

# SELLER ATTACHMENT

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*The pre-printed portion of this form has been drafted by the Arizona Association of REALTORS®. Any change in the pre-printed language of this form must be made in a prominent manner. No representations are made as to the legal validity, adequacy and/or effects of any provision, including tax consequences thereof. If you desire legal, tax or other professional advice, please consult your attorney, tax advisor or professional consultant.*



This attachment is intended to be given to the Seller prior to consummation of a Seller Financing Addendum for a credit transaction secured by a dwelling.

THIS ATTACHMENT IS NOT PART OF THE SELLER FINANCING ADDENDUM'S TERMS.

## MESSAGE TO SELLER

You are entering into a complex transaction governed by many State and Federal laws. Real estate brokers are not qualified, nor licensed, to ensure that the terms of your Seller Financing Addendum comply with these laws. You are advised to carefully read the below disclosures and consult with qualified licensed professionals to ensure that the terms of your Seller Financing Addendum comply with all applicable State and Federal laws.

### LOAN ORIGATION DISCLOSURE



**Sellers originating a residential loan must be registered and/or licensed as mortgage loan originators unless exempt under the Dodd-Frank Wall Street Reform and Consumer Protection Act.**

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") mandates that a loan originator for a consumer credit transaction secured by a dwelling must, when required by applicable State or Federal laws, be registered and/or licensed in accordance with those laws, including the Secure and Fair Enforcement for Mortgage Licensing Act (the "S.A.F.E. Act").

Although the definition of a "loan originator" under the Dodd-Frank Act is broad in scope, there exist two categories of seller financing excluded from the "loan originator" definition.

**Requirements of the first exemption include all of the following:** (1) the Seller originates financing for only one property in any 12-month period; (2) the Seller is a natural person, estate or trust; (3) the Seller has not constructed or acted as a contractor for the construction of a residence on the property as part of their ordinary course of business; (4) the financing does not result in negative amortization; and (5) the financing has a fixed rate or does not adjust for the first five years.

OR

**Requirements of the second exemption include all of the following:** (1) the Seller originates financing for no more than three residential properties in any 12-month period; (2) the Seller is a natural person or an organization, including a partnership, corporation, proprietorship, association, cooperative, trust, estate, or government unit; (3) the Seller has not constructed or acted as a contractor for the construction of a residence on the property as part of their ordinary course of business; (4) the loan is fully amortizing; (5) the financing has a fixed rate or does not adjust for the first five years; and (6) the Seller has determined that the borrower has the reasonable ability to repay the loan according to its terms per 12 CFR § 1026.43(c), which is available at <http://www.gpo.gov/fdsys/pkg/CFR-2013-title12-vol8/xml/CFR-2013-title12-vol8-part1026.xml>.

**Before consummating this transaction, it is the sole and exclusive duty of you, the Seller, to verify whether you are a "loan originator" as defined by the Dodd-Frank Act thereby requiring you to be registered and/or licensed in accordance with applicable State or Federal laws.**

### HOEPA DISCLOSURE



**Sellers originating a high cost mortgage as defined by the Home Ownership and Equity Protection Act may need to be registered and/or licensed as mortgage loan originators.**

The Home Ownership and Equity Protection Act ("HOEPA") applies to most types of consumer credit transactions secured by a consumer's principal residence. Before concluding if you, the Seller, are exempt from the definition of a "loan originator," you must determine whether the transaction you are originating is subject to HOEPA coverage, and if so, whether the transaction is covered by the high-cost mortgage provisions of HOEPA.

**Sellers originating a high-cost mortgage may not be exempt from the definition of a "loan originator," meaning that you, the Seller, would need to be registered and/or licensed in accordance with applicable State or Federal laws before engaging in the business of residential mortgage loan origination.**

The complete 2013 HOEPA rule, including the Official Interpretations, is available at <http://www.consumerfinance.gov/regulations/high-cost-mortgage-and-homeownership-counseling-amendments-to-regulation-z-and-homeownership-counseling-amendments-to-regulation-x/>.



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**SAMPLE**  
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# SELLER FINANCING ADDENDUM CREDIT TRANSACTION SECURED BY A DWELLING\*

## SELLER PROVIDING FINANCING FOR THREE OR FEWER RESIDENTIAL PROPERTIES IN ANY 12-MONTH PERIOD

\*Dwelling means a residential structure that contains one to four units. The term includes an individual condominium unit, cooperative unit, manufactured home and mobile home, if it is used as a residence. (An Arizona real estate licensee is permitted to act in the sale of a used mobile home when the mobile home is installed on the real property and listed in a contract for transfer of an interest in real property executed by its owner. A.R.S. § 41-2178(B)(1).)

 <p>ARIZONA association of REALTORS® REAL SOLUTIONS. REALTOR® SUCCESS.</p>	<p>The pre-printed portion of this form has been drafted by the Arizona Association of REALTORS®. Any change in the pre-printed language of this form must be made in a prominent manner. No representations are made as to the legal validity, adequacy and/or effects of any provision, including tax consequences thereof. If you desire legal, tax or other professional advice, please consult your attorney, tax advisor or professional consultant.</p>	 <p>REALTOR® EQUAL HOUSING OPPORTUNITY</p>
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1. Seller: \_\_\_\_\_
2. Buyer: \_\_\_\_\_
3. Premises Address: \_\_\_\_\_
4. Date: \_\_\_\_\_

5. The following additional terms and conditions are hereby included as a part of the Contract between Seller and Buyer for the above referenced Premises.

7. **SELLER VERIFICATION**

- 8. Seller is a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust or government unit.
- 9.
- 10. Seller is providing financing for the sale of three or fewer residential properties in any 12-month period.
- 11. Seller owns the property securing the financing.
- 12. Seller has not constructed or acted as a contractor for the construction of a residence on the property as part of their ordinary course of business.
- 13.
- 14. Seller has made a reasonable and good faith determination at or before consummation that the borrower will have a reasonable ability to repay the loan according to its terms as required
- 15. by 12 CFR § 1026.43(c). <http://www.gpo.gov/fdsys/pkg/CFR-2013-title12-vol8/xml/CFR-2013-title12-vol8-part1026.xml>
- 16.
- 17. SELLER'S INITIALS REQUIRED \_\_\_\_\_

18. The following amount shall be financed by Seller and paid by Buyer: \$ \_\_\_\_\_.
19. Lien Position:  First  Second  \_\_\_\_\_
20. Type of Financing Instrument:
21.  Buyer shall execute a promissory note and deed of trust in favor of Seller. The deed of trust shall be recorded against the
22. Premises at the Close of Escrow.
23.  Other \_\_\_\_\_
24. Fixed Interest Rate: The unpaid balance shall bear interest at the rate of \_\_\_\_\_% per year, beginning at the Close of Escrow.

25.  If the agreed upon financing has an adjustable rate, this Seller Financing Addendum shall not be utilized. If considering an adjustable

26. interest rate, the parties are advised to immediately consult independent legal counsel and a licensed loan originator. Any adjustable

27. rate shall be determined by the addition of a margin to an index rate and is subject to reasonable rate adjustment limitations. The

28. index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or LIBOR.

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**Seller Financing Addendum — Three or Fewer Residential Properties >>**

29. **Term:** The financed amount is fully amortized over the life of the loan, which shall be \_\_\_\_\_ years, not to exceed thirty (30) years  
30. from Close of Escrow with no balloon payment.

31. **Payment Amount (Principal and Interest):** \$ \_\_\_\_\_.

32. The note  will  will not require payment to an impound account as follows: In addition to and at the time of the above-stated  
33. payment amount, Buyer shall pay an amount equal to 1/12 the annual real estate tax, 1/12 the annual hazard insurance premium,  
34. 1/12 annual assessment(s),  Other \_\_\_\_\_.

35. **Payment Intervals:** The first payment is due \_\_\_\_\_, and subsequent payments are due on the same day thereafter as follows:  
MO/DA/YR

36.  Monthly  Quarterly  Semi-annually  Annually  Other \_\_\_\_\_.

37. **Late Payments:** If late, Buyer shall pay late fees:  Yes  No. If Yes, any payment which is at least  ten (10) days or

38.  \_\_\_\_\_ days past due shall be subject to a late fee of \$ \_\_\_\_\_, not to exceed five percent (5%) of the  
39. scheduled payment. Payment(s) shall first be applied to accrued interest and late fees.

40. If the unpaid balance is not paid in full when due, the late fee per day will be \$ \_\_\_\_\_.

41. Any late payments received without applicable late fees shall be accepted and unpaid late fees shall not accrue interest.

42. **Account Servicing:** The parties shall use the services of a duly licensed entity or individual authorized to conduct account servicing.  
43. Payments on this loan and all prior encumbrances shall be made concurrently through a single servicing account to be maintained  
44. by the account servicing agent. The parties hereby instruct the servicing agent not to accept any payment without all other  
45. concurrent payments.

46. Account Servicing fee(s) shall be paid by  Buyer  Seller  \_\_\_\_\_

47. Account Setup fee(s) shall be paid by  Buyer  Seller  \_\_\_\_\_

48. Account to be serviced by: \_\_\_\_\_

49. \_\_\_\_\_

50. \_\_\_\_\_

51. **Credit Evaluation:** This sale is contingent upon Seller's approval of Buyer's credit. Buyer shall provide to Seller a current credit  
52. report from a credit reporting agency and a completed Uniform Residential Loan Application within three (3) days after acceptance of  
53. this Contract. Reasonable disapproval of Buyer's credit requires written notice from Seller to Escrow Company within three (3) days  
54. after receipt by Seller of current credit report and completed loan application.

55. **Due On Sale:** The unpaid balance, including accrued interest, fees and penalties, is immediately due and payable in the event that  
56. the Premises is sold, transferred, or conveyed in any manner, unless otherwise prohibited by law.

57. **Buyer's Liability:** On certain qualified residential property, the Seller understands that under Arizona law, the Buyer may have no  
58. personal liability in case of a default and that the Seller's only recourse may be the Premises as the sole and exclusive source for  
59. repayment of the debt. Should Buyer default, Seller may need to at Seller's own expense: (i) exercise their power of sale in order to  
60. recover legal title to the Premises; and (ii) initiate a forcible entry and detainer action to recover physical possession of the Premises.  
61. Seller is hereby advised of their inability to conduct a trustee's sale sooner than the ninety-first day after the date on which a notice  
62. of trustee's sale is recorded. Seller may additionally incur expenses such as unpaid property taxes, delinquent home owners'  
63. association fees and assessments, attorneys' fees and delinquent utility bills. Independent counsel should be consulted.

64. **SELLER'S INITIALS REQUIRED** \_\_\_\_\_  
SELLER SELLER

65. **Title Insurance:** Buyer shall furnish to Seller, at Buyer's expense, an American Land Title Association Standard Loan Insurance  
66. Policy or Vendor Owner Insurance Policy on the Premises in the full amount financed by Seller.

67. **Tax Service:** In the absence of a tax impound account, Buyer shall provide and pay for a tax service contract over the life of this  
68. loan which will provide a delinquency notice of any unpaid real estate tax to Seller, any successor in interest to Seller, and the  
69. account servicing agent.

70. **Hazard Insurance:** Buyer shall provide, maintain, and deliver to Seller hazard insurance with loss payable to Seller in the  
71. amount of: (i) all encumbrances against the Premises; or (ii) the replacement cost of the improvements built on the Premises,  
72. whichever is less.

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BUYER BUYER

