



Revisions to Short Sale Summaries and Addendum

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When the initial Short Sale Addendum and Summary were first made available by OREF a few months ago, they almost immediately became one of its top-selling forms. These new forms represented our industry's effort to address a phenomenon never seen by most homeowners or Realtors® - i.e. situations where the market value of a property actually fell below the price necessary to pay off all of the liens and convey marketable title to the buyer. Given the newness of this phenomenon, and with little or no industry experience to draw upon, OREF sought to develop forms that would not only assist consumers in understanding and dealing with short sales, but also serve as a risk management device for Realtors® involved in these transactions. As industry practice has developed, and we learn more about lender response to short sales, OREF decided that rather than wait a full year to make revisions, it would immediately revise its current short sale forms in order to better serve home sellers and buyers and their real estate agents.

You will note that the Short Sales Summary has now been divided into two separate documents – one for Buyers and one for Sellers. The Seller's Summary has a new section addressing alternatives to a Short Sale.

Following is a description of changes to the Short Sales Addendum:

Section 1. The Contingency

In the revised Addendum, we have identified when/how the Contingency is satisfied or terminated, and give the parties – especially the buyer – the opportunity to limit the length of the Contingency by inserting a date after which it automatically expires.

Reason for Change: We had received reports from Realtors® that some lenders were unduly delaying approval/disapproval decisions and/or were requiring that the property remain on the market for an extended period of time. In some cases, this hampered the buyer's ability to withdraw from the transaction and/or freely make other offers on other properties. Accordingly, the Addendum was adjusted to meet the current market situation. Buyer agents are cautioned to discuss timeframes with their clients and, where necessary, suggest adjustments in the Additional Provisions section of the form.

Section 2. Contingency and Deposit Deadlines.

The original Short Sale Addendum suspended all time and performance deadlines. The revised Addendum excludes the closing date from this suspension of deadlines. Additionally, the parties are now reminded that the closing date is the final outside deadline for the Contingency (assuming that an earlier date was not already inserted in Section 1). Additionally, the revised section reminds all parties that the Lead Based Paint Disclosure Addendum must be signed before closing.

Reason for Change: The closing deadline change is also related to the anecdotal reports we have received from Realtors® regarding lender delay. Both agents are cautioned to make sure their clients understand that the scheduled closing date automatically terminates the Contingency, if the closing date has not already occurred. If seller and buyer want the Contingency to continue, they need to mutually agree to a new closing date in writing.

Section 4. Termination of Transaction; No representations or Warranties' Assumption of Risk.

We have again clarified that the scheduled closing date is the outside deadline. If the Contingency is not satisfied or waived by that time, it expires and the transaction is over.

Section 5. Rights of Parties During Contingency; Buyer's Contact With the Creditors.

Although the possibility of multiple offers was addressed in the original Addendum, OREF felt it important to clarify that the seller will comply with the lender's instructions on which of several potential buyers to select.

Reason for Change: In speaking to Realtors® who are becoming familiar with short sale transactions, it appeared that buyers (and occasionally their agents) may not fully understand that with multiple short sale offers, the lender – not the seller – actually dictates which one will be accepted. Buyer agents, in particular, are encouraged to emphasize to their clients that the seller has little, if any, control over the final decision. Lender/seller acceptance of any one offer constitutes automatic rejection of all others (using this Addendum).

Section 6. Sharing of Non-Confidential Information.

This section, which is self-explanatory, is new.

Reason for Change: This provision was added due to Realtor® reports of listing agent non-cooperation with multiple short sale offers, thus resulting in buyers "going around" sellers and their agents. Listing agents are encouraged to discuss with their clients the real possibility that there may be multiple offers on a property and all offers should be forwarded to the lender. Conversely, buyer agents should discuss with their clients the need to make realistic first offers, in order to improve the chances of early lender acceptance.