



2010 Association Legal Issues Update

Supplemental Handouts for January 22, 2010

Sample of MLS Policy Re: Calculating Commissions

Section 8(b) of RESPA

Code of Ethics Waiver

Sample Statute of Frauds Waiver Language

Short Sale Addendum To Listing Contract

Short Sale Addendum To Buy and Sell Agreement

**Geographic Boundaries of US Courts of Appeals &
US District Courts**

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A. Sample MLS Policy Re: Calculating Commissions:

The compensation specified on listings published by the MLS shall be shown in one of the following forms:

1. by showing a percentage of the gross selling price;
2. by showing a definite dollar amount; or
3. by showing a percentage of the net sale price. "Net sale price" shall mean the gross sale price minus: (a) buyer upgrades in the event of new construction; and (b) seller concessions. "Seller concessions" shall mean . . . [insert definition].

Sample definitions of "seller concessions:"

- a. Anything of value added to the transaction by the seller for which the buyer pays nothing additional and which the seller is not customarily expected to pay or provide.
- b. Any costs of the buyer that the seller pays on behalf of the buyer, such as any buyer's closing costs and remodeling credits.
- c. Anything of value added to the transaction by the seller.

B. Section 8(b) of RESPA:

No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan, other than for services actually performed.

C. Code of Ethics Waiver:

Every member, for and in consideration of his right to invoke arbitration in proceedings and to initiate complaints under the Code of Ethics as a member of the NATIONAL ASSOCIATION OF REALTORS®, hereby waives any right of action against the Board, any Board Member, or any member of a Hearing Panel or tribunal arising out of any decisions, determinations, or other action taken or rendered under these procedures in the absence of willful or wanton misconduct. Further, as a condition of continued membership, every member expressly waives any cause of action for libel, slander, or defamation that might arise from the filing or consideration of any ethics complaint or arbitration request.

D. Sample Statute of Frauds Waiver Language

The parties agree that this contract may be subsequently modified by electronic correspondence. Neither party shall assert the statute of frauds or any invalidity of this contract or subsequent amendments or modifications to this contract due to the use of electronic correspondence and both parties specifically waive any such defense.

SHORT SALE ADDENDUM TO LISTING CONTRACT

PROPERTY

THIS ADDENDUM is to be part of and incorporated into a Listing contract between _____ as Listing REALTOR®/Broker and _____ as Seller, dated _____, 20____, regarding the above-captioned Property.

It is acknowledged by the parties hereto that the sale price may not be sufficient to pay the balance(s) owed on all debt secured by the Property and, accordingly, it may be necessary to attempt to negotiate a short sale with Seller’s mortgagee(s) and other lienholder(s) (hereafter “mortgagee(s)”).

Seller acknowledges that while agents of REALTOR®/Broker may, at the direction of the Seller, assist Seller in such negotiations, Seller understands that neither REALTOR®/Broker nor any agent of REALTOR®/Broker can provide legal advice or financial advice. Seller acknowledges that REALTOR®/Broker has advised Seller to consult with an attorney as to any such transaction and specifically as to any continued liability on any existing mortgage that may be owed to Seller’s mortgagee(s) after such transaction. Seller should not assume that the mortgagee(s) approval of the short sale, acceptance of a lesser amount and the granting of a discharge of mortgage will release the Seller from any obligation to pay the mortgagee(s) for any deficiency or difference between the amounts owed to the mortgagee(s) and the amount paid to the mortgagee(s) at closing.

Seller	Date	Buyer	Date
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Seller	Date	Buyer	Date
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SHORT SALE ADDENDUM TO BUY AND SELL AGREEMENT

Date: _____, covering Property located at _____
 _____ between _____ Seller and _____
 _____ Buyer for the Property commonly known as _____
 _____, this Addendum to be deemed part of the attached Buy and Sell
 Agreement (the "Agreement").

1. The sale of the Property is subject to and contingent upon the written agreement of the Seller's mortgagee(s) and any other lienholder(s) (hereafter "mortgagee(s)") to accept less than the amount(s) owed. Moreover, this sale of the Property is contingent upon the Seller's acceptance of any conditions imposed by such mortgagee(s). The parties acknowledge that neither Seller nor Seller's agent can compel any mortgagee or lienholder to agree to accept less than the amount owed or even to respond to such a request.
2. In the event all mortgagee(s) do not consent to the short sale or Seller is unwilling to agree to the conditions imposed by any mortgagee(s), Seller reserves the right to terminate the Agreement, in which event the earnest money shall be refunded to Buyer and neither party shall have any further rights or obligations hereunder.
3. Buyer reserves the right to terminate this Agreement at any time if all mortgagee(s) have not consented to this transaction, in writing, within _ days from the acceptance of the Agreement by Buyer and Seller, in which event the earnest money deposit shall be refunded to Buyer and neither party shall have any further rights or obligations hereunder.
4. In the event of termination of the Agreement pursuant to Paragraph 2 or 3 above, neither party will have any liability to the other party for any expenses incurred by that party in anticipation of closing.
5. All timeframes referenced in the inspection clause in the Agreement shall commence upon:
(select one) receipt of all mortgagee(s)' written consent.
 acceptance of the Agreement by Buyer and Seller.
6. The Property shall be reported with the local multiple listing service as a "pending sale" upon acceptance of the Agreement by Buyer and Seller.
7. All parties acknowledge that they have been advised to obtain legal advice concerning the terms of a short sale transaction and professional tax advice regarding the tax implications of such a transaction. Seller specifically acknowledges that no agent has made any representation with respect to any continued liability on any existing mortgage or lien and that Seller has been advised to seek legal advice on this issue. Seller should not assume that the mortgagee(s) approval of the short sale, acceptance of a lesser amount and the granting of a discharge of mortgage will release the Seller from any obligation to pay the mortgagee(s) for any deficiency or difference between the amounts owed to the mortgagee(s) and the amount paid to the mortgagee(s) at closing.

 Seller Date

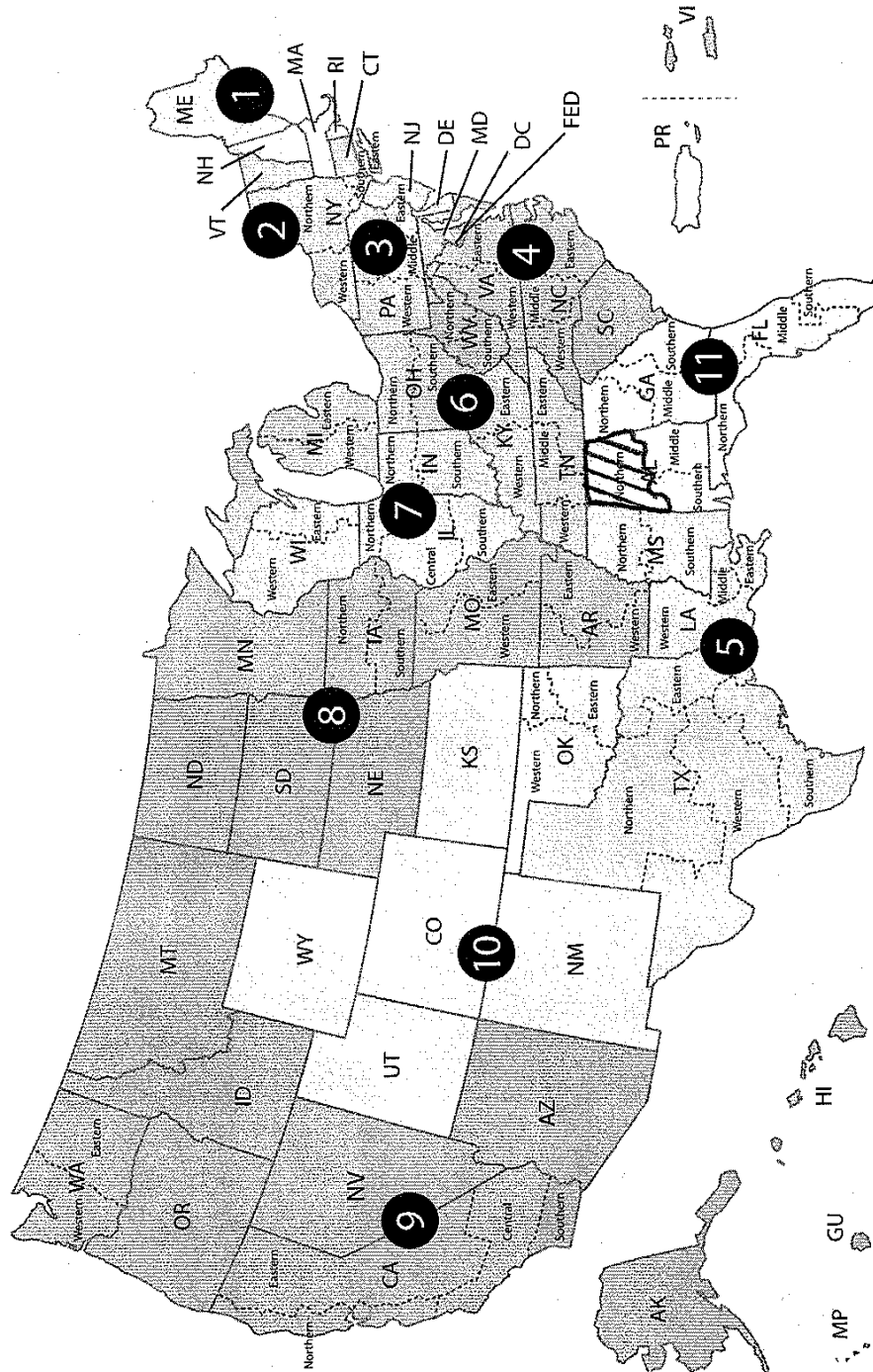
 Seller Date

 Buyer Date

 Buyer Date

Geographic Boundaries

of United States Courts of Appeals and United States District Courts



- 1. ME, NH, MA, RI
- 2. VT, NY, CT
- 3. PA, NJ, DE
- 4. MD, WV, VA, NC, SC

- 5. TX, LA, MS
- 6. MI, OH, KY, TN
- 7. WI, IL, IN
- 8. ND, SD, NE, MN, IA, MO, AR

- 9. WA, OR, CA, ID, MT, NV, AZ, AK, HI
- 10. WY, UT, CO, NM, KS, OK
- 11. AL, GA, FL