



## SPECIAL INSTRUCTIONS REGARDING SECTION 2 OF SHORT SALE FORM

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Users of this Short Sale Addendum form are advised that Section 2 (“Contingency and Deposit Deadlines”) provides that – with the exception of the scheduled closing date - all other performance and contingency deadlines, (e.g. those for redemption of earnest money, financing, lead based paint and seller’s property disclosure) are *suspended* until the first day after the Creditor’s consent has been obtained. This means that under certain circumstances there may be insufficient time for the buyer to actually complete all due diligence items without re-scheduling the closing date.

As noted in Section 2 of the Short Sale Addendum form, if the property is “target housing” (i.e. constructed before 1978), then two important steps must be taken: (a) The Lead-Based Paint Disclosure Addendum (OREF-021) must be completed and signed by the parties and their real estate agents prior to the closing, and (b) Unless waived, the buyer must be given a ten-day opportunity to conduct a lead-based paint assessment or inspection. *Until this ten-day period is either waived or expires, the sale agreement is not enforceable.* These issues are also addressed at the Lead Based Paint Contingency Period Section of the Residential Real Estate Sale Agreement.

Accordingly, if the property which is the subject of the short sale was constructed before 1978, a buyer’s agent may wish to discuss with their client ahead of time whether they will want to conduct a lead-based paint inspection or assessment. If the buyer wishes to do so, then the issue becomes: (a) Whether to incur the cost of an assessment/inspection at the commencement of the transaction before knowing whether the Creditor will give consent, or (b) Whether to wait until after the Creditor has issued their decision.

If the buyer wishes to commence the assessment/inspection at the start of the transaction, then the ten-day time frame should not be suspended and this fact should be noted in the blank line at the end of Section 2. If the buyer wishes to wait, then the suspension language of Section 2 would be appropriate for the lead-based paint assessment/testing, and no exclusion would be necessary. However, the buyer should be advised of the possibility that a Creditor granting consent might insist upon a time frame for closing that could limit or restrict the buyer’s right to have the desired assessment or inspection. It is for this reason that if the property is pre-1978 construction, buyer agents should discuss with their clients in advance whether they might want a lead-based paint

assessment or inspection. If such a desire exists, it may be a good idea to include that fact as a part of the offer itself, so that the Creditor is made aware of the issue as well.<sup>1</sup>

Lastly, although the above discussion has been limited to the lead-based paint contingency, similar issues are raised with the seller property disclosure and inspection contingencies, as well. In any event, prior to making a short sale offer, all sections of the Short Sale Agreement form, including Section 2, should be thoroughly reviewed and discussed with both sellers and buyers.

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<sup>1</sup> *Caveat:* Some short sale buyers may be hesitant to include another inspection contingency into the sale agreement which could make the offer less attractive to the creditor should other buyers be competing for the same property. This is an issue that should be left up to the buyer, depending upon their concern about lead-based paint and lead-based paint hazards.