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## **Legal Hotline Q & A**

**From Get the Facts 03/28/17**

**QUESTION:** Using Form 22AD, the additional down payment is negotiated up front, at the time of mutual acceptance. Later the issue arises, after the low appraisal comes in, that buyer could have and is willing to pay MORE money (in addition to the previously agreed amount) to make up the difference. However, Form 22AD, paragraph 2, requires notice from the buyer to the seller which automatically gives the seller a termination right with full refund of the buyer's earnest money deposit. Pretty black and white ... except if the 2nd guessing buyer now wishes to pay an additional amount to make it to the purchase price. Is it true that there is no way for the buyer to increase the additional amount down once 22AD is signed around and the appraisal is back?

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**ANSWER:** Not entirely. Broker is correct in all of the factual analysis related to Form 22AD and its requirement that buyer give notice.

However, it is important to note that Form 22AD states that the provisions of Form 22AD modify the low appraisal provision of the Financing Contingency. In other words, Form 22AD is not a stand-alone addendum. Rather, it is part of the buyer's financing contingency and replaces paragraph 7 of Form 22A. As a result, if buyer wants to avoid the obligation of Form 22AD, paragraph 2, then buyer must waive the financing contingency. By waiving the financing contingency, buyer eliminates Form 22A, paragraph 7 and the paragraph 7 replacement which is Form 22AD.

It is important for buyer's broker to explain this situation to buyer up front. Form 22AD contemplates that buyer will identify, in paragraph 1, the full amount that buyer is willing to pay as additional down in the event of a low appraisal. If buyer includes a lesser amount in that provision than buyer is actually willing to pay and it turns out that buyer ultimately wants to pay more than is identified in paragraph 1 of Form 22AD, then the consequence to buyer is that buyer will have to waive the financing contingency rather than risk giving seller the right to terminate the PSA.

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