Included Items) has been revised to add an “(s)” to many of the items (e.g., refrigerator(s), dishwasher(s), microwave(s), etc.). This is to address properties that may have multiple appliances. If the property contains multiple refrigerators and the parties wish to exclude one of the refrigerators, the “refrigerator(s)” checkbox should be selected, and the excluded refrigerator should be listed in the Excluded Item provision in the Optional Clauses Addendum (Form 22D).

Specific Term 5 has also been revised to include “attached camera(s)” to the list of optional included items. General Term c has been updated to clarify that any “access permissions” (e.g., passwords) are included with any of the applicable included items.

b. Earnest Money

Specific Term 7 has been revised to remove the “method” of the earnest money deposit (e.g., check, wire, etc.) from the form. The method of payment is not important, as long as the earnest money is deposited by the “Delivery Date.” The option for a “promissory note” will remain in the form, as this form of payment is relevant to the seller’s consideration of the buyer’s offer.

General Term b has been updated to increase the amount that the closing agent may withhold for commencing an interpleader action from \$500 to \$750 and to include an acknowledgement from the parties regarding the attorneys’ fees provision in RCW 64.04.220(9).

c. Information Verification Period.

The most significant change to the purchase and sale agreement is new Specific Term 15 related to the Information Verification Period. This provision, in connection with General Term w, allows the buyer time to verify that the information provided by the seller and the listing firm about the Property is accurate. During this period, the buyer should verify the accuracy of the information contained in the listing, flyers, advertising,

marketing materials, etc. The prior form contained an automatic 10-day review period for the buyer. The revised agreement allows the parties to negotiate the length of the review period – or allows the buyer to satisfy/waive the provision as a part of the buyer’s offer. General Term w has been revised to accommodate the new Specific Term 15, with a default of a 10-day review period.

Note that if the buyer discovers a *material* inaccuracy in the information provided by the seller or the listing firm, the buyer can elect to terminate the agreement within the agreed upon period by providing notice to the seller identifying the *materially* inaccurate information. The new Buyer’s Notice of Termination (Information Verification Period) (Form 90Z) can be used for this notice.

d. Other Revisions to the Purchase and Sale Agreements

Other changes to the purchase and sale agreement include:

- General Term f (Closing and Possession): clarify that delivery of keys includes any “access codes”.
- General Term h (Closing Costs and Prorations and Charges and Assessments): add requirement for seller to pay internet charges.
- General Term j (Seller Citizenship and FIRPTA): require the seller to pay any fees incurred by the buyer related to the withholding and payment of the FIRPTA tax.
- General Term x (Property Condition Disclaimer): add advisory language for the buyer to investigate whether the property is suitable for the buyer’s intended use.
- New General Term y (Fair Housing): add paragraph to address fair housing.

2. Financing Addendum (Form 22A) and Related Forms

Paragraph 1 (Loan Application) has been revised to include “down payment program” as a type of funding that is included in the buyer’s financing contingency.

The amount that the buyer inserts into the down payment blank (e.g., 10% down) is the amount that the buyer will pay toward the purchase at closing. That amount should *not* include any funding from a down payment program included in Form 22A.

If the buyer chooses to simply disclose that buyer is relying on funds from a down payment program, as opposed to making the buyer’s offer contingent on the buyer obtaining those funds, the buyer can make that disclosure in the Evidence of Funds Addendum (Form 22EF), which has been updated to include that option.

Paragraph 3 (Loan Cost Provisions) has been clarified to provide that the buyer’s waiver of the financing contingency does not change the parties’ obligations (e.g., the seller’s agreement to pay for certain loan and settlement costs) under that paragraph.

Paragraph 5 (Appraisal Less Than Sale Price) has been revised to include a new provision related to appraisal work orders. This new provision requires the buyer to give notice to the seller if the appraised value is conditioned on the completion and approval of work orders prior to closing. This notice gives the seller the opportunity to address any work orders to remove those conditions from the appraisal. The form provides that if the buyer is unable to close due to an incomplete work order as confirmed by the lender (and if the buyer has not waived the appraisal provision in Form 22A), then the buyer would be entitled to the earnest money. The new Notice of Appraisal Work Order (Form 22AWO) can be used for the buyer's notice.

The Notice of Low Appraisal (Form 22AN) has been clarified to provide that the buyer's waiver of the financing contingency (when the parties are negotiating a low appraisal), includes a waiver of Paragraph 5 (Appraisal Less Than Sale Price).

a. Appraisal Addendum (Form 22AA)

Similar to Form 22A, the Appraisal Addendum (Form 22AA) has been revised to address potential appraisal work orders. The process in the Appraisal Addendum regarding work orders is a little different than in the Financing Addendum because the buyer may not be financing the purchase. In Form 22AA, the buyer and the seller negotiate any low appraisal and/or any work orders using the same back and forth process. The new Notice of Low Appraisal for Form 22AA (Form 22AAN) can be used for the buyer's notice.

b. Seller Financing Addendum (Form 22C)

Section 1(B) of the Seller Financing Contingency (Form 22C) was updated to address exemptions to the Department of Financial Institutions ("DFI") waiver requirement. The seller must provide the buyer a DFI waiver or identify an exemption to the waiver requirement, and if the seller fails to timely do so, the buyer may terminate the agreement. Revised Section 1(B) also creates a limited contingency for a seller who is not exempt from the DFI waiver requirement and who cannot obtain the required waiver. Finally, new Section 1(C) requires the seller to provide the buyer with a disclosure of the material terms and conditions of the loan and cost of financing.

3. Buyer's Sale of Property Contingency (Form 22B) and Related Forms

The Buyer's Sale of Property Contingency (Form 22B) has been revised as follows:

- Paragraph 1 (Contingency): allows the parties to negotiate the amount of time that the buyer has to list the buyer's property for sale (default is five days).
- Paragraph 2 (Seller Consent): changes the timeframe for the seller's consent for the sale of buyer's property to a closing date of less than 30 or more than 45 days (as opposed to 60 days). In other words, if the buyer receives an offer that has a closing date less than 30 days from mutual acceptance or more than

45 days from mutual acceptance – the buyer must obtain seller’s consent before accepting the offer.

- Adds references to the various notices and related forms throughout Form 22B (e.g., Form 39, Form 90L, and Form 90k).

a. Related Forms

The Bump Response (Form 46) has been revised, consistent with the changes to Form 22B, to change the timeframe required for the seller’s consent for the sale of the buyer’s property to a closing date of less than 30 or more than 45 days (as opposed to 60 days).

The Contingency Property Notice (Form 90K) has been reformatted and clarified. The form has also been updated to add a notice of termination for the seller if the buyer accepts an unauthorized offer.

The Seller’s Consent – Contingent Sale (Form 90L) has been reformatted and clarified.

Finally, the Second Buyers Addendum (Form 39) was revised to update references to the notice form the seller will provide to the second buyer about whether the second purchase will proceed or be terminated. Rather than Form 90K, the seller will use a new notice form – Notice to Second Buyer (Form 39N) for those notices.

4. Inspection Addendum (Form 35) and Related Forms

The Inspection Addendum (Form 35) has been revised to address issues related to the inspection report and the buyer’s notice for additional inspections.

Paragraph 4 (Inspection Report) was revised to *require* the buyer to provide the inspection report or portions of the report to the seller – if requested by the seller. The form still prohibits the buyer from providing the report, or portions of the report, to the seller without the seller’s written request.

Paragraph 5 (Additional Time for Inspections) was revised to remove the requirement that the buyer include the inspector’s recommendation with the buyer’s notice of additional inspections. Note that the inspector must make the recommendation that the buyer obtain additional inspections, but the buyer does not need to provide that recommendation to the seller. However, if the seller requests that the buyer provide the inspector’s recommendation, the buyer must do so. A checkbox was added to Paragraph 4 and also to the Seller Request – Inspection Report (Form 35C) to enable the seller to make that request. This revision should make it easier for the buyer to provide notice of additional inspections to the seller.

a. Related Inspection Forms

A new form – Sewer Inspection Addendum (Form 22SI) – was created to allow the buyer to conduct a sewer inspection without also including the Inspection Addendum (Form 35) in the agreement. Note that Form 35 includes the option for the buyer to conduct a sewer inspection, so if Form 35 is used, there would be no reason to also use new Form 22SI.

The Feasibility Contingency Addendum (Form 35F) has been reformatted for ease of use. The default timeframe for the feasibility contingency was increased from 10 days to 20 days. Paragraph 3 (Property Access) now includes the requirement that the seller cooperate with the buyer in obtaining permits or other approvals, provided that the seller does not incur any costs or liability in doing so.

Similar to the Inspection Addendum (Form 35), the Pre-Inspection Agreement (Form 35P) was revised to *require* the buyer to provide the inspection report to the seller – if requested by the seller.

The Inspection Response (Form 35R) was revised to address the changes to Form 35 related to the notice of additional inspections.

5. Well Addendum (Form 22R)

The Well Addendum (Form 22R) has been revised to create two separate contingencies – one for “water quality” and the other for “water quantity.” In addition, the revised form creates a process, similar to the Inspection Addendum (Form 35), for the buyer to request repairs to the system for the water quality or water quantity or modifications to the agreement. A new notice form, Well Addendum Response (Form 22RN) can be used for the parties to negotiate repairs (similar to the Inspection Response (Form 35R)). Finally, Form 22R was revised to provide that some water rights do not automatically transfer with title to the property and advising the parties to consult with an attorney regarding the same.

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

Rental Agreement (Buyer Occupancy Prior to Closing) (Form 65A) has been revised to clarify that the Residential Landlord Tenant Act (RCW 59.18) (“RLTA”) does not apply to the owner/renter relationship created in Form 65A. RCW 59.18.040(2) provides an exemption from the RLTA for “[o]ccupancy under a bona fide earnest money agreement to purchase or contract of sale of the dwelling unit or the property of which it is a part, where the tenant is, or stands in the place of, the purchaser.”

In addition, Paragraph 2 has been updated to add specific time for possession and termination (default is 9:00 pm). The attorneys’ fees provision has also been simplified. Note that allowing the buyer the right to occupy the property prior to closing continues to pose many risks for the seller.

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

House Bill 1070, effective July 23, 2023, exempts the owner/renter relationship created in Form 65B from the RLTA if certain conditions are met. RCW 59.18.040(3) provides an exemption from the RLTA for “[o]ccupancy under a written rental agreement entered into by a seller and buyer of a dwelling unit, for the seller to retain possession of the dwelling unit after closing of the sale of the dwelling unit” if the following conditions are satisfied:

- The agreement permits the seller to remain in possession for no more than three months after closing and the buyer does not accept any rent payments after three months from closing;
- The property was not a “distressed home” as defined in RCW 61.34; and
- The seller was represented by an attorney or a real estate broker.

Accordingly, Form 65B has been revised to clarify that the RLTA does not apply to the owner/renter relationship created under Form 65B. The form limits the term of the agreement to three months from closing and addresses the other limitations in House Bill 1070 (i.e., no payments after three months from closing, no distressed home, and seller was represented).

Note that because House Bill 1070 is not effective until July 23rd, the revised Form 65B should only be used for those owner/renter relationships that are created on or after July 23rd. Even though the RLTA no longer applies to Form 65B relationships, allowing the seller to stay in the property after closing comes with many risks for the buyer.

Finally, similar to Form 65A, other clarifications to the form include adding a specific time for termination (default is 9:00 pm) and simplifying the attorneys’ fees provision.

8. Lease/Rental Agreement (Form 68)

The Lease/Rental Agreement (Form 68) has been revised as follows:

- Paragraph 3(c) clarifies that payment of rent is due upon mutual acceptance of the agreement;
- Paragraph 6 clarifies the timing of payment of the security deposit and adds a reference to the Move In/Move Out Addendum (Form 68A);
- Paragraph 19 includes an acknowledgment that local ordinances or regulations may include specific requirements regarding notices, security deposits, rent increases, registration, disclosures and other requirements; and
- New Paragraph 23 adds a fair housing provision to the agreement.

9. Listing Agreements/Addenda (Form 1A, 1B, 1C, 16A, 16B, 16C, 63, 63A)

The listing agreements were revised to clarify the seller's obligation to pay the listing firm and buyer brokerage firm compensation in the "tail provision." Note that the tail provision obligates a seller to pay compensation under certain circumstances after expiration of the agreement. The forms were also updated to add an indemnity regarding the seller recording or intercepting conversations in the property in violation of RCW 9.73.030. The fair housing provision was clarified to include local, state, and federal protections. Finally, the "closing" paragraph was revised to authorize the listing firm to provide the FIRPTA Certification (Form 22E) to the buyer and obligate the seller to pay any fees, including fees incurred by the buyer, related to FIRPTA withholding and payment.

10. Other Form Revisions

There have been slight revisions made to a number of other forms, including:

- Lead Based Paint Disclosures (Form 22J and Form 22J-Lease) – clarify the buyer's initial acknowledgment with regard to information provided by the seller.
- Land and Acreage Addendum (Form 22LA) – update the default contingency timeline from 10 to 20 days, include an acknowledgment regarding transfer of water rights, and create a new contingency for the review of crop/land leases.
- Title Contingency Addendum (Form 22T) – clarify that the preliminary commitment provided by the seller need not identify the buyer as the insured.
- Resale Certificates (Form 27 and 27CIC) – remove the "penalty of perjury" language from the signature blocks.
- Compensation Disbursement (Form 40) – modernize the form and add a "total seller funded compensation" field.
- Buyer Brokerage Compensation Addendum (Form 41C) – in the "Reduction in Buyer Brokerage Firm Compensation" option, remove the sentence that states: "The Purchase Price offered by Buyer reflects this reduction in compensation owed to Buyer Brokerage Firm."

11. Availability of Revised and New Forms

SAMPLE copies (including both clean and redline copies) of the revised and new forms are available on NWMLS's website for your review. Please note that you should not use the SAMPLE copies of the forms for any transactions.

A subset of the revised and new forms will be available for order in hard-copy on July 5th and will be available for use on Transaction Desk and Xpress Forms on July 11th. NWMLS will remove the old version of the forms at the same time. You should recycle your old forms to prevent any inadvertent use.

Remember that because House Bill 1070 is not effective until July 23rd, the revised Rental Agreement (Seller Occupancy After Closing) (Form 65B) should only be used for those owner/renter relationships that are created on or after July 23rd.