

Memo

To: Montana Association of REALTORS
From: James A. Bowditch, Boone Karlberg P.C., Missoula, Montana
Date: November 15, 2022
Subject: Form Changes from October 2021 and April 2022 Forms Subcommittee Meetings and the August 2022 Property Manager Subcommittee Meeting

The form changes approved by the Forms Subcommittee of the Montana Association of REALTORS® in October 2021 and April 2022, and the form changes approved by the Property Managers Subcommittee in August 2022 are finally complete, uploaded to the platforms of all of MAR's licensed form vendors, and available for use by MAR members. A summary of these approved changes is below.

Form Changes

I. Escalation Addendum –

- a. Language was modified at line 22 to state that both Buyer and Seller acknowledge the limitations imposed under Montana law concerning the ability of a seller agent to disclose the name of a person making an offer or the amount or terms of any offer to other persons interested in making offers. Prior to this change only the seller made the acknowledgment.
- b. Language was also added at line 44 whereby the seller represents that the Escalated Purchase Price (as stated in the form) is based on a bona fide written offer that the seller has received.

II. Buy-Sell Agreements (all)

- a. Language was added to the “Earnest Money” and “Closing Date” sections providing that if the closing date or the date the earnest money is due falls on a Saturday, Sunday or state or federal holiday, closing can occur, and the earnest money can be paid on the date of the immediately following non-weekend or non-holiday. The reason for this change is the modification to the “Days footer” found in all MAR forms as mentioned below. This new language is found at the following locations:
 - i. Buy-Sell Agreement (Commercial): lines 55-57 (Closing Date) and lines 75-77 (Earnest Money)
 - ii. Buy-Sell Agreement (Farm & Ranch): lines 118-120 (Closing Date) and lines 139-141 (Earnest Money)

- iii. Buy-Sell Agreement (Land): lines 51-53 (Closing Date) and lines 73-75 (Earnest Money)
 - iv. Buy-Sell Agreement (New Construction): lines 52-54 (Closing Date) and lines 73-75 (Earnest Money)
 - v. Buy-Sell Agreement (Residential): lines 47-49 (Closing Date) and lines 67-69 (Earnest Money)
- b. Due to the relative infrequency that MAR members accept earnest money from clients (since a buyer often deposits earnest money directly with the closing agent) and because, if they do, they deliver or deposit it almost immediately, the section entitled “Deposit of Funds by Broker/Salesperson” has been removed. In the absence of this language the default under rules adopted by the Board of Realty Regulation state that any licensee who accepts earnest money from a client must either deposit it into their trust account or deliver it to the closing agent within three business days. As a result of the deletion of this section, the language concerning interest earned on earnest money was moved to the Earnest Money sections of the applicable MAR Buy-Sell Agreements.
- c. The acknowledgment by a licensee that they have received payment of earnest money was revised to include wire transfers. This new language is found at the following locations:
- i. Buy-Sell Agreement (Commercial): lines 66-67
 - ii. Buy-Sell Agreement (Farm & Ranch): lines 132-133
 - iii. Buy-Sell Agreement (Land): lines 64-65
 - iv. Buy-Sell Agreement (New Construction): lines 64-65
 - v. Buy-Sell Agreement (Residential): lines 59-60
- III. Buy-Sell Agreements (all except New Construction) – Language was added to the “Condition of Property” section, at the locations listed below, that (i) requires the seller to remove personal property and tenants or occupants from the property unless otherwise agreed and (ii) allows the buyer, at the pre-closing walk-through inspection, to verify that the property remains in the same condition.
- a. Buy-Sell Agreement (Commercial): lines 283-289
 - b. Buy-Sell Agreement (Farm & Ranch): lines 350-356
 - c. Buy-Sell Agreement (Land): lines 264-270
 - d. Buy-Sell Agreement (Residential): lines 347-353

- IV. Buy-Sell Agreements (all except Commercial and Land) – The “Heating Fuel/Propane Proration” section was revised to clarify that when using market price to calculate fuel price(s), the market price must be as determined no more than seven days prior to closing. The revised language is found at the following locations:
- a. Buy-Sell Agreement (Farm & Ranch): lines 165-169
 - b. Buy-Sell Agreement (New Construction): lines 367-370
 - c. Buy-Sell Agreement (Residential): lines 342-345
- V. Buy-Sell Agreements (all except Commercial)
- a. Language was added to the “Loan Application” section that requires a buyer, as part of the loan application process, to provide a copy of the buy-sell agreement to any lender(s) to whom the buyer submits a loan application. This added language is found at the following locations:
 - i. Buy-Sell Agreement (Farm & Ranch): lines 154-158
 - ii. Buy-Sell Agreement (Land): lines 89-93
 - iii. Buy-Sell Agreement (New Construction): lines 92-98
 - iv. Buy-Sell Agreement (Residential): lines 98-103
- VI. Buy-Sell Agreements (Farm & Ranch, Commercial and Land only) – New language was added, substantively identical to that found in the MAR Residential Buy-Sell Agreement, which provides for a Notice Date and Resolution Date as part of the notification process under the inspection contingency. This new language was added at the following areas of each applicable agreement:
- a. Buy-Sell Agreement (Commercial): lines 138-151
 - b. Buy-Sell Agreement (Farm & Ranch): lines 239-252
 - c. Buy-Sell Agreement (Land): lines 149-162
- VII. Listing Agreements (all) – A checkbox was added at the end (shortly before the signature lines) to specify, if applicable, that the listing is for the sale/rental of the property to a specifically identified buyer/tenant and is modified by the Single Party Listing Addendum, a new form mentioned in more detail below.
- VIII. Addendum Between Parties for Additional Provisions – Since an addendum is the equivalent of an exhibit and, therefore, to be used as an attachment to an existing document, the MAR Forms Subcommittee felt that signatures on this form were confusing. The signature and date lines were therefore removed from this form and replaced with lines for the parties to simply initial. Additionally, under the lines for the parties to initial “Property Manager” and “Property Owner” were added since this form can be used for property management forms.
- IX. Residential Lease Rental Agreement – A number of changes were made to this

form as set forth below:

- a. Language was added at line 85 to allow for the charging of a fee for a notice of lease violation. This change was made based on changes to the Montana Residential Landlord Tenant Act (MRLTA) approved during the 2021 Legislature.
 - b. A checkbox was added to line 142 to allow for the attachment of the Authorization/Consent to Communicate Form.
 - c. Lines for email were added to the Emergency Contact section at lines 157-166.
 - d. At lines 175-176, the language was changed to simply prohibit marijuana (not just medical marijuana) given recent changes in Montana law.
- X. 24 Hour Notice to Enter Premises – Language was added at line 30, consistent with changes to the MRLTA in 2021, to allow a landlord or property manager to leave a notice of intent to enter on the main entry door of the rental premises.
- XI. Notice of Cleaning Required for Return of Security Deposit – Language was added at lines 60-61, consistent with changes to the MRLTA in 2021, to allow a landlord or property manager to leave a notice of cleaning required inside the rental premises followed by an email, call or text.
- XII. Rental Application – Changes made to this form were as follows:
- a. Language was added under the title specifying that each resident over the age of 18 must complete a separate application.
 - b. Questions formerly on line 4 relating to a waterbed or piano/organ were removed.
 - c. A blank line for email was added to line 13.
 - d. A line for ages of other residents was added to lines 15-16.
 - e. Lines for emails of prior landlords were added to lines 32 and 37.
 - f. Lines for emails of personal references were added to lines 47, 50, and 53.
 - g. The Credit References section formerly at lines 57-62 was changed to “Bank Information” at lines 62-65.
 - h. Lines for emails of emergency contacts were added to lines 80 and 85.

- i. Line 81 was removed that asked a rental applicant how long they intended to reside on the property.
 - j. The consent to do a background/credit check was revised at lines 92-97 to be consistent with applicable law
- XIII. All MAR Forms – The footer in all of the MAR documents revised as set forth above, and shortly in all MAR forms, has been revised to simply state that days means calendar days and business days means all days except Sundays and state or federal holidays. Concerning performance that falls on a Saturday, Sunday or holiday, the MAR forms Subcommittee felt that the only “performance items” that needed to be pushed to a non-weekend or non-holiday, day, were payment of earnest money and the closing date. Therefore, as set forth above this language has been added to these sections of all MAR Buy-Sell agreements.

New Forms

- I. Septic System Disclosure and Acknowledgment – This new form is available for use in transactions where improvement(s) located on property are not connected to a community or municipal sewer system and instead utilize an onsite wastewater treatment and disposal system.
- II. Rental Property Addendum – This is a form that can be used when representing a buyer interested in acquiring rental property. It (i) allows a buyer to select, via checkboxes, various documents relating to the rental unit(s) that the seller is obligated to provide to allow the buyer to conduct due diligence, (ii) allows the parties to specify who is responsible for obtaining any required consent to an assignment of leases and (iii) allows the buyer to elect whether the currently rented property shall be occupied or vacant at closing.
- III. Single Party Listing Addendum – This document, mentioned above under the section concerning changes to the MAR Listing Agreements, can be used as an addendum to say listing agreements in situations where a seller or landlord has an identified buyer or tenant but wants seller/lessor representation by an agent relating to the sale or lease of the property to said identified buyer or tenant. It includes language that prohibits the advertising of the property as available for sale or rent (which should not be necessary since a buyer or tenant has already been identified) thereby allowing the execution of a listing agreement that should not have to be input into any multiple listing service under NAR’s Clear Cooperation Policy.