



SHORT SALE ADDENDUM TO EXCLUSIVE RIGHT-TO-SELL LISTING CONTRACT

Hawaii Association of REALTORS® Standard Form Revised 7/12 (NC) For Release 11/16 from subcommittee 2/5/17

ANNOTATED DRAFT - For use during 3/16/17 SFC meeting



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Short Sale 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).

Definitions:

The term "Short Sale" is used to describe a sale where: (1) the liens against a property combined with the associated costs will exceed the purchase price of the property and (2) the Seller will be asking the lien holder for a release of the lien on the subject property without a complete payoff. (A property in a short sale may not be a Distressed Property.)

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

Any residential real property that:

- (1) Is in foreclosure or at the 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.

The term "Distressed Property Consultant" is defined by the Act as follows:

Any person who performs or makes any solicitation, representation, or offer to perform any of the following relating to a Distressed Property:

- (1) Stop or postpone the foreclosure sale or loss of any Distressed Property due to the nonpayment of any loan that is secured by the Distressed Property;
(2) Stop or postpone the charging of any lien or encumbrance against any Distressed Property or eliminate any lien or encumbrance charged against any Distressed Property for the nonpayment of any taxes, lease assessments, association fees, or maintenance fees;
(3) Obtain any forbearance from any beneficiary or mortgagee, or relief with respect to a tax sale of the property;
(4) Assist the owner to exercise any cure of default arising under Hawaii law;
(5) Obtain any extension of the period within which the owner may reinstate the owner's rights with respect to the property;
(6) Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a Distressed Property or contained in the mortgage;
(7) Assist the owner in foreclosure, loan default, or post-tax sale redemption period to obtain a loan or advance of funds;
(8) Avoid or ameliorate the impairment of the owner's credit resulting from the recording or filing of a notice of default or the conduct of a foreclosure sale or tax sale; or
(9) Save the owner's residence from foreclosure or loss of home due to nonpayment of taxes.

The term "Distressed Property Conveyance" is defined by the Act as follows:

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" is defined by the Act as follows:

Any agreement or obligation affecting a Distressed Property Conveyance.

The term "Distressed Property Purchaser" is defined by the Act as follows:

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

BROKER'S INITIALS & DATE

SELLER'S INITIALS & DATE



1. **Professional Advice:** Seller understands that a short sale can have serious legal, cash, and credit consequences, and may result in taxable income and other adverse tax consequences to Seller. Seller has been advised to obtain advice from a licensed Hawaii attorney, Certified Public Accountant and other experts prior to entering into the Exclusive Right-to-Sell Listing Contract. Seller has been notified that there are alternatives to a short 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.

2. **Hawaii Mortgage Rescue Fraud Prevention Act of 2008:** If, at any time during the listing term and pendency of any executed Purchase Contract, (i) Property becomes a Distressed Property, and (ii) Seller uses, directly or indirectly, the services of a Distressed Property Consultant, Seller shall notify Brokerage Firm immediately in writing and authorizes Brokerage Firm to disclose to prospective buyers and their agents that the sale is subject to the Hawaii Mortgage Rescue Fraud Prevention Act of 2008.

2.3. **Disclosure:** Seller hereby authorizes Brokerage Firm to identify Property as a short sale in marketing materials including the Multiple Listing Service ("MLS"). Brokerage Firm is further authorized to disclose to prospective buyers and their agents that terms of the sale may be subject to lien holders' approval and the transaction is likely to be a short sale.

3.4. **Seller's Obligations:** Seller hereby agrees to cooperate in good faith and in a timely manner to negotiate the conditions of a short sale with lien holders and Buyer. This may include providing information which lien holders may require. Seller agrees to respond to lien holders' requests promptly, accurately and fully. ~~Should the Property be, or at any time during the term of the Exclusive Right-to-Sell Listing Contract become, a Distressed Property, and/or Seller uses, hires or retains a Distressed Property Consultant, Seller shall immediately notify Brokerage Firm.~~

4.5. **Short Sale Addendum to Purchase Contract:** Seller agrees to use the Short Sale Addendum to Purchase Contract which has been attached for reference.

5.6. **Brokerage Firm Liability:** Seller understands that lien holders are not within the Brokerage Firm's control. Brokerage Firm shall not be liable for any loss, damage or harm to Seller resulting from any communication between lien holders and Brokerage Firm, lien holders' rejection of Purchase Contract terms or commissions, the imposition of additional requirements on Seller, the failure of lien holders to act in a timely manner, or lien holders' proceeding with foreclosure.

6.7. **Commission Obligations:** Seller understands and agrees that Brokerage Firm is not obligated to negotiate commissions for purposes of accommodating a short sale.

_____ Seller	_____ Date	_____ Brokerage Firm
_____ Title		
_____ Seller	_____ Date	_____ Principal Broker or Broker-in-Charge
_____ Title		_____ Date

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).