

# Memo

**To:** Ken Joiner, Forms Subcommittee Chairman  
**From:** James A. Bowditch, Boone Karlberg P.C., Missoula, Montana  
**Date:** April 20, 2017  
**Subject:** Changes to Purchase Price and Terms Section of All Buy-Sell Agreements

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As most of you have likely noticed, either by using the MAR forms or reading the recent memorandum on form changes, the Purchase Price and Terms section of all buy-sell agreements was recently restructured. However, that restructuring has caused some confusion concerning the cash payment at closing. Therefore, an additional change was made that is explained below. All line numbers mentioned below are in reference to the residential Buy-Sell Agreement.

As restructured, in the Purchase Price and Terms section information is to be inserted concerning the purchase price for the property (line 42) and the amount of earnest money that will be provided (line 43). The balance due is then automatically calculated on line 44. The buyer or buyer agent then needs to check the appropriate box indicating whether (i) the balance of the purchase price will be paid in cash at closing (line 46) or (ii) all or some portion the balance of the purchase price will be financed (line 47). If the buyer will be financing less than one hundred percent of the balance of the purchase price (which is typically the case) the buyer must indicate what amount, in addition to the earnest money, the buyer will pay at closing. Please note that this is exactly the same way the previous version of the Purchase Price and Terms section of all buy-sell agreements has functioned for additional cash paid by the buyer at closing. The only substantive differences in the new version is that the layout has been slightly changed, and users now have the option to show the percentage of the purchase price for the down payment (line 48) instead of a dollar amount (line 47) if they so choose.

For example, if the purchase price is \$500,000, the earnest money is \$10,000 and the buyer intends to finance 80%, the cash down payment at closing to be inserted on line 47 would be \$90,000 ( $(\$500,000 \times 20\%) - \$10,000$ ), OR the percentage to be inserted on line 48 would be 18% ( $\$90,000 / \$500,000$ ). However, there is concern that some users will instead insert 20% on line 48 forgetting to deduct the \$10,000 in earnest money (remember, line 48 is the percentage of the purchase price to be paid at closing that is in addition to the earnest money). This would create an internal inconsistency because line 47 would indicate that the buyer has to come to closing with \$90,000 (and would be financing \$400,000) and line 48 would indicate that the buyer has to come to closing with \$100,000 (and would be financing \$390,000). To avoid this potential inconsistency, check boxes have been added in front of the blank line on line 47 where the dollar amount is to be inserted and in front of the blank line on line 48 where the percentage is to be inserted. Form users will only be able to check one box. As a result, users will not be able to insert both a dollar amount on line 47 and a percentage on line 48, thereby alleviating the potential of an inadvertent inconsistency between the dollar amount on line 47 and the percentage on line 48.

As set forth above, the addition of check boxes has been made to all buy sell agreements. Those agreements and the line location of those changes are as follows:

- Commercial: lines 34 – 35
- Farm & Ranch: lines 87 – 88
- Land: lines 29 – 30
- New Construction: lines 30 – 31
- Residential: lines 47 - 48