

# PROFESSIONAL SERVICES AGREEMENT

*[Purchase and Sale Agreement Executed]*

**THIS PROFESSIONAL SERVICES AGREEMENT** ("Agreement") is executed on the date specified on the signature page of this Agreement, by and among **MCFERRAN, BURNS & STOVALL, P.S. SHORT SALE LOSS MITIGATION GROUP** (hereinafter "Consultants"); Sellers, whose names appear on the signature page of this Agreement; Purchasers, whose names also appear on the signature page of this Agreement for the property specified and addressed on the signature page of this Agreement as well as Listing and Selling Brokers involved in the subject sale and purchase.

## W I T N E S S E T H:

**WHEREAS**, Consultants consist of attorneys licensed to practice real estate law in the State of Washington and other associates and legal associates employed by them; and,

**WHEREAS**, Sellers are the owners of certain real estate located in the State of Washington for which an accepted offer of Purchase and Sale has been received and accepted from Purchasers; and,

**WHEREAS**, Purchasers wish to purchase Sellers' property herein described, but understand that Sellers' performance under the terms of the Purchase and Sale Agreement is conditioned upon the acceptance by one or more lenders or lienholders of amounts less than what is owed them as the overall purchase price, including transaction costs, is less than the total amount owed; and,

**WHEREAS**, Sellers, Purchasers, Seller's Agent and Purchaser's Agent, instead of attempting to negotiate with lenders and lienholders themselves, have agreed to retain the professional services of the Consultants; and,

**WHEREAS**, Consultants, Sellers, Purchasers, Seller's Agent and Purchaser's Agent all wish to state with particularity the terms and conditions associated with their professional relationship in this written Agreement.

**NOW, THEREFORE**, in consideration of the mutual benefits to be derived, the parties, each by their signatures below, agree to retain the professional services of Consultants and Consultants agree to be bound by this Agreement upon acceptance of the engagement under the following terms:

A. The Consultants agree, upon written acceptance of this Engagement, to immediately undertake the duties of representing both Seller and Purchaser in the transaction contemplated between the affected property located as specified in this Agreement. Consultants do not accept an engagement to perform services under this Agreement until they have reviewed the matter and agree to accept the engagement in writing to the parties and seller has had an "in-person" or telephonic consultation with the law firm under its \$150.00 one time client consultation program.

B. Consultants agree to take any and all actions required by lenders and lienholders to secure a reduced amount due from those parties to coincide with the terms in the Purchase and Sale Agreement between the parties specified on the signature page of this Agreement.

C. Consultants are retained by and perform services for all parties to the proposed transaction. Both Seller and Purchaser agree that it is in the best interest of the transaction that Consultants be authorized to communicate with, provide information regarding the progress of the negotiations, and obtain strategic market valuation information from any and all licensed Real Estate Professionals involved in the overall transaction. Consultants will not be independently determining the fair market value of the affected property nor will consultants express any opinion as to the sufficiency, legality, or economic implications of the Purchase and Sale Agreement, Counter-offers, or modification requests thereto. Services are limited to only short sale negotiations under this Agreement.

D. Seller understands and agrees that they will be required to provide Consultants substantial amounts of personal financial information that may be required by lienholders to evaluate offerings presented to lenders and lienholders by Consultants. Consultants agree to respect the privacy of that information provided and agree to only utilize such information as necessary to achieve the purpose of this Agreement. Notwithstanding the provision of Section "C" above, Consultants agree not to disclose to any other party to this transaction (including Real Estate Professionals) any of Seller's financial information without specific written authorization from the Seller. Seller agrees that they shall be prompt in providing Consultants information required to obtain requested responses from Lenders.

E. All parties to this Agreement understand that Consultants herein are industry professionals providing negotiation services only to achieve a result that will allow the proposed transaction to proceed to closing.

**CONSULTANTS ARE NOT ACTING AS ATTORNEYS IN ANY REPRESENTATIVE CAPACITY UNDER THIS AGREEMENT AND ARE NOT PERFORMING SERVICES THAT WOULD RESULT IN A TYPICAL ATTORNEY-CLIENT RELATIONSHIP.**

**PARTIES UNDERSTAND THAT, BY THIS AGREEMENT, THEY ARE NOT RETAINING AN ATTORNEY TO REPRESENT THEM INDIVIDUALLY OR IN THEIR CAPACITY AS PURCHASER OR SELLER IN THIS TRANSACTION. THE ATTORNEY OR SUPPORT STAFF REPRESENT ONLY THE OVERALL TRANSACTION AND DO NOT REPRESENT EITHER THE SELLERS OR PURCHASERS OR ANY REAL ESTATE AGENTS INVOLVED IN THIS TRANSACTION IN ANY INDIVIDUAL CAPACITY.**

**FURTHER, SELLERS AND PURCHASERS UNDERSTAND THAT AS A RESULT, CONSULTANT WILL SHARE ALL INFORMATION ARISING FROM THIS AGREEMENT (EXCEPT AS DESCRIBED IN SECTION "D" ABOVE) TO ANY OTHER PARTY TO THIS AGREEMENT. THERE IS NO EXPECTATION OF PRIVILEGE BY ANY PARTY TO THIS AGREEMENT.**

**IN THE EVENT OF A DISPUTE BETWEEN THE PURCHASERS AND SELLERS, CONSULTANTS WILL NOT PROVIDE LEGAL REPRESENTATION TO EITHER PARTY OR ANY REAL ESTATE PROFESSIONAL.**

F. Consultants shall take actions customary in the industry as well as those required by specific lenders and lienholders to obtain reduction in the amount owed in order to allow the sale to proceed to closing. In that regard, the terms of the above-referenced Purchase and Sale Agreement are incorporated herein by reference as an integral part of this Agreement when not inconsistent with the terms of this Agreement.

G. Consultants shall keep all parties informed on a periodic basis as to the status of the negotiations with information provided to all parties through email communications only. This email communication is sent out to all parties asking to be included in the weekly message updates that occurs typically once per week during the term of the engagement.

H. Consultants shall promptly inform all parties of any offers or counteroffers by the lenders or lienholders. Sellers, Purchasers and Agents agree to be prompt in providing any additional information that may be required by the lenders or lienholders to Consultants to facilitate negotiations.

I. Consultants, in the course of negotiations, may be required to provide additional valuation information to the lenders and lienholders. Parties to this Agreement authorize the Consultants to obtain such information from either or both real estate licensees involved in this transaction.

J. Parties to this Agreement understand that lenders and lienholders are not in any fashion obligated to engage in short sale negotiations with Sellers or Purchasers and, in some cases, lenders presently may choose not to do so. Parties further understand that Consultants can make no representation or warranty that the proposed transaction will be accepted by the lender or lienholder. In such case, Consultants, upon email communication with the parties, will advise of its inability to advance or complete the negotiation, and may unilaterally terminate representation. At such time, this Agreement will terminate and no further services will be performed.

K. Parties to this Agreement understand that lenders and lienholders are under no duty or formal obligation as to the length of time they may take to negotiate, answer or provide an offer or counter-offer to parties in a transaction. Lenders may take as long as four to six months (or more) in some instances. Consultants cannot predict the length of time that may be required to complete negotiations for the short sale that is the subject of this Agreement.

L. Parties to this Agreement also understand that Consultants are performing the duties specified herein and are doing so on a fixed fee contingent basis anticipating a closing of the proposed transaction. The law firm is not paid unless the transaction successfully closes. The fixed fee for services is as specified below and requires that certain ancillary services be placed with certain title and escrow companies. Parties to this Agreement understand that Consultant's ability to provide this service at these low rates is because of economies they achieve by electronic data transfer mechanisms with other third party service providers that allow Consultant's economies of operation.

M. On occasion Consultant may accept properties with liens that exceed two (2) in number. The fee schedule on the next page anticipates no more than two liens. All engagements are not accepted by Consultants until they have had the opportunity to review the terms of the proposed transaction. Fees for such specialized services will be quoted on an engagement-by-engagement basis. Parties may expect that each lien release (above two) will be charged at the rate of \$500.00 per lien release.

## **Seller's Requirement To Update Documentation**

**Sellers understand and agree to continually update their paycheck stubs from employment and bank statements during the course of the short sale negotiations. Sellers acknowledge that they will be required to provide a full set of this documentation at the time of initial submission of the short sale proposal by consultants.**

**Lenders will require that these be updated on a monthly basis. Sellers herein agree to provide to Consultants on the first of each month during negotiations copies of paycheck stubs and all pages of bank statements on an on-going basis.**

**Lenders are very sensitive to having current documentation to substantiate income and negotiations can be delayed without such timely documentation.**

N. Parties to the transaction acknowledge that Consultants' services may result in a reduction in the amount owed, but the transaction contemplated herein may not close. Sellers herein, by their signatures, agree that should the short sale negotiations services contracted for herein result in a sale to another third party purchaser not a party to this transaction or to the original purchaser in a subsequent secondary short sale transaction that the Consultants' fee structure contemplated herein shall transfer and be paid from that transaction as well.

O. Consultants make no representation or warranty that the actions to be undertaken in this Agreement will result in the sale of the subject property. Seller and Purchaser understand and agree that the Consultants' ability to obtain short sale relief from the foreclosure of the subject property is contingent on the independent actions and decisions of parties having interests in the Home, including, but not limited to, lenders, loan servicers, taxing authorities, etc., who are outside the control of the Consultants and that Consultants' success may be precluded as a result of the failure of such third parties from cooperating or timely responding. Consultants are hereby released and held harmless from any and all liability arising from, connected with or relating to the lack of cooperation, agreement or timeliness of any such third parties. Consultants' may give Notice of Termination of Professional Services when further services are demanded, but in Consultants' professional opinion, those requested further services will prove fruitless.

P. The captions in this Agreement are for convenience only and are not to be considered in construing this Agreement.

Q. If any portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law.

R. This Agreement may be executed in counterparts, each of which, when taken together, shall be deemed one fully executed original.

S. This Agreement may be executed and delivered by exchange of facsimile or e-mail copies showing the signatures of all parties and those signatures need not be affixed to the same copy. The facsimile or email copies showing the signatures of all parties will constitute originally signed copies of the same Agreement requiring no further execution.

T. In the event any legal action, including appeal of same, is brought by any party to enforce the terms hereof, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorney fees as determined by the court or other decision-making body. Venue shall be the Pierce County, Washington.

U. Purchaser, Seller and Real Estate Professionals understand and agree that these services may be provided in addition to title, escrow and legal services if requested. This Agreement is related only to the Short Sale Negotiations and shall not affect the Consultants' duties undertaken in other capacities, if any. Nothing in this Agreement alters the requirements and duties undertaken in performing title and escrow services related to the subject property nor does it preclude legal representation in unrelated matters involving any of the parties.

V. Purchaser, Seller and Real Estate Professionals understand that Law Firm's ability to provide these services at a very competitive rate is predicated upon its ability to contain costs. All parties understand that only certain title and escrow companies may perform ancillary services of title and escrow for this transaction as specified in Law Firm's "Sellers Short Sale Information Booklet" as well as "Real Estate Broker's Information Booklet" that specifies current approved providers for title and escrow services for transactions negotiated by Law Firm.

## **RISKS TO SELLERS OF SHORT SALE PROPERTY**

In conjunction with the Professional Services Agreement, the following information is provided. Such information is general in nature and has been prepared by the Consultants and is meant only to alert the Short Sale Sellers and other parties to potential issues, but is not specific advice as to the Seller's specific situation. You should consult your own legal counsel for specific advice as to your situation.

**Tax Ramifications** Presently, through December 31, 2012, if you owned and occupied your home as your principal residence for two years or more, then you may be exempt from recognizing as income the difference between what the bank accepts to clear your mortgage/deed of trust and what is actually owed to the bank. If you have not owned and occupied such dwelling for two years, you might be liable for reporting such "forgiveness of debt" as income. You should consult with your attorney or tax advisors for specific advice for your situation.

**Liability Ramification** If your home is sold in a "short sale" (the lender takes less than the lender is owed) oftentimes the lender requires a "Reaffirmation" of the debt. Even if there is no reaffirmation, the residual debt due the lender is not necessarily extinguished by a short sale under Washington State law.

Thereafter, the lender or someone they sell or assign their rights to, may demand from you what the lender lost. However, if your residence is foreclosed through a Trustee's Sale, Washington law extinguishes any right of the foreclosing lender to pursue you for a deficiency. Non-foreclosing lenders (such as lenders in second position) may still sue you under the promissory notes in a foreclosure situation as well as a short sale situation. Accordingly, signing any reaffirmation agreement may not be in your best interest and you should seek legal counsel prior to signing such agreement for specific advice for your situation. Even if you do not sign any agreement, you need to know that, absent a very clear written confirmation by the lender that you are released of any liability, you should assume that you are not so released from your obligation to pay. We suggest that you consult with an attorney on these matters.

**Credit Ramifications** It is virtually certain that any foreclosure or short sale will seriously damage your credit rating or credit scores and impair your ability to obtain future credit, mortgages or loans. Credit scores are also used in other industries, and can influence, for example, insurance premiums, security clearances, apartment rentals, and job screenings. Paying your loan timely and staying current will likely positively affect your future credit.

**Profits** If this is a short sale, in almost all situations, the lender requires that you not receive any money from the sale. It is possible that you may have to bring money to escrow to facilitate the short sale. If anyone is promising you money in a "side agreement" or a deal not disclosed to the lender, such agreement may be fraudulent. Please inform your Consultants of any side deals from a buyer and seek the advice of an attorney as such arrangements are possibly invalid and/or unenforceable and could subject you to civil and criminal proceedings and penalties.



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www.mbs-shortsales.com

**SHORT SALE LOSS MITIGATION GROUP**

**SHORT SALE PROFESSIONAL SERVICES**  
**AGREEMENT**

**SIGNATURE AND DATA PAGE**

Property Address: \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Purchase and Sale Agreement Date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**Consultants' contract with the parties herein under the following understanding) (check which apply).**

- In the event that Bank or Lender does not pay all or part of the negotiation fee, consultants' professional fee as shown on the fixed fee sheet will be paid from the closing of the transaction by **Purchaser**;
- In the event that Bank or Lender does not pay all or part of the negotiation fee, consultants' professional fee as shown on the fixed fee sheet will be paid from the closing of the transaction by **Seller**;
- In the event that Bank or Lender does not pay all or part of the negotiation fee, consultants' professional fee will be paid from the closing of the transaction by **Listing Agent**;
- In the event that Bank or Lender does not pay all or part of the negotiation fee, consultants' professional fee as shown on the fixed fee sheet will be paid from the closing of the transaction by **Selling Agent**; or,
- In the event that Bank or Lender does not pay all or part of the negotiation fee, consultants' professional fee as shown on the fixed fee sheet will be paid by **Listing Agent and Selling Agent sharing equally** the fee charged.
- In the event that Bank or Lender does not pay all or part of the negotiation fee, consultant's professional fee will be paid in the following fashion:

Pricing Schedule: \$995.00 for properties up to \$150,000.00/\$1,495.00 for properties from \$150,000.00 to \$500,000.00/\$1,995.00 for properties over \$500,000.00.

**SELLER(S):**

**PURCHASER(S):**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

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(Signature)

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(Print Name)

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Address:  
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Phone: (\_\_\_\_) \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_

Email #1: \_\_\_\_\_

Email #1: \_\_\_\_\_

Email #2: \_\_\_\_\_

Email #2: \_\_\_\_\_

**LISTING AGENT:**

**SELLING AGENT:**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

Phone: (\_\_\_\_) \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_

Email #1: \_\_\_\_\_

Email #1: \_\_\_\_\_

Email #2: \_\_\_\_\_

Email #2: \_\_\_\_\_

**CONSULTANTS:**

**McFerran Burns & Stovall, P.S.  
Loss Mitigation Group**

By: \_\_\_\_\_  
Authorized Signatory

**For document submission: [docs@mbs-shortsales.com](mailto:docs@mbs-shortsales.com)**