

Memo

To: Ken Joiner, Forms Subcommittee Chairman
From: James A. Bowditch, Boone Karlberg P.C., Missoula, Montana
Date: March 26, 2018
Subject: Form Changes from October 2017 Forms Subcommittee Meeting

The Forms Subcommittee of the Montana Association of REALTORS® met in October 2017. The changes that were approved at the meeting are described below.

REVISIONS TO REAL ESTATE FORMS

I. Buy-Sell Agreements –

- a. For **all** buy-sell agreements a new section titled “WIRE FRAUD ALERT” was added warning buyers and sellers about wire fraud. The new language is found immediately after the Consent to Disclose Information section at the following areas of all buy-sell agreements:
 - i. Buy-Sell Agreement (Residential): Lines 402-407
 - ii. Buy-Sell Agreement (Commercial): Lines 339-344
 - iii. Buy-Sell Agreement (Farm & Ranch): Lines 415-420
 - iv. Buy-Sell Agreement (Land): Lines 300-305
 - v. Buy-Sell Agreement (New Construction): Lines 442-447

- b. For **all** buy-sell agreements the language following the second checkbox under the section titled “POSSESSION” was modified slightly as follows:
 - ~~on the date of~~ upon recording of the deed or notice of purchaser’s interest; ORThis revised language is found at the following areas of all buy-sell agreements:
 - i. Buy-Sell Agreement (Residential): Line 64
 - ii. Buy-Sell Agreement (Commercial): Line 57
 - iii. Buy-Sell Agreement (Farm & Ranch): Line 121
 - iv. Buy-Sell Agreement (Land): Line 53
 - v. Buy-Sell Agreement (New Construction): Line 58

- c. For **all** buy-sell agreements the “OFFER PRESENTATION” section was deleted. This language was formerly found just before the section titled “SELLER’S COMMITMENT.”

- d. For **only** the New Construction Buy-Sell Agreement, at lines 520 and 531 “licensee’s Montana licensee number” (which was misspelled) was changed to “licensee’s Montana license number”.

- e. For **all** buy-sell agreements, the language whereby the buyer(s) acknowledge(s) receipt of the buy-sell agreement signed by the buyer(s) has been moved from a line by itself to the end of the immediately preceding section titled “BUYER’S COMMITMENT.” This move is reflected at the following areas of all buy-sell agreements:
 - i. Buy-Sell Agreement (Residential): Lines 488-489
 - ii. Buy-Sell Agreement (Commercial): Lines 414-415
 - iii. Buy-Sell Agreement (Farm & Ranch): Line 488
 - iv. Buy-Sell Agreement (Land): Line 385
 - v. Buy-Sell Agreement (New Construction): Lines 547-548

- f. For **all** buy-sell agreements, under the “RELATIONSHIP CONFIRMATION” section the terms “Seller’s Broker/Salesperson”, “Dual Agent/Salesperson” and Buyer’s Broker/Salesperson” were changed to “Seller’s Agent”, “Dual Agent”, and “Buyer’s Agent”, respectively. This change was made to bring these terms in line with those found in Montana law. These changes are reflected at the following lines of all buy-sell agreements:
 - i. Buy-Sell Agreement (Residential): Lines 466 and 476-477
 - ii. Buy-Sell Agreement (Commercial): Lines 396 and 400-401
 - iii. Buy-Sell Agreement (Farm & Ranch): Lines 471 and 475-476
 - iv. Buy-Sell Agreement (Land): Lines 361 and 372-373
 - v. Buy-Sell Agreement (New Construction): Lines 525 and 536-537

- g. For all buy-sell agreements **except** New Construction, the Financing Contingency section was modified to remove the checkbox and related language that allowed the buyer and seller to agree on a release date for the financing contingency other than the closing date. While a buyer and seller are still able to agree upon a financing contingency release date that expires prior to closing, they will need to add such language as there is no longer a check box. The revised financing contingency section with the closing date as the only release date is found at the following areas of the following buy-sell agreements:
 - i. Buy-Sell Agreement (Residential): Lines 188-191
 - ii. Buy-Sell Agreement (Commercial): Lines 145-148
 - iii. Buy-Sell Agreement (Farm & Ranch): Lines 197-200
 - iv. Buy-Sell Agreement (Land): Lines 101-104

- h. For **only** the Residential Buy-Sell Agreement and the Commercial Buy-Sell Agreement, a new check box was added for “Internet Availability/Speed” under the Inspection Contingency, at line 171 and line 141, respectively.

- i. For **only** the Land Buy-Sell Agreement the “RELATIONSHIP CONFIRMATION” section was modified so that the new language is consistent with providing information needed for TRID-regulated loans as found in the Residential and New Construction Buy-Sell Agreements. This change is found at lines 348-373 of the Land Buy-Sell Agreement.

- j. For **only** the Residential Buy-Sell Agreement, the word “ONLY” was inserted at a line 177 under the “INSPECTION CONTINGENCY” section. This change was made to clarify that a buyer, when providing an inspection notice to the seller or seller’s agent disapproving of certain property conditions, is only required to provide that portion of any inspection or report upon which said disapproval is based – the buyer or buyer agent is discouraged from sending the seller or seller’s agent a complete copy of the entire inspection or report obtained by the buyer.
- k. For **only** the Residential Buy-Sell Agreement language was added at the end of the Inspection Contingency section to clarify the purpose of the dates that are to be inserted at lines 175 and 185. Specifically, the language inside the parentheses at line 175 was changed to “Notice Date” to clarify that this is the deadline by which the buyer must provide written notice to the seller of any disapproved items relating to the property. Similarly, the language inside the parentheses at line 185 was changed to “Resolution Date” to clarify that this is the deadline by which the buyer and seller must reach an agreement or the buyer must withdraw the buyer’s notice of disapproval, to avoid termination of the buy-sell agreement.

II. Listing Agreements –

- a. For **all** listing agreements a new section titled “WIRE FRAUD ALERT” was added warning sellers about wire fraud. The new language is found immediately after the Authorization for Broker’s Use of Information section at the following areas of all listing agreements:
 - i. Listing Agreement (Residential): Lines 250-255
 - ii. Listing Agreement (Commercial-Exclusive Right to Lease): Lines 259-264
 - iii. Listing Agreement (Commercial-Exclusive Right to Sell): Lines 267-272
 - iv. Listing Agreement (Farm & Ranch): Lines 320-325
 - v. Listing Agreement (Land): Lines 219-225
- b. For **only** the Farm & Ranch Listing Agreement, the “FIXTURES” section was revised slightly so that the language therein largely matches the Fixtures section of the other listing agreements. The revised language is found at Lines 33-46 of the Farm & Ranch listing agreement and was revised as follows:

FIXTURES: The following items are to be left upon the premises as part of the Property sold and transferred to a Buyer regardless of whether they are in fact permanently installed and attached to the Property: all existing All permanently installed fixtures and fittings that are attached to the Property including such as electrical, plumbing, and heating fixtures, wood, pellet, or gas stoves, built-in appliances, screens, storm doors, storm windows, curtain rods and hardware, window treatments, attached floor coverings, television T.V. antennas, satellite dish, hot tub, air cooler or conditioner, garage door openers and controls, fireplace inserts, mailbox, trees, shrubs and fixtures, and perennials, owned water softeners, smoke/fire/burglar alarms (# _____) security devices inside

telephone wiring and connecting block/jacks, intercom systems, sprinkler systems and controls, built-in vacuum systems (including accessories), awnings, storage sheds, keys and other fixtures, unless otherwise noted below:

III. **Buyer Broker Agreements (All)** – In both buyer broker agreements a new section titled “WIRE FRAUD ALERT” was added warning buyers about wire fraud. The new language is found at the following areas of both of the buyer broker agreements:

- a. Buyer Broker Agreement (Short Form): Lines 45-50
- b. Buyer Broker Agreement [BBA]: Lines 92-97

IV. **Counter Offer** – Certain language was modified slightly to “clean-up” the language of this form. These changes and the locations of those changes are as follows:

- a. At lines 1-2 the following language changes were made:

This ~~eCounter~~ ~~o~~ffer pertains to a Buy/Sell Agreement (hereafter ~~the~~ **“Agreement”** ~~“Buy/Sell”~~) dated _____, by and between _____ (Seller) and _____

- b. At lines 9-10 the following language changes were made:

All the terms conditions of the **“Buy/Sell” Agreement, except the Buyer’s Commitment provision**, are hereby incorporated by reference except as modified by the terms and provisions:

This change was made to clarify that the deadline for a seller’s response that is set forth in the Buyer’s Commitment of the buy-sell agreements (e.g. lines 485-486 of the Residential Buy-Sell Agreement) is not incorporated into the terms of the seller’s counter-offer to a buyer as reflected in the Counter Offer form.

- c. The term “Buy/Sell” was replaced with the term “Agreement” at lines 40-43.
- d. The “NOTE” footer was removed from the bottom of page one (where it was not supposed to be).
- e. The term “Counter Offer” at line 44 was capitalized (it was not previously).

V. Multiple Counter Offer – Certain language was modified slightly to also “clean-up” the language of this form. These changes and the locations of those changes are as follows:

- a. At lines 1-2 the following language changes were made:

This Multiple Counter Offer pertains to a Buy/Sell Agreement (hereafter the “Agreement” ~~“Buy/Sell”~~) dated _____, by and between _____ (Seller) and _____

- b. At lines 10-11 the following language changes were made:

All the terms conditions of the “Buy/Sell” Agreement, except the Buyer’s Commitment provision, are hereby incorporated by reference except as modified by the terms and provisions:

This change was made to clarify that the deadline for a seller’s response that is set forth in the Buyer’s Commitment of the buy-sell agreements (e.g. lines 485-486 of the Residential Buy-Sell Agreement) is not incorporated into the terms of a seller’s counter-offer to a buyer as reflected in the Multiple Counter Offer form.

- c. The term “Buy/Sell” was replaced with the term “Agreement” at lines 32-35 and line 37.

VI. Disclosure Statements – In both the Owner’s Property Disclosure Statement at line 134 and the Owner’s Property Disclosure Statement (Commercial) at line 141, language was added to clarify that insurance damage and claims should include both past and present as follows:

16. HAZARD INSURANCE/DAMAGES/CLAIMS (past and present):

REVISIONS TO PROPERTY MANAGEMENT FORMS

- I. **Notice Concerning Abandoned Personal Property** – a Certificate of Service was added to this form, including service by email if consented to by a tenant in the lease. This added language is found at the end of this form (this form has no line numbering).
- II. **Adding Service by E-mail to Certain Forms** – In the property management forms below, at the locations listed below, language was added to the Certificate of Service allowing a landlord or property manager to serve notice on a tenant by email, if consented to by the tenant in the lease.
- a. 14 Day Notice to Correct or Quit: Lines 52-55
 - b. 24 Hour Notice to Enter Premises: Lines 33-35
 - c. 30 Day Notice to Quit and Terminate the Rental Agreement: Lines 39-41
 - d. 3 Day Notice to Pay rent or Quit: Lines 51-53
 - e. 3 Day Notice for Damaging or Removing Premises: Lines 53-55
 - f. 3 Day Notice to Correct or Quit: Lines 51-54
 - g. 3 Day Notice to Terminate for Drug or Gang Related Activity: Lines 48-51
 - h. 5 Day Notice to Quit and Termination of the Rental Agreement for Second Violation: Lines 52-55
 - i. Change of Terms, Rules, Regulations Conditions: Lines 37-40
 - j. Notice of Default: Lines 51-54
 - k. Notice of Rent Increase: Lines 36-39
- III. **Abandoned Personal Property Language Added to Certain Forms** – In the property management forms below, at the locations listed below, language was added regarding the rights of a landlord or property manager concerning personal property that has been abandoned by a tenant.
- a. 14 Day Notice to Correct or Quit: Lines 31-39
 - b. 30 Day Notice to Quit and Terminate the Rental Agreement: Lines 18-26
 - c. 3 Day Notice to Pay rent or Quit: Lines 30-38
 - d. 3 Day Notice for Damaging or Removing Premises: Lines 31-40
 - e. 3 Day Notice to Correct or Quit: Lines 31-39
 - f. 3 Day Notice to Terminate for Drug or Gang Related Activity: Lines 27-35
 - g. 5 Day Notice to Quit and Termination of the Rental Agreement for Second Violation: Lines 26-34
 - h. Notice of Default: Lines 30-38

IV. Residential Lease Rental Agreement –

- a. A “NOTICE” section was added allowing a tenant to consent to the receipt of notices by e-mail in accordance with the passage of Senate Bill 144. This new language is found at lines 25-35.
- b. Ten more blank lines were added under the section title “SPECIAL PROVISIONS” at lines 145-156.
- c. The section titled “TERM OF LEASE” was changed to “INITIAL TERM OF LEASE” at line 33.
- d. The section titled “DEFAULT EXTENSION OF LEASE TERM” was changed to “EXTENSION OF LEASE TERM” at line 49 and the choices for the extension of the lease term at lines 49-59 were clarified and simplified in accordance with House Bill 350.