

# REVISIONS TO THE 2011 OREF RELATED TRANSACTIONAL FORMS

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*This summary should not be relied upon in lieu of a thorough review of the specific forms and their revised provisions by each individual broker and principal broker.*

## Short Sale Addendum (OREF-027B)

After getting off to a rocky start, the OREF Short Sale Addendum has survived the test of time. For the last several years it has remained the primary short sale document used by most Oregon Realtors®. Whether it is OREF's form or another well-drafted form, there is little question today, that a separate addendum or form is essential to encapsulate all of the provisions necessary to maneuver through the short sale minefield.

This year, the OREF Forms Committee took a close look at the Short Sale Addendum, to see if, with the passage of time, we might have observed some developments in short sale protocols that we could incorporate into our Addendum. As a result, several small changes were made clarifying the protocols, but without substantively altering Realtor® practice. That is to say, the changes are designed to enhance clarity, avoid disputes, while retaining the fairly predictable protocols that have developed in the real estate and lending industry over the last few years. Here are the major clarifications:

1. Specifically, the Addendum now provides that if any of the following events occur, the transaction shall be deemed to be automatically terminated, and Buyer shall be entitled to a full refund of all deposit(s):
  - a. Either Buyer or Seller reject any of the terms which the Creditor(s) impose as a condition to granting their consent to this transaction;
  - b. Creditor(s) consent upon terms satisfactory to both Buyer and Seller does not occur by 5:00 PM on \_\_\_\_\_, \_\_\_\_\_;
  - c. Buyer, in Buyer's sole discretion gives written notice of termination at any time prior to Creditor(s)'s consent; or
  - d. Creditor(s) consent upon terms satisfactory to both Buyer and Seller does not occur prior to the scheduled closing.

Upon such termination under (a) - (d) above, all parties agree to cooperate in promptly signing such documentation reasonably necessary to effect a complete termination of the transaction and refund/return all deposits, notes, cash or checks, if any.

2. The second clarification is the following:

"Buyer and Seller acknowledge that closing of this Short Sale transaction will be primarily based upon consent of the Creditor(s), and that neither party, nor their respective Licensee(s) or Firm(s), have made any representations or warranties concerning the likelihood this transaction will successfully close. This Addendum shall not create any right of first refusal to Buyer. Any expenditure of time, money or other consideration by Buyer or Seller prior to termination or expiration of the transaction shall be solely at their own risk, and neither shall have a claim against the other, or the other's Licensee(s) or Firm(s), for such expenditure."

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3. The next clarification provides, in substance, that the buyer understands the following:
- a. Seller's Property may remain on the market as an active listing (subject to existing MLS rules);
  - b. Seller may consider, accept and submit to the creditor(s) other competing offers to purchase the Property with the understanding that the creditor(s) will make the final decision on which offer to accept, if any; and
  - c. Creditor(s) may insist that regardless of the order in which received from seller, all Short Sale offers will be reviewed before a final decision is made on which one to accept.
  - d. If one or more creditor(s) instruct seller or seller's representatives that all offers of purchase be submitted promptly as received by seller, that seller may accept multiple offers without designating any subsequent offers to be in a "back-up" position. In such case, seller shall not be legally required to sell the property to any particular buyer except the one accepted by the creditor(s) upon terms acceptable to seller and said selected buyer, and that all remaining offers previously accepted by seller shall be automatically terminated with no liability to seller and with a full refund of their deposit(s) to the buyer.
  - e. During the period that the short sale contingency remains open, buyer and seller shall have the right to verify, to their sole satisfaction, that one or more of the creditor(s) will, in writing, waive or reduce the total closing costs in an amount sufficient to enable seller to close this transaction for the purchase price and convey marketable title to the buyer.
4. Lastly, the Addendum clarifies issues regarding buyer contact with seller's creditors, as follows:

Without seller's consent, buyer or buyer's Licensee(s), agents or representatives have no authorization to contact any creditor(s) regarding seller's financial, personal or confidential information for which any privacy rights may exist. If seller agrees to permit buyer or buyer's licensee(s), agents or representatives to have direct contact with the creditor(s) concerning or verifying a reduction of seller's total closing costs, seller agrees to sign such documents as reasonably required by the creditor(s) to authorize such contact.

***Comment:*** It appears that short sales will be with us as long as total inventory is backed up, REO sales continue, and time on the market stays high. For that reason, short sales will continue to be a significant part of the transactional landscape. For those lucky Realtors® whose business permits them to avoid them, the OREF Short Sale Addendum is perhaps an unnecessary tool in their toolbox. But for the vast number of agents who are on either side of a short sale transaction, this revised form is essential. It represents the current protocols in short sale transactions and should be closely reviewed *in advance* with all buyers and sellers who expect to become involved with them.

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## **Seller Property Disclosure Statement** ***(OREF-020)***

As noted above, the 2009 Legislature passed the Lofgren and Zander Memorial Act requiring that upon sale of certain residential structures, including condominiums and single family residences, one or more carbon monoxide alarms must be installed outside the sleeping areas. This law becomes effective in Oregon for sales by deed or contract, on April 1, 2011. Rather than add it later, OREF has opted to do so now, in order to avoid having to update the form early next year. Accordingly, Realtors® will notice that Section 5 (Dwelling Structure) of the Statement, the following question is asked: "Are there carbon monoxide alarms?"

In all other respects, the Seller Property Disclosure Statement remains the same.