

2014 Changes to the Northwest Multiple Listing Service's Residential Purchase and Sale Forms

By Magnus R. Andersson and Scott P. Beetham

These days, almost all sales of homes, condominiums and townhomes in Washington State are completed using form contracts prepared by the Northwest Multiple Listing Service ("NWMLS"). So anytime the NWMLS updates its forms, as it did in May 2014 to bring them up to current practices, home sellers and buyers should take note. This newsletter highlights several of the most important changes to the NWMLS forms.

The NWMLS's most recent changes consist of mostly minor modifications to the primary real estate "contract" that sellers and buyers typically use, the Real Estate Purchase and Sale Agreement. The new NWMLS forms add language advising buyers to investigate the cost of insurance, including homeowners, flood, earthquake, landslide and other coverage. Buyers are well advised to work closely with their insurance brokers to make sure they have sufficient coverage for the home they are looking to buy. Also, the updated Agreement clarifies that the buyer has the option to deliver earnest money to either the selling broker or directly to the closing agent, usually a title/escrow company.

Several NWMLS addendums, which are forms that add terms and conditions to the Real Estate Purchase and Sale Agreement, have seen more substantial revisions. The Financing Addendum now gives the parties the flexibility to decide whether the buyer's waiver of the financing contingency also acts as a waiver of the "appraisal" contingency, the latter of which is triggered if the buyer's lender's appraisal of the property is for less than the proposed purchase price. In that event, the buyer may give notice of the low appraisal to the seller, and seller must respond by having a reappraisal done on the home, consent to reduce the purchase price, or reject the low appraisal. Under the prior version of this Form, if the buyer waived the financing contingency, the buyer also waived the appraisal contingency.

The Inspection Addendum, another important form that is used in many real estate deals, now states that any inspection must be performed by the buyer or a person licensed to perform inspections under state law, or a person exempt from licensing requirements, such as engineers, architects, licensed electricians, licensed plumbers and licensed pest inspectors. The NWMLS specifically notes that there is no exemption for general contractors in the inspector licensing laws. In addition, this Form now allows the parties to agree that the buyer may do an inspection of the property's sewer system, which can include a sewer line video inspection and allow the inspector to remove toilets and other fixtures to access the sewer line.

The new Optional Clauses Addendum makes it clear that, in the sale of a home, condominium or townhome in a homeowners' or condominium association, the seller must provide the buyer with the governing and other important documents for the association, at the seller's expense. Among the documents that now must be provided to the buyer are the association's covenants, conditions, and restrictions and bylaws, in addition to the other documents that were listed in the previous version: condominium declaration, meeting minutes, financial statements and a current operating budget.

Sellers should contact their property manager or association to find out how much this service will cost and factor that into the sales cost of the home.

The Optional Clauses Addendum also grants buyer the right to reinspect the property within five days prior to the closing date of the purchase and sale. The revised Addendum now makes it clear that the buyer's right to reinspect the property is limited to making sure the property is in the same condition as when initially viewed by the buyer (as opposed to the right to do a completely new inspection).

Buyers looking to condition their purchase of a new residence on the sale of their existing home must now attach the purchase and sale agreement for their existing home to the Buyer's Pending Sale of Property Contingency Addendum. This Addendum also states that if Buyer waives this contingency, the buyer also waives all other conditions in the purchase and sale agreement and addendums, including any financing, inspection and other contingencies.

The NWMLS added a new form to be used in sales of homes, condominiums and townhomes that are rented out to tenants. The new Assignment of Lease or Rental Agreement Form contains language whereby the seller (i.e. the landlord) transfers the lease to the buyer, and the buyer agrees to assume the seller's obligations under the lease. The Assignment is effective as of the closing date of the sale of the property.

If you have any questions, please feel free to contact us. Hanson Baker Ludlow Drumheller, P.S. has been serving the Eastside for over 60 years in the areas of Real Estate, Construction, Finance and Banking, Business, Creditors' Rights and Estate Planning. We have a team of highly experienced attorneys to provide you with sound advice and exceptional representation.

Magnus R. Andersson is an attorney and shareholder with Hanson Baker Ludlow Drumheller P.S. in Bellevue, Washington. His practice focuses on real estate, construction and finance. Magnus can be reached at 425.454.3374 and mandersson@hansonbaker.com.

Scott P. Beetham is also an attorney with Hanson Baker Ludlow Drumheller P.S. His practice focuses on real estate, commercial transactions and wills, trusts and estates. Scott can be reached at 425.454.3374 and sbeetham@hansonbaker.com

This message has been released by Hanson Baker Ludlow Drumheller P.S. for general information purposes only and is not intended to provide legal advice on any specific facts or circumstances.

July 2014