

Memo

To: Jeri Moon
From: James A. Bowditch, Boone Karlberg P.C., Missoula, Montana
Date: April 22, 2015
Subject: Form Changes

The Forms Subcommittee of the Montana Association of REALTORS® met in September 2014. A description of new forms and changes to existing forms that were approved at the meeting are described below.

I. New Forms

- a. Termination of Agreement Between Party and Broker/Salesperson/Property Manager – Over the years a number of callers to the MAR Legal Hotline mentioned the fact that the database of MAR forms did not contain a document to use when a real estate or property manager licensee and a client desired to mutually terminate their relationship. A new form to be used in such a scenario has now been added to the database of MAR forms.
- b. Statutory Broker Compensation Agreement – A statutory broker is defined in Montana as a broker or salesperson who assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction. This new form may be used by licensees who desire to act as a statutory broker. Licensees are to choose how much and when to be paid and whether the buyer, the seller or both will be paying the specified compensation.
- c. Earnest Money Deposit Disbursement Agreement – This new form, which replaces the form entitled Agreement for Disbursement of Earnest Money Deposit, is to be used when a written agreement signed by all parties is necessary to obtain the disbursement and release of an earnest money deposit.

II. Form Amendments

- a. Buy-Sell Agreements
 - i. The lines for the buyer's and seller's phone numbers were removed from the last page of all of the MAR buy-sell agreements. This was requested by agents who had experiences with sellers who were using this information to contact buyers directly and vice versa.
 - ii. The MAR Legal Hotline continually receives questions from agents experiencing disputes concerning items listed as fixtures but that were not permanently attached to the property and whether said items are or are not supposed to transfer to the buyer at closing. As a result, the MAR Forms Subcommittee approved further modifications to the fixtures section of

applicable buy-sell agreements to clarify that the items listed, regardless of whether they are in fact permanently installed and attached to the property, transfer to the buyer at closing unless they are expressly excluded.

- iii.** Language was added to all buy-sell agreements providing a short explanation of mineral rights to buyers, explaining that the agents, the brokerage firm and the seller involved in the transaction are not making any representation concerning any mineral rights and disclosing that said agents, brokerage firm and seller have not conducted an inspection of any mineral rights.
- b.** Owner's Property Disclosure – A line has been added after item 21 where a seller can disclose the amount of property owner's association dues or other information. Also, a new check box inserted as item 30 was added to the disclosure entitled "Other matters" with a blank line. This will allow a seller to insert other items that should be disclosed to a buyer but which don't necessarily fall within any of the other categories in the disclosure statement.
- c.** Inspection Notice (Results/Remedies) – This form was modified to clarify that the performance date listed just above the buyer's signature lines pertains to the date that the seller must complete a resolution of the conditions and problems noted by the buyer (and not the date which the seller must accept or reject the resolution proposed by the buyer).
- d.** Residential Lease Rental Agreement – Two changes were made to this lease agreement.

 - i.** The Montana Residential Landlord Tenant Act requires that at the signing of the lease the tenant be provided a choice default extension period that is to be given effect if a revised lease is not agreed to or if neither party gives a 30-day written notice of termination to the other prior to the rental agreement's original termination date. The MAR Forms Subcommittee approved adding a new section entitled "Default Extension of Lease Term" at the bottom of page 1 of the residential lease agreement. Relatedly, the section entitled "Holdover", which stated that any lease that continues past the lease expiration date is on a month-to-month basis, was removed.
 - ii.** The section concerning late charges was revised to allow a property manager to assess late fees of either a flat fee amount or an amount that is a percentage of the monthly rent amount that was late.