

Legal Bulletin 182**2009 Revisions to Form 17**

by Northwest Multiple Listing Service
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Effective July 26, 2009, amendments to the Seller Disclosure Act (RCW 64.06) (the "Act") require the use of a new Form 17 (Seller Disclosure Statement – Improved Property), Form 17C (Seller Disclosure Statement – Unimproved Property), and Form 35 (Inspection Addendum).

This bulletin summarizes the amendments to the Act and the corresponding revisions to NWMLS forms. Please take the time to read this bulletin carefully.

1. Sellers Must Provide a New Version of Form 17 or Form 17C for Transactions Executed On or After July 26, 2009.

If the seller is required to provide a seller disclosure statement, you should make certain that the seller delivers the proper version of Form 17 or Form 17C to the buyer. If the seller delivers the wrong version of the form, there may be a question as to whether the buyer retains a right of rescission until closing.

The version of the form that the seller must provide is determined by the date the disclosure statement will be delivered to the buyer.

- If the disclosure statement will be delivered before July 26, 2009, your seller must deliver the 2007 version of Form 17 for residential property or Form 17C for unimproved residential property.
- If the disclosure statement will be delivered on or after July 26, 2009, your seller must deliver the 2009 version of Form 17 for residential property or Form 17C for unimproved residential property.

In other words, if the parties reach mutual acceptance on or after July 26, 2009, the seller must provide the 2009 version of Form 17 to the buyer. If the parties reach mutual acceptance before July 26, 2009 and the seller has already given a 2007 version of Form 17 to the buyer, the seller should not provide a new Form 17 to the buyer. If a seller unnecessarily provides the buyer with a new form, there may be a question as to whether that buyer has been given a new right of rescission. If the parties reach mutual acceptance before July 26, 2009 and the seller does not provide a Form 17 until after July 26th, the seller must provide the 2009 version of the form to the buyer.

Please note that if a transaction mutually accepted before July 26, 2009 fails, the seller must thereafter provide the 2009 version of Form 17 to any subsequent buyer, including the same buyer, in any future transactions. If the seller or buyer has questions about whether to give or ask for a new Form 17, refer them to an attorney for legal advice.

The new Form 17 and new Form 17C (revision date 7/09) will be available for order and distribution in hard-copy on July 9, 2009, and you should plan your orders for forms accordingly. NWMLS will not issue refunds or credits for any remaining stock of the 2007 version of the form. Please prepare to distribute the new form in your office along with a copy of these instructions to all agents. The revised forms will be available on Xpress Forms on July 26, 2009, the date the revised Act becomes effective. NWMLS will remove the old version of the forms at the same time.

2. Important Revision Regarding the Seller's Duty to Supplement and Revisions to Form 35 (Inspection Addendum).

The Act currently requires that if, after the seller delivers Form 17 to the buyer, the seller learns of additional information that makes any of the disclosures inaccurate, the seller must update the form and deliver the amended form to the buyer. This is true even if the information that makes the disclosures inaccurate is discovered by the buyer's own inspection of the property. The revised Act does not require the seller to provide the buyer with an amended form if the seller learns of the additional information through the buyer or others acting on the buyer's behalf (such as an inspector).

Due to this revision in the Act, NWMLS will remove Paragraph 1(f) in Form 35, which states that the buyer waives the right to receive an amended Form 17 based on conditions identified in the inspection report. This language is now unnecessary due to changes in the revised Act. In addition, NWMLS will remove the sentence in Paragraph 1(f) which provides that the buyer may not waive the right to receive an amended "Environmental" section of Form 17. This is because with the revisions to the Act, even if the seller learns of information from the buyer that makes a disclosure in the Environmental section inaccurate, the seller is still not required to amend Form 17.

Although this revision does not render the existing version of Form 35 inadequate, the new Form 35 is consistent with the revised Act, and NWMLS recommends that you replace your existing inventory. Indeed, if you use the old version of Form 35, the seller may be required to amend Form 17 even when the revised Act does not require an amendment.

Please note that even though the seller does not need to amend Form 17 for a buyer who discovers changes or other conditions, the seller must amend Form 17 for all other buyers.

3. The Definition of "Unimproved Residential Real Property" Has Not Been Significantly Revised.

The original version of the bill that sought to amend the Act proposed significant changes to the definition of "unimproved residential real property." However, the only change to that definition in the revised Act is to exempt "timber land" from the definition.

This means that the challenges with the overly-broad definition of "unimproved residential real property" still exist. A seller must give a Form 17C to a buyer of "unimproved residential real property," which is defined as "property zoned for residential use that is not improved by residential dwelling units, a residential condominium, a residential timeshare, or a mobile home."

Property is "zoned for residential use" if any part of the property can be used for residential purposes (e.g. zoned for mixed commercial and residential use). Please note that it is the zoning of the property that determines whether the form must be provided, not the existing or intended use of the property.

4. Revisions to Form 17 and 17C.

The following is a summary of the revisions to the new Form 17 and Form 17C (revision date 7/09):

- New question regarding defects in the operation of the "water system" (e.g. pipes, tank, pump, etc.)
- Revised question: "Has the roof leaked?" to: "Has the roof leaked within the last five years?"
- New question regarding wood burning appliances and whether the appliances are certified as "clean burning appliances."
- Revised questions in the Environmental section regarding flooding and standing water on the property.
- Revised questions in the Environmental section regarding fill dirt and waste.

- Revised question in the Environmental section to clarify that the seller need only answer yes if there is electrical utility equipment on the property that does not provide service to the property.
- Revised question in the Environmental section regarding radio towers interference with telephone reception.
- New question asking for the contact information for a representative from the homeowner's association who can provide association documents to the buyer. Please note that the failure of the association to provide requested information does not constitute the seller's failure to provide Form 17.
- Other revisions to clean up the form.

If you would like to review the legislation discussed above, including the revised questions in Form 17 and Form 17C, you can access the Session Law at <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=1420&year=2009>. You can access the Session Law that added the question regarding contact information for a homeowner's association at <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=6000&year=2009>. Use the web address and then click on "Session Law" near the bottom left portion of the page. This will open a new browser which will show you the changes to the existing law.