



LAW CHANGE NECESSITATING EXECUTIVE COMMITTEE APPROVAL

CLEAN DRAFT - To be used during 5/25/17 SFC meeting

DISTRESSED PROPERTY ADDENDUM TO EXCLUSIVE RIGHT-TO-SELL LISTING CONTRACT
Hawaii Association of REALTORS® Standard Form
Revised 7/17 For Release 11/17



COPYRIGHT AND TRADEMARK NOTICE: This copyrighted Hawaii Association of REALTORS® Standard Form is licensed for use by the entire real estate industry on condition that there shall be no alteration of the printed portions, pagination, or paragraph numbers or breaks. The use of this form is not intended to identify the real estate licensee as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by real estate licensees who are members of the National Association of REALTORS® and who subscribe to its Code of Ethics.

Distressed Property Addendum is made a part of Exclusive Right-to-Sell Listing Contract:

Property Reference or Address: _____

Tax Map Key: Div. ____/Zone ____/Sec. ____/Plat ____/Parcel ____/CPR ____ (if applicable).

- Seller's Obligation:** Seller hereby agrees to notify Brokerage Firm immediately if the Property is, or at any time during the term of the Exclusive Right-to-Sell Listing Contract becomes, a Distressed Property and/or Seller uses, hires or retains a Distressed Property Consultant. Should Seller fail to so notify Brokerage Firm, Seller shall indemnify and hold Brokerage Firm harmless from any claims arising therefrom or related thereto.
- Distressed Property Addendum to Purchase Contract:** Seller agrees to use the Distressed Property Addendum to the Purchase Contract, which has been attached for reference, with any Purchase Contract in which Seller engages during the term of the Exclusive Right-to-Sell Listing Contract, or any applicable protection period, should the Property be, or become, a Distressed Property.
- Distressed Property Purchase Contract:** (i) Should the Property be, or should the Property become during the term of the Exclusive Right-to-Sell Listing Contract, a Distressed Property, and (ii) should Seller retain the services of a Distressed Property Consultant, Seller understands that Hawaii law requires that a Distressed Property Purchase Contract be used in the case of a Distressed Property Conveyance.
- Brokerage Firm Liability:** Seller understands and agrees that Brokerage Firm shall not be liable for any loss, damage or harm to Seller resulting from any communication between Seller or Seller's Distressed Property Consultant and any lien holder, lien holder's rejection of the Purchase Contract terms or conditions, the imposition of additional requirements on Seller, the failure of lien holders to act in a timely manner, or lien holders proceeding with foreclosure.
- Real Estate Licensee Exemption:** Buyer and Seller understand and agree that according to the Act, a Distressed Property Consultant, shall not include an active real estate broker or real estate salesperson in Hawaii when acting in the capacity of a real estate broker or real estate salesperson in accordance with customary industry standards.
- Professional Advice:** Seller understands that the sale of a Distressed Property can have serious legal, cash and credit consequences, and may lead to taxable income and other adverse tax consequences to Seller. Should the Property be, or become at any time during the term of the Exclusive Right-to-Sell Listing Contract or any applicable protection period, a Distressed Property, Seller has been advised to obtain advice from a licensed Hawaii attorney, Certified Public Accountant and other experts. Seller has been notified that there are options involving a Distressed Property sale that Seller may wish to explore with these professionals, such as, but not limited to: foreclosure, voluntary deed in lieu of foreclosure, bankruptcy, refinancing, loan modification agreements, etc.

Definitions:

The term "Distressed Property Owner" means the owner of any Distressed Property as defined below.

The term "Distressed Property" is defined by Hawaii's Mortgage Rescue Fraud Prevention Act of 2008 ("the Act") as follows:

Any residential real property that:

- (1) Is in foreclosure or at risk of foreclosure because payment of any loan that is secured by the residential real property is more than sixty days delinquent;
- (2) Had a lien or encumbrance charged against it because of nonpayment of any taxes, lease assessments, association fees, or maintenance fees;
- (3) Is at risk of having a lien or encumbrance charged against it because the payments of any taxes, lease assessments, association fees, or maintenance fees are more than ninety days delinquent;
- (4) Secures a loan for which a notice of default has been given or;
- (5) Secures a loan that has been accelerated;
- (6) Is the subject of any solicitation, representation, offer, agreement, promise, or contract to perform any mortgage assistance relief service.

The term "Distressed Property Consultant" means any person who performs or provides, or attempts to perform or provide, or who assists others to perform or provide, or who makes any solicitation, representation, or offer to perform or provide, any mortgage assistance relief service.

"Mortgage Assistance Relief Service" means any service plan, or program that is offered or provided to the consumer in exchange for consideration and is represented, expressly or by implication, to assist or attempt to assist the consumer with any of the following:

BROKER'S INITIALS & DATE

SELLER'S INITIALS & DATE



1. Stopping, preventing, or postponing the loss of any residential real property, whether by mortgage or deed or trust foreclosure sale or repossession, or otherwise saving any consumer's residential real property from foreclosure;
2. Stopping, preventing, or postponing the loss or the charging of any lien or encumbrance against any residential real property or reducing or eliminating any lien or encumbrance charged against any residential real property for the nonpayment of any taxes, lease assessments, association fees, or maintenance fees;
3. Saving the owner's property from foreclosure or loss of home due to nonpayment of taxes;
4. Negotiating, obtaining, or arranging any modification of any term of a residential loan, including a reduction in the amount of interest, principal balance, monthly payments, or fees;
5. Negotiating, obtaining, or arranging any extension of the period of time within which the consumer may:
 - a. Cure the default on a residential loan, including a reduction in the amount of interest, principal balance, monthly payments or fees;
 - b. Reinstate the residential loan;
 - c. Redeem any residential real property or;
 - d. Exercise any right to reinstate a residential loan or redeem a residential real property;
6. Negotiating, obtaining, or arranging with respect to any residential real property:
 - a. A short sale;
 - b. A deed-in-lieu of foreclosure or;
 - c. Any other disposition of the property other than a sale to a third party who is not the residential loan holder;
7. Obtaining any forbearance or modification in the timing of payments from any residential loan holder or servicer;
8. Obtaining any forbearance from any beneficiary or mortgagee, or any relief with respect to a tax sale of any residential real property;
9. Obtaining any waiver of an acceleration clause or balloon payment contained in any promissory note or other contract secured by a mortgage on any residential real property or contained in the mortgage;
10. Obtaining any extension of the period within which the owner may reinstate the owner's rights with respect to the owner's property;
11. Obtaining a loan or advance of funds while the consumer is in foreclosure or at risk of foreclosure due to nonpayment of any obligation related to a residential real property, including but not limited to one or more loans, taxes, lease agreements, association fees, or maintenance fees;
12. Obtaining a loan or advance of funds during any post-tax sale redemption period;
13. Considering or deciding whether a consumer should continue making payments on any loan, taxes, lease assessments, association fees, or maintenance fees or any other obligation related to a residential real property;
14. Exercising any cure of default;
15. Avoiding or ameliorating the impairment of the property owner's credit resulting from the recording or filing of a notice of default or the conduct of a foreclosure sale or tax sale;
16. Drafting, preparing, performing, creating, or otherwise obtaining a forensic loan audit, a forensic securitization audit, or any other type of audit, report, summary, affidavit, or declaration involving an opinion, determination, or analysis of whether a lending party has an enforceable mortgage or lien, predicated upon claims that a lending party that is a party to a pooling and service agreement failed to adhere to the terms of that agreement, or that errors occurred after the signing of the mortgage loan, or disputing whether the lending party is the holder of the promissory note, or any argument that the lending party has failed to comply with federal or state mortgage lending laws;
17. Drafting, preparing, performing, creating, or otherwise obtaining any documentation used or intended to be used to advance any legal theory in defense of a foreclosure or ejection action, regardless of any disclaimer as to providing legal advice; or
18. Understanding any legal theory that may be sued in defense of a foreclosure or ejection action, regardless of any disclaimer as to providing legal advice.

The term "Distressed Property Conveyance" means:

The transfer of any interest in a Distressed Property effected directly or indirectly by or through a Distressed Property Consultant.

The term "Distressed Property Conveyance Contract" means:

Any agreement or obligation affecting a Distressed Property Conveyance.

The term "Distressed Property Purchaser" means:

Any person who acquires any interest in a Distressed Property directly or indirectly through a Distressed Property Conveyance or Distressed Property Conveyance Contract.

Seller _____ Date _____

Brokerage Firm _____

Title _____

Seller _____ Date _____

Principal Broker or Broker-in-Charge _____ Date _____

Title _____

NOTE: THERE IS NO WARRANTY ON PLAIN LANGUAGE. An effort has been made to put this agreement into plain language. But there is no promise that it is in plain language. In legal terms, THERE IS NO WARRANTY, EXPRESSED OR IMPLIED, THAT THIS AGREEMENT COMPLIES WITH CHAPTER 487A OF THE HAWAII REVISED STATUTES, AS AMENDED. This means that the Hawaii Association of REALTORS® is not liable to any Buyer, Seller, or other person who uses this form for any damages or penalty because of any violation of Chapter 487A. People are cautioned to see their own attorneys about Chapter 487A (and other laws that may apply).