

FHA/VA FINANCING ADDENDUM CONSUMER VERSION

What is the purpose of the FHA/VA Financing Addendum (Form 2A4-T)?

FHA and VA loans are mortgage loans that are insured by the Federal Housing Administration and the US Department of Veterans Affairs, respectively.

The real estate sales contract of a purchaser who intends to seek FHA or VA financing in connection with their purchase must include, or be amended to include, an “amendatory clause” or “escape clause,” the wording of which is prescribed by FHA and VA regulation. The essential purpose of the FHA and VA amendatory/escape clauses is to give the buyer the right to terminate the sales contract if the sales price exceeds the appraised value of the Property.

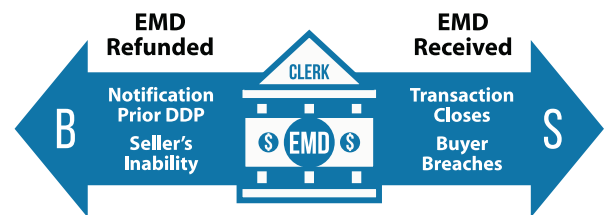
Form 2A4-T includes the prescribed wording of the FHA and VA amendatory/escape clauses. Form 2A4-T may be included as a part of the initial contract or can be added later if necessary.

If a buyer decides to seek FHA or VA financing *after* the contract has been signed, is the seller obligated to sign an FHA/VA Addendum?

No. Adding Form 2A4-T to an existing contract would be considered an amendment of the contract requiring mutual consent. There is nothing in the contract that would require a seller to agree to add Form 2A4-T.

Does the buyer’s right to terminate the contract if the property doesn’t appraise for the purchase price survive the end of the Due Diligence Period?

Yes. The right of a buyer to terminate under either the FHA or VA amendatory/escape clause due to a low appraisal is not limited to a particular period of time.



If a buyer elects to terminate a contract under either the FHA or VA amendatory/escape clause due to a low appraisal, is the buyer entitled to recover any Earnest Money Deposit and Due Diligence Fee?

The buyer is entitled to a refund of any Earnest Money Deposit paid. However, the buyer is not entitled to a refund of any Due Diligence Fee. The amendatory/escape clauses provide that the buyer will not incur any “penalty” as a result of a low appraisal. The seller’s retention of the Due Diligence Fee should not be viewed as a “penalty” to the buyer, since the buyer received the benefit of having the right to investigate the property and the transaction during the Due Diligence Period and to terminate the Contract for any reason or no reason during that time.

Does the buyer have the right to terminate the contract and receive a refund of their Earnest Money Deposit if the lender declines to make the loan for a reason unrelated to the appraisal?

No, not if the Due Diligence Period has ended. The buyer’s right to terminate under Form 2A4-T is limited to a single circumstance—a low appraisal. As noted above, Form 2-T does not contain a loan or appraisal contingency that would give a buyer the right to terminate the contract. Therefore, if the buyer does not terminate the contract prior to the expiration of the Due Diligence Period, the buyer’s failure to close due to the inability to obtain financing would be considered a breach of contract and the earnest money deposit would be payable to the seller.



Is the seller required to pay VA loan costs if the contract falls through due to the buyer’s inability to get the loan?

Likely not. As noted above, the seller’s agreement to pay the cost of certain inspections that the VA may require to be performed at the seller’s expense is subject to the limit set forth in Paragraph 8(i) of Form 2-T. The first sentence of paragraph 8(i) states: “Seller shall pay at Settlement \$ _____ toward any of Buyer’s expenses associated with the purchase of the Property...” This sentence may reasonably be interpreted to mean that any obligation for the seller to pay any inspection costs is contingent on the transaction closing, and that if the contract falls through, the seller would not be obligated to pay any such costs.

If the FHA or VA appraisal is low, is the seller in breach of contract if the seller refuses to reduce the purchase price to match the appraised value?

No. Although the seller may agree to reduce the purchase price, the seller is not obligated to do so.

If the seller will not agree to reduce the purchase price, the buyer has the option to complete the transaction for the agreed-upon purchase price, notwithstanding the low appraisal.