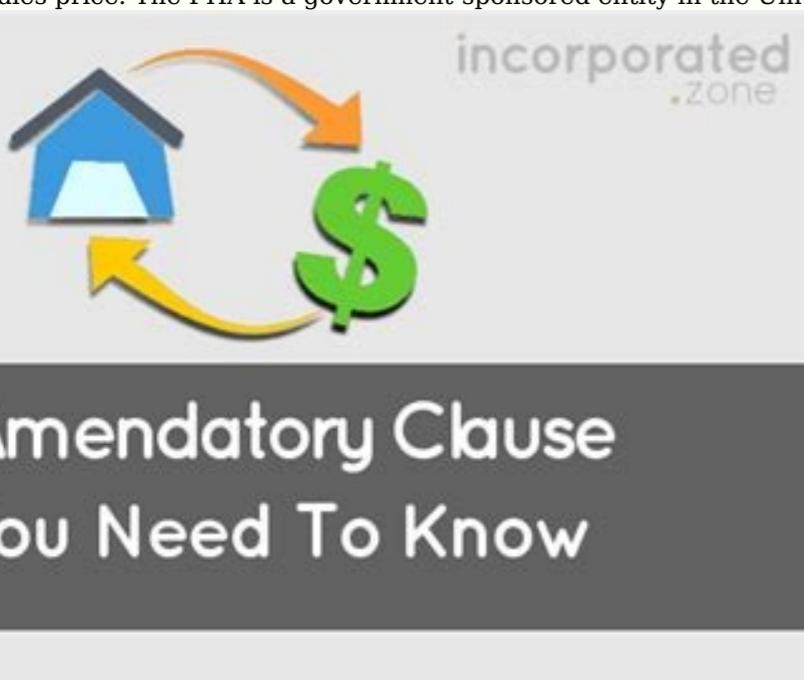


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How to explain the fha amendatory clause

What does the FHA amendatory clause mean? What are the requirements to get an FHA loan? How does it work? We will look at what is an FHA amendatory clause, its definition, its objective and benefits, the FHA disclosures amendatory clause form, when must the FHA amendatory clause be signed, how is the clause worded, what is the real estate certification, and more! Be sure to read this entire post as we have awesome content for you! We are super excited to go over the topic with you! Are you ready? Let's get started! The FHA amendatory clause (also known as just the amendatory clause) is a legal document signed by parties to a real estate transaction along with their real estate agents or broker agreeing that the buyer can get out of the deal if the property is appraised for less than the sales price. In other words, it's a legal provision intended to protect the FHA so that it insures home loans for values below the market value and to protect the buyer having the chance to back out of the home purchase without any penalties if the appraised value is below the sales price. The FHA is a government-sponsored entity in the United States tasked to promote homeownership by insuring mortgages and lenders against potential homeowner mortgage payment defaults or foreclosures.



Over half of the mortgages in the United States are insured by FHA. The FHA's mission is to allow individuals with a lower credit score or first time home buyers to be able to get the necessary funding by securing the lender's loan against possible events of default. The Federal Housing Administration (FHA), part of the United States Department of Housing and Urban Development, will not guarantee mortgages for a value higher than the property's appraised value. With the FHA backing a loan, lenders will potentially lend up to 96.5% of the property's appraised value. Fundamentally, the mandatory clause is intended to protect the FHA. In this context, to allow new home buyers, people with lower credit scores and insure lenders for home and property loans, the FHA must ensure that it does not give loan guarantees for values higher than the actual home value. The agency does not want to be stuck with additional debt on its hands when a homeowner goes into default where the property's value does not even cover the outstanding mortgage.

FHA DISCLOSURES
AMENDATORY CLAUSE / REAL ESTATE CERTIFICATION

Buyer(s) _____

Date of Agreement: _____

Seller(s) _____

File No.: _____

Property Address: _____

FHA AMENDATORY CLAUSE

It is expressly agreed that notwithstanding any other provisions of this contract, the purchaser shall not be obligated to complete the purchase of the property described herein or to incur any penalty by forfeiture of earnest money deposit or otherwise unless the purchaser has been given in accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement lender setting forth the appraised value of the property not less than \$ _____. The purchaser shall have the privilege and option of proceeding with the sale of the property at the price and condition of the property, or the purchaser may cancel the contract and is entitled to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not limit the value or the condition of the property. The purchaser should satisfy himself/herself that the price and condition of the property are acceptable.

Borrower _____ Date _____

Borrower _____ Date _____

Seller _____ Date _____

Seller _____ Date _____

Note: The dollar amount to be inserted in the amendatory clause is the sales price as stated in the contract. If the borrower and seller agree to adjust the sales price to an appraised value that is less than the sales price, a new amendatory clause is not required. However, the loan application package must include the original sales contract with the same price as shown on the amendatory clause, along with the revised or amended sales contract.

REAL ESTATE CERTIFICATION

We, the borrower, seller, and the selling real estate agent or broker involved in the sales transaction certify by our signatures below that the terms and conditions of the sales contract are true to the best of our knowledge and belief, and that any other agreement entered into by any of these parties in connection with this real estate transaction is part of, or attached to, the sales agreement.

Borrower _____ Date _____

Borrower _____ Date _____

Seller _____ Date _____

Seller _____ Date _____

Listing Agent (as applicable) _____ Date _____

Selling Agent (as applicable) _____ Date _____

WARNING: Our signatures above indicate that we fully understand that it is a Federal Crime punishable by fine, imprisonment or both to knowingly make any false statements concerning any of the above facts as applicable under the provision of Title 18, United States Code, Section 1012 and 1014.

In case of repossession, foreclosures, or defaults, the FHA wants to make sure that the home can always be sold for a price, allowing it to fully cover the property's outstanding loan. How do you define an FHA amendatory clauses?



What is the definition of FHA amendatory clause? The FHA amendatory clause is a legally binding statement between the parties to a real estate transaction along with their real estate brokers or agents whereby the parties agree that the buyer can elect not to pursue the transaction if the appraisal value is below the sales price. In other words, the amendatory clause is a legally binding statement made by all parties to a real estate transaction where the buyer is given the right to opt-out of a deal in case the real estate property is appraised below the sales price. A real estate purchase can also elect to proceed with the transaction provided that he or she financially assumes the difference between the sales price and the appraised value. Purchasing a property where FHA backs the mortgage provides many benefits to the buyers such as: Ability to make lower cash down paymentAbility to get approved for a mortgage with lower credit scores Have more chances of finding home purchase financing The FHA mortgages also benefit sellers perhaps in a more indirect fashion in the following manner: With more buyers potentially able to purchase a home, they can have a larger market of potential buyersThey can sell their home to individuals who would have otherwise not been qualified for financing To get an FHA loan, you'll need to observe may requirements. Here are some FHA mortgage requirements that you should keep in mind: You can have a lower credit score to be approved but credit scores lower than 500 may not qualifyIf your credit score permits, you can qualify to deposit as low as 3.5% of the appraisal value as a cash down paymentYou may need to get mortgage insurance to protect against any future risks (you can get an upfront mortgage insurance premium or an ongoing mortgage insurance premium)The amendatory clause must be signed before the property appraisal is doneThe amendatory clause must be signed by all parties including their real estate agents What is the legal consequence of having an amendatory provision? What happens when the FHA purchase agreement addendum is triggered? Here is what can happen following the execution of an FHA addendum form: The appraisal is above the sales price The appraisal is below the sales price If the appraisal shows that the property's market value is above the sales price, then the buyer can complete the transaction and the FHA will continue its file assessment as expected. However, if the appraisal reveals a property market value below the sales price, then the buyer has two options: Cancel the accepted offer to purchase without any financial penaltiesContinue with the purchase by directly paying the difference between the sales price and the appraised value Essentially, when the parties to a real estate transaction sign the amendatory clause, they are agreeing that the buyer has the right to call off the deal or back out if the home appraisal is below the sales price and he does not have the means or willingness to pay the difference.

FHA/VA ADDENDUM TO AGREEMENT TO BUY AND SELL REAL ESTATE

In reference to the Agreement to Buy and Sell Real Estate between _____, the Buyer(s), and _____, the Seller(s), dated _____, covering the real property known as:

Lot _____ Block _____ Section _____ Subdivision _____
Address _____

Tax Map # _____ City _____ Zip _____ County _____ South

Carolina, the undersigned parties hereby agree that the said Agreement to Buy and Sell shall be subject to the following provisions:

FHA-VA TERMS: If this sale is subject to the Buyer obtaining an FHA or VA loan, the following shall apply:

- (a) Seller will not be obligated to give possession of the herein described property until such time as Buyer has been approved by the FHA or VA, and title is passed.
- (b) Buyer will not be charged with any special assessments or improvement bonds, including those payable in the future for improvements commenced or completed on the day of closing, such as sidewalks, curbs, sewers, etc.
- (c) Notwithstanding any other provision of this agreement, the Buyer will be charged on such closing costs and/or prepaid items that are allowed by FHA and/or VA.

FHA/VA VALUE CLAUSE: It is expressly agreed that, notwithstanding any other provisions of this contract, the Buyer shall not be obligated to complete the purchase of the property herein described or to incur any penalty by forfeiture of earnest money deposits unless a written statement issued by the Federal Housing Authority or Veterans Administration setting forth the appraised value or certification of reasonable value of the property, excluding closing costs, for mortgage insurance purposes not less than \$ _____. The Buyer shall, however, have the privilege and option of proceeding with the consummation of this contract without regard to the amount of the appraisal evaluation made by the Federal Housing Authority or Veterans Administration. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure or guarantee. HUD and VA do not warrant the value or the condition of the property. The Buyer shall satisfy himself/herself that the price and condition of the property are acceptable.

NEW HOME FHA-VA TERMS: If the home to be financed with an FHA or VA loan has not been previously occupied, the following shall also apply:

- (a) The building and improvements of the herein described property have been or shall be completed in substantial conformity with the plans and specifications which have been or shall be approved by the FHA or VA.
- (b) If this agreement is for proposed construction, the Seller is not obligated to begin construction until such times as the plans, specifications, and the Buyer's loan application have been approved by the FHA or VA.
- (c) Seller shall deliver to the Buyer at the consummation of this sale, an FHA or VA warranty (if property is financed by a FHA or VA loan).
- (d) Date of Completion: _____

BUYER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

BUYER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

SELLER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

SELLER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

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For example: John has an accepted offer to buy a property for \$300,000. However, the home appraisal reveals that the property is only worth \$250,000. Leveraging the FHA clause, John can cancel the deal without any financial penalty and get his earnest money back. In the end, the benefits of the FHA addendum go to the FHA and the homebuyer. Who should sign the amendatory clause? Do sellers have to sign the FHA amendatory clause? Generally, all parties to the transaction (including the real estate agents) will need to sign the amendatory clause before the home appraisal is done. This includes: The buyer, Any co-buyer, The seller, The buyer's agent (if any), The listing agent (seller's agent). In some cases, the FHA addendum is signed separately from the promise to purchase using an FHA amendatory clause form whereas in other cases the FHA disclosure is directly built into the sales contract (also referred to as the FHA purchase agreement). Further to the amendatory clause, all parties agree that should the appraisal reveal that the property's market value is below the agreed sales price, the buyer has the right to cancel the transaction and get out of the deal. This protects both the buyer and FHA. In essence, the buyers are protected as they have the ability to get out of a real estate transaction where the value of the property was not consistent with the market value. This helps prevent buyers from buying property based on emotion or potentially getting into a deal over and above their means. The FHA is also protected as they are insuring home loans for a value below the property market value. In what case is the FHA addendum will not apply? When a homebuyer does not intend to use the property as their primary residence (owner-occupant), the FHA amendatory statement will not apply. Also, the FHA amendatory clause will not apply when: Fannie Mae is involved, Freddie Mac is involved, Rural Housing Services is involved, For HUD REOs, When the Department of Veteran Affairs is involved. When a seller is selling an REO asset relating to foreclosure sales. What does the amendatory clause form look like? What's contained in the FHA loan addendum? The FHA amendatory clause is a statement where the parties agree and acknowledge that in notwithstanding any other terms of the sales contract, the purchaser has no obligation to complete the transaction if the appraised value of the home is below the sales price. The Department of Housing and Urban Development (HUD) requires the following FHA amendatory clause statement: It is expressly agreed that, notwithstanding any other provision of this contract, the purchaser shall not be obligated to complete the purchase of the property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the seller has delivered to the purchaser a written statement issued by the Federal Housing Commissioner setting forth the appraised value of the property (excluding closing costs) of no less than \$ which statement the seller hereby agrees to deliver to the purchaser promptly after such appraised value statement is made available to the seller. The purchaser shall, however, have the privilege and option of proceeding with the consummation of the contract without regard to the amount of the appraised valuation made by the Federal Housing Commissioner. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value or the condition of the property. The purchaser should satisfy himself/herself that the price and the condition of the property are acceptable. Why is

FHA Amendatory Clause

Real Estate Certification

20. This Addendum is not a sales contract or part of the sales contract. It is a separate agreement and does not make any agreement entered into by any of the parties in connection with the real estate transaction a part of, or attached to, the sales agreement.

How do you fill out an FHA addendum? In the FHA amendatory clause form, you have two parts: The actual FHA amendatory clause The FHA real estate certification The buyer and seller sign the first part of the FHA addendum (amendatory clause). The second part (real estate certification) is signed by the buyer, seller, listing agent and selling agent, if any are involved. The real estate certification objective is to ensure that the buyer and seller disclose the true and correct information about their sales price. In essence, the FHA's objective is to avoid buyers, sellers and their real estate agent to come up with side agreements to circumvent the purpose of the amendatory clause. With the real estate certification, all parties certify that the terms and conditions of the sales contract are true and accurate and, according to their knowledge, there are no other agreements between the parties related to the purchase of the property in question. Many sellers are reluctant to sign an FHA addendum form as the process can reveal that the property is being sold for more than its fair market value and the buyer can potentially back out of a good deal. This position is not entirely false.

Sellers aspire to sell their property for the best possible price so long as someone is ready and willing to pay for it. On the flip side, the FHA will not stay in the business of guaranteeing loans for long if buyers were buying based on speculation or for values not supported by the market conditions. We must also recognize that with the FHA supporting bank loans, sellers can tap into a larger pool of eligible candidates (even those who are first time home buyers or have lower credit scores). This can help increase a seller's chance of being able to sell his or her property. The higher demand can also help increase the appraisal value, which will benefit the sellers. Industry reports indicate that more than 50% of mortgages issued to buyers in the U.S. are FHA mortgages. In other words, sellers who feel that they cannot sell their property at their choosing price will potentially lose 50% of potential candidates. Articles Recommended For You!