







Purchase Agreements
(Forms 20, 21, 23, 25, 28)

- Earnest Money
- Agency Disclosure
- FIRPTA
- Computation of Time
- Included Items
 - "Garbage Disposal" now included in boiler plate (on Form 21, line 42)
- Property Condition Disclaimer (Paragraph X)
 - "... soil or other contamination ..."
 - ...defective or "hazardous" conditions

Earnest Money

- Parties negotiate when earnest money must be deposited:
 - "Delivery Date ___ days after mutual acceptance." (para 7)
 - Default is 2 days (General Term b)
- Wiring funds is an option
 - Promissory Note is still an option (Why would you ever use one?)
- General Term b is simplified
 - only one timeline for deposit of earnest money
 - EM due to HOLDER on "Delivery Date" regardless of how or to whom delivered
 - if EM sent by USPS, it must arrive by Delivery Date (no more "mailbox rule")

Earnest Money is due when it's due, no matter what!

Agency Disclosure

"Buyer represented by: ____ Buyer Broker;
____ Buyer/Listing Broker (dual agent); ____ unrepresented"

Seller represented by: ____ Listing Broker;
____ Listing/Buyer Broker (dual agent); ____ unrepresented"

- If listing agent writes PSA but has NO buyer agency agreement, buyer is unrepresented and no information is included for "buyer broker"
- Broker is only a dual agent if broker has both a written listing agreement and a written buyer agency agreement

FIRPTA

- Seller must deliver Form 22E ("FIRPTA" certification) to closing agent
 - Within 10 days of Mutual Acceptance
 - "Foreign Investment in Real Property Tax Act"
- If seller fails, buyer may give "notice of right to terminate"
 - Seller then has three days to deliver Form 22E to closing agent
 - If Seller fails, buyer may terminate the PSA, EM refunded to buyer
 - Buyer may terminate UNTIL seller delivers Form 22E
 - Form 90 FIRPTA
- Incentivizes seller to provide Form 22E early
 - time to address any issues with FIRPTA if the seller is subject to the tax

Computation of Time (General Term L)

- Counting Backwards from Closing Date
 - Form 22EF
 - Form 35
 - Buyer's walk-thru pursuant to PSA

"When counting backwards from Closing, any period of time measured in days shall start on the day prior to Closing and if the last day is a Saturday, Sunday or legal holiday as defined in RCW 1.16.050, the specific period of time shall expire on the next day, moving forward, that is not a Saturday, Sunday or legal holiday (e.g. Monday or Tuesday)."

Financing Addendum (Form 22A)

- Paragraph 2, "Loan Information" is deleted
- New paragraph 2 includes Option A and Option B
- Option A is essentially, old paragraph 3
 - Seller may deliver "Notice to Perform" (Form 22AR) when allowed by agreement (21 days by default)
 - Buyer has three days to waive financing contingency
 - If buyer fails to timely waive, seller **may** terminate PSA anytime prior to waiver, however, seller is not obligated to terminate PSA
 - If seller terminates, buyer recovers EM

Financing Addendum (continued)

- Option B "Automatic Waiver of Financing Contingency"
 - Buyer's financing contingency automatically waives days after MA (21 days by default)
 - Prior to waiver, buyer may terminate PSA
 - Buyer only recovers EM if buyer provides Lender Letter
 - Timely loan application; sufficient funds to close; reason loan funds unavailable
 - If buyer terminates without lender letter, buyer cannot recover EM
- Risks to buyer must be explained; buyer needs COMPETENT lender
- Appraisal Less Than Sales Price in Option A and B
 - "will not" by default"

Financing Addendum (continued)

- Buyer consent to seller/LB inquiry with lender is boiler plate
 - Buyer will sign any required authorization
- VA Amendatory Clause embedded
- No changes to:
 - Buyer loan application requirements
 - Low Appraisal provision
 - Loan Cost provision
- If financing contingency not waived, it still survives termination

Increased Down Payment (Form 22AD)

- Includes option to modify Form 22A or Form 22AA
- Form 22AD supersedes the "Appraisal Less Than Sale Price" provision in the Financing Addendum (Form 22A)
 - Note: if buyer includes a Form 22A in the transaction but then waives Paragraph 5 (Appraisal Less Than Sales Price) in the Financing Addendum (Form 22A), then Buyer shall be obligated to purchase the property for the purchase price and may not give notice under this provision.

Increased Down Payment (continued)

- Paragraph of Form 22AD relates to Form 22AA
- Buyer requires financing but includes Form 22AA (Low Appraisal Addendum) only and no Form 22A (Financing Contingency)
- Buyer must disclose reliance on financing, including amount of down payment
 - Form 22EF is the form to use to disclose reliance on financing
- If appraisal less than purchase price, buyer shall pay additional funds
 - Buyer's additional down is capped by Form 22AD
- If appraisal plus additional less than purchase price, buyer **may** give notice
 - Seller may reduce purchase price or terminate PSA
- Buyer waiver of Form 22AA contingency prevents seller termination
- Use [Form 22ADN](#) to give notice

Buyer's Sale of Property Contingency (Form 22B)

- Clarifications only
 - Waiver of "Buyer's Sale of Property" contingency constitutes waiver of all other contingencies benefitting buyer
 - Buyer must close the transaction thirty days following waiver
 - If buyer's sale of buyer's property fails after home sale contingency is already expired, buyer has the option of terminating the PSA and recovering EM or waiving the home sale contingency.

Optional Clauses Addendum (Form 22D)

- Paragraph 5 (Utilities) updated to include
 - Checkbox for cable
 - Checkbox for internet
 - Blank space to identify provider of each

Lead Based Paint Addendum (Forms 22J & 22J Lease)

- Revisions made at the request of the Environmental Protection Agency
- Two separate forms
 - For sales, use Form 22J
 - For property management, use Form 22J Lease
- Pay attention**
 - New buyer initial spots in "Buyer's Acknowledgment" section
 - Top of page 2, Form 22J –
 - Buyer has received copies of all information listed above _____ (buyer initials)
 - Buyer has received the pamphlet Protect your Family From Lead in Your Home. _____ (buyer initials)

Septic Contingency (Form 22S)

- Buyer's right to terminate is based on buyer's "subjective satisfaction"
 - This means that buyer can terminate *even* if there is nothing wrong with the septic system
- Termination right begins *when* seller delivers inspection report
 - Listing brokers ... do not let seller delay getting septic inspection report

Title Contingency Addendum (Form 22T)

- If buyer receives preliminary commitment prior to mutual acceptance, buyer's contingency period begins at mutual acceptance
- Question for listing brokers
 - If buyer receives the preliminary commitment for title prior to mutual acceptance, why would seller give buyer a Title Review Contingency?

Inspection Addendum (Form 35)

- Initial Inspection Period
 - Buyer or Licensed Home Inspector ONLY performs "general home inspection"
 - Other **specialists** may also inspect
 - Contractors allowed during initial inspection but NOT to do "general home inspection"
- Additional Inspections
 - Grants extra time only
 - No difference in who buyer may bring into the property
 - Requires provision of inspector recommendations for additional inspections

Inspection Addendum (continued)

- Buyer's Inspection Report
 - Do NOT provide report or portions of report UNLESS seller requests
 - Exception: provide inspector recommendation for additional inspections
 - If buyer provides ANY PORTION of inspection report without seller request **BUYER'S INSPECTION CONTINGENCY IS DEEMED WAIVED**
 - Seller Consent given at time of mutual acceptance (not a counteroffer)
 - "Seller requests that buyer provide the inspection report to seller"
 - "If Buyer requests repairs or modifications to the Agreement, Seller requests that Buyer provide to Seller only the portions of the inspection report related to the requested repairs or modifications to the Agreement"
 - New Form 35C can be used for seller to give consent after MA
 - Form 35R revised to include reminder to not deliver inspection report

Inspection Addendum (continued)

- Neighborhood Review Contingency remains
- "Preinspection Conducted" is deleted from Form 35
 - Now included in "Inspection Waiver Addendum" (New Form 35W)
- "Waiver of Inspection" is deleted from Form 35
 - Now included in "Inspection Waiver Addendum" (New Form 35W)

Inspection Waiver Addendum (New Form 35W)

- Waiver of Inspection
 - Buyer WAIVES the right to obtain inspections of the Property
 - This includes waiver of "information-only" inspections
- Preinspection Conducted
 - Buyer inspected and wants to proceed
- Modifications/Repairs
 - Based on preinspection, buyer wants identified repairs or modifications
- Advisory to buyer to get a septic inspection

Escalation Addendum (Form 35E)

- Net Purchase Price Redefined
 - Buyer offers ___ over "Net Purchase Price" of Competing Offer
 - Competing Offer defined in paragraph 2 (bona fide, cash at closing, no 22B, closing date)
 - Net Purchase Price means stated purchase price or maximum escalated price including credits to buyer or seller
 - Credit to seller could be, for example, reduction of selling office compensation

Escalation Addendum (continued)

- Complete Copy of Competing Offer MUST be provided to buyer
 - If not, buyer may give notice to seller to provide and if seller does not provide, buyer is entitled to purchase at non-escalated price
- Buyer has ___ days (3 by default) to dispute Competing Offer
 - Closing date too long, includes 22B, etc.
 - Buyer says nothing in those 3 days, the Competing Offer deemed legit
- Seller has ___ days (2 by default) to terminate following receipt
 - Refund earnest money
 - If seller does not terminate, purchase price is non-escalated price

Escalation Addendum (continued)

- Purchase price worksheet
 - Now includes credits to seller
- What if seller's math is wrong?
 - Buyer has ___ days (3 default) to deliver correct calculation and price
 - If buyer says nothing, seller's calculated price is the purchase price
 - Seller has ___ days (2 default) to terminate and refund EM, following receipt
 - If seller does not terminate, buyer's calculated price is the purchase price
- Suggested use of Form 35EN for such notices

Escalation Addendum ... Practice

- You represent buyer
- Buyer offers \$400,000 price, \$1000 escalation provision, \$450,000 cap
- In paragraph 2, buyer writes "30" on blank
- What do you do when: (tell me or type it in the chat "give notice" or "say nothing")
 - Seller escalates to \$435,000, Competing Offer closes in 45 days
 - Seller escalates to \$420,000, Competing Offer expired yesterday
 - Seller escalates to \$443,000, Competing Offer includes a Form 22Q
 - Seller escalates to \$450,000, no Competing Offer provided
 - Trick question ... price is automatically the non-escalated price

Escalation Addendum ... More Practice

- Same buyer: \$400,000; \$1,000 escalation provision; \$450,000 cap
 - Seller contributes \$10,000 for roof replacement
 - Buyer will pay seller's closing costs up to \$3,000
- Assume Competing Offer satisfies definition of "Competing Offer"
 - Competing Offer price is \$420,000
 - Competing Offer Escalates to a cap of \$435,000
 - Seller pays Competing buyer closing costs up to \$5,000
 - Selling office for Competing Buyer agrees to reduce selling office compensation from \$12,000 to \$5,000
- What is the calculated price? (write it on a piece of paper or type it in the chat)

| Calculate Purchase Price | |
|---|------|
| Purchase Price of Competing Offer (or the maximum purchase price of the Competing Offer if it contains an Escalation provision) | \$ |
| Less Credits (if any) to Buyer in Competing Offer | - \$ |
| Plus Credits (if any) to Seller in Competing Offer | + \$ |
| Competing Offer Net Purchase Price | = \$ |
| Plus Escalation Amount (this offer) | + \$ |
| Plus Credit (if any) to Buyer (this offer) | + \$ |
| Less Credits (if any) to Seller (this offer) | - \$ |
| New Purchase Price | = \$ |

Escalation Addendum Calculation Worksheet

- Escalation Addendum ... It's still a tough form!
- What if ...
 - One of the offers includes free rent back to seller?
 - Is that a seller credit? How is it accounted for?
 - One of the brokers reduces compensation by a percentage?
 - The credit to seller will have to be calculated as a percentage of the price that can only be determined by calculating in the credit that cannot be determined until you know the price.
 - Brokers should still be talking and creating win-wins for buyer and seller based on a negotiated price.
 - Consider counteroffer approach to lock in price!

- Pre & Post Closing Rental Agreement (Forms 65A & 65B)
- Small changes, big impact!
 - Provision removed stating that rent is received upon signing
 - Recall Form 21 provision
 - If possession other than closing, parties **SHALL** sign Form 65A or 65B
 - Complete form upon agreement that possession transfers sometime other than closing
 - Buyer and seller sign and initial when early or late possession is agreed

Minor Forms Revisions

- Backup Addendum (Form 38A)
 - Seller must give buyer notice within 2 days (instead of 3) of learning that first sale failed to close
- Referral Agreement (Form 11)
 - Must be signed by DB or branch manager of each firm
- Commission Disbursement (Form 40)
 - Style and vernacular updated
- Contingency Property Notice (Form 90k)
 - Notice option for failure to close and waiver of contingency

New Forms

- Survey Contingency Addendum (Form 22TS)
 - Buyer selects and hires surveyor
 - Buyer has **subjective** right to terminate
 - 14 days by default
- Termination of Buyer Representation Agreement (Form 53)
 - Terminates buyer agency agreement created by Forms 41A and 41B
- Lease Rental Agreement Notice (Form 68N)
 - Blank addendum for use with leases

New Forms (continued)

- Notice of Termination Pursuant to Evidence of Funds Addendum (Form 90EF)
 - Use with Form 22EF when seller terminates because evidence of funds not provided
- Notice of Termination Based on Lease Review (Form 90LR)
 - Should be used when terminating based on Lease Review Contingency set forth in Form 22L

Dangerous Practices

- Non-refundable Money
 - What if seller cannot provide insurable title?
 - Does buyer have any remaining contingencies?
- Waiver of all contingencies
- Seller delayed possession
 - Subject to eviction moratorium currently through June 30
- **Probably give warnings and advice to seek legal counsel**
 - Use a lawyer-approved/standardized form

THANK YOU!
