

Supplemental Forms Revisions – Available on April 12th

Updates to Form 22AD, Form 35E, and Form 35EN

NWMLS has received significant feedback from members regarding the March 3rd forms revisions. In response to member's suggestions, NWMLS will make the following revisions to the Increased Down Payment for Low Appraisal Addendum (Form 22AD), the Escalation Addendum (Form 35E), and the Escalation Addendum Notice (Form 35EN). The revised forms are available for order in hard copy and will be available for use on Xpress Forms and TransactionDesk on April 12th. Increased Down Payment for Low Appraisal Addendum (Form 22AD) Form 22AD can be used for a transaction where the buyer agrees to pay additional funds towards buyer's down payment, if the appraisal is less than the purchase price. The following revisions will be made to Form 22AD:

- Providing the buyer with the option to give notice that the appraised value and buyer's additional funds are less than the purchase price. If the buyer still wants to purchase the property for the purchase price, the buyer should consider not providing notice, as doing so will give the seller the right to terminate.
- Requiring the seller to respond to the buyer's notice that the appraised value and the buyer's additional funds are less than the purchase price – and if the seller fails to timely respond, the agreement will terminate.
- Clarifying that if the buyer waives Paragraph 5 (Appraisal Less Than Sales Price) in the Financing Addendum (Form 22A) (as opposed to a waiver of the financing contingency), the buyer is obligated to purchase the property for the purchase price.

In addition, NWMLS will discontinue the publication of the Limited Waiver of Financing Contingency Addendum (Form 22AW). This form is not necessary as the parties negotiate in Form 22A whether a waiver of the financing contingency constitutes a waiver of the appraisal provision. Escalation Addendum (Form 35E) and the Escalation Addendum Notice (Form 35EN) Form 35E can be used to increase the purchase price of the buyer's offer so that it is greater than another buyer's competing offer. Please note that there are many risks and challenges associated with Form 35E, for both the buyer and the seller. To simplify the transaction, the seller may choose to use the information provided in Form 35E (e.g. the maximum price a buyer is willing to pay) in a counteroffer to buyer in order to avoid the challenges with calculating the new purchase price, providing a competing offer, etc. If the seller is using a competing offer to escalate the purchase price, the seller must provide a complete copy of the competing offer to buyer at mutual acceptance. The following revisions will be made to Form 35E related to this requirement:

- If the seller fails to provide a competing offer at mutual acceptance, the buyer has ___ days (3 days if not filled in) to provide notice to the seller of that fact. If the buyer fails to timely provide such notice, the buyer is obligated to purchase at the new purchase price stated in Form 35E.
- If the buyer gives such notice, the seller has ___ (1 day if not filled in) to provide the buyer with the competing offer. If the seller fails to do so, the buyer is entitled to purchase the property at the non-escalated price.

Form 35EN will be revised to include an option for the buyer to give notice that seller failed to provide a competing offer at mutual acceptance. SAMPLE copies (clean and redline versions) of these revised forms are available below for review purposes only. Legal Bulletin 219 has also been updated to reflect these supplemental revisions.

- **Sample Revised Forms (22AD, 35E, 35EN)**
- **Revised forms (22AD, 35E, 35EN) - redline format**
- **Legal Bulletin 219 (revised April 2021)**