

Memo

To: Laura Feist
From: James A. Bowditch, Boone Karlberg P.C., Missoula, Montana
Date: November 20, 2014
Subject: Form Changes

The Forms Subcommittee of the Montana Association of REALTORS® met earlier this year and made changes to some of the MAR forms. Those changes and a few other are described below.

I. Listing Agreements – All five MAR listing agreements were modified in some fashion. The modifications to these listing agreements are as follows:

- a. Cooperation Disclosure** – Standard of Practice 1-12, which interprets Article 1 of the REALTOR® Code of Ethics, states that REALTORS® when entering into listing contracts must advise sellers/landlords of the REALTOR®'s company policies regarding cooperation and the amount of any compensation that will be offered to subagents, buyer/tenant agents, and/or brokers acting in legally recognized non-agency capacities. After numerous request from MAR members, the MAR Forms Subcommittee felt it was appropriate to add language to all listing agreements whereby a listing agent can either provide a seller a copy of existing company policies or insert into the blanks the selling office commission that the listing agent is offering to other real estate agents. This new language is found immediately after the compensation section of each of the five listing agreements.
- b. Internet Advertising** – The National Association of REALTORS® recently modified the Model IDX Rules requiring that a seller be permitted to request that certain features be disabled or discontinued relating to automated or estimated valuations of the listed property and third party comments or reviews concerning the property. The MAR Forms Subcommittee therefore added two more boxes in the Internet Advertising section of each of the listing agreements whereby a seller can elect to have either or both of these features disabled. If a seller has elected to have these features disabled, the listing agent is then obligated to communicate this information to any MLS in which the property will be listed for sale.
- c. Lock Box Authorization** – It is not uncommon for inspectors and appraisers to utilize a lock box to access property to conduct inspections and appraisals. However, these inspectors and appraisers are not always participants of an MLS. The MAR Forms Subcommittee was concerned that language in the listing agreements concerning lock box use could be interpreted to limit such use only to participants of the MLS. Therefore individuals hired to inspect and appraise the listed property were added to the Lock Box Authorization section of all listing agreements as individuals who are authorized by the seller to access the listed property provided such access is permitted by the applicable rules of the MLS in which the property is listed.

- d. **Hold Harmless Clause** – A number of MAR members have reported that clients have expressed concern with the language in the Hold Harmless and Indemnification clause of the MAR listing agreements. Specifically, clients were concerned that the language obligating a seller to indemnify, defend and hold harmless the listing agent could be interpreted to include loss or damage due to the listing agent’s conduct. The Forms Subcommittee therefore added language to clarify that said obligation does not include losses, damage or injuries that are the result of the listing agent’s gross negligence or intentional misconduct. The Forms Subcommittee also made a similar change to the Hold Harmless section of the Agreement to Manage Property.
- II. Flood Insurance Disclosure** – Due to the ongoing changes in the cost of flood insurance, the MAR Forms Subcommittee, based on a form provided by National Association of REALTORS®, created a new form entitled “Flood Insurance Disclosure and Acknowledgment.” The purpose of this form is to advise buyers concerning flood insurance and the cost thereof and to encourage buyers to consult with flood insurance carriers to obtain additional information about the need for flood insurance and the costs.
- III. Miscellaneous Changes** – In addition to the changes and new form set forth above, the Forms Subcommittee also approved adding additional blank lines to the Counter Offer and the Inspection Notice and, for clarification, removing the word “agent” from line 22 of the Seller’s Estimated Costs and Fees.

Anyone who has any questions regarding use of the new forms or the modifications that were made to existing forms may contact the MAR Legal Hotline at hotline@montanarealtors.org or 406-546-6646.