

Memo

To: Ken Joiner, Forms Subcommittee Chairman
From: James A. Bowditch, Boone Karlberg P.C., Missoula, Montana
Date: July 7, 2017
Subject: Form Changes from March 2017 Forms Subcommittee Meeting

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

NEW REAL ESTATE FORMS

- I. Addendum Between Parties for Additional Provisions – The addendum for additional provisions that formerly existed in the MAR Forms Database was limited to use as an addendum to buy-sell agreements. The Forms Subcommittee decided to eliminate this form and replace it with a form that can be used as an addendum to other agreements. This new form is entitled “Addendum Between Parties for Additional Provisions” and includes a blank so that members may insert the addendum number in situations where more than one addendum is used. This new addendum can also be used to add names to a wide variety of forms where there may be more than two buyers or sellers, or when their name is too long to fit in the allotted space on a given form. This new form replaces the form entitled “Addendum to Buy-Sell Agreement for Additional Provisions.”
- II. Assignment of Buy-Sell Agreement – The former assignment document, entitled “Assignment of Real Estate Agreement” has been replaced with a revised (and shortened) form entitled “Assignment of Buy-Sell Agreement.” Some redundant wording was removed and other wording was clarified. Checkboxes were also added so that the seller can mark whether or not they agree to release the assignor from any further obligation and/or liability. The previous version of the form automatically released the assignor from further obligation and/or liability.

REVISIONS TO REAL ESTATE FORMS

- I. Owner’s Property Disclosure Statements (All)
 - a. The cover sheet (the sheet filled out and signed by the seller agent) for all three disclosure statements was modified to add a signature line for the buyer agent to acknowledge receipt. Previous to this change only the buyer acknowledged receipt. Lines 43-46 for all three forms are where these modifications are located.
 - b. None of the disclosure statements work well in transactions where a seller is not represented by a real estate agent. The Forms Subcommittee therefore approved minor modifications to all three disclosure statements removing language referring to the owner entering into a listing agreement and similar language. The specific line numbers of these modifications for all three forms are lines 1, 8-9,

20-26 and 28-31.

- II. Buyer Broker Agreement – Sometimes clients, especially those interested in commercial property, are undecided concerning what kind of offer they want to present. The long form Buyer Broker Agreement formerly required that the buyer and the buyer agent choose between purchase, lease or option to purchase. In order to provide more versatility for multiple transaction types, a fourth check box marked “Other” was added with a blank line to be completed. This modification is found at line 4.
- III. Notice of Personal Transaction – In 2013 the Montana statute concerning personal transactions was modified. Due to this change, a supervising broker is not liable for the personal transactions of a salesperson regardless of whether the supervising broker and/or his or her real estate firm were “involved” in the personal transaction. As a result the Notice of Personal Transaction form was modified to remove language stating that the supervising broker is not involved in the transaction. This language was removed from the second sentence found at lines 2-4.
- IV. Buy-Sell Agreements (All) – The sections entitled “FACSIMILE” and “COUNTERPARTS” and the language concerning the Montana Uniform Electronic Transaction Act were all deleted and replaced with a new section that covers the deleted language entitled “FAX/COUNTERPARTS/ELECTRONIC SIGNATURES.” The new language is found at the following areas of all buy-sell agreements:
- a. Buy-Sell Agreement (Residential): Lines 426-431
 - b. Buy-Sell Agreement (Commercial): Lines 357-362
 - c. Buy-Sell Agreement (Farm & Ranch): Lines 434-439
 - d. Buy-Sell Agreement (Land): Lines 319-324
 - e. Buy-Sell Agreement (New Construction): Lines 461-466
- V. Buy-Sell Agreement (Residential and Farm & Ranch) – The term “window treatments” was added to the fixtures and fitting sections at the following locations:
- a. Buy-Sell Agreement (Residential): Line 20
 - b. Buy-Sell Agreement (Farm & Ranch): Line 26
- The purpose of this change is to state that by default, window blinds, shades, curtains, valances, etc. will convey with the property.
- VI. Buy-Sell Agreement (Residential, Farm & Ranch, Land and New Construction) – In these agreements, heating and fuel tank rental was deleted from the section entitled “PRORATION OF TAXES AND ASSESSMENTS” and a new section entitled “HEATING FUEL/PROPANE PRORATION” was created that specifies how to determine the fuel price and tank rental charges to calculate the amount to be prorated. The new language is found at the following locations:
- a. Buy-Sell Agreement (Residential): Lines 338-343
 - b. Buy-Sell Agreement (Farm & Ranch): Lines 172-177
 - c. Buy-Sell Agreement (New Construction): Lines 364-369