

VA ESCAPE CLAUSE

- The purpose of this clause is to protect the veteran from paying more than the appraised (reasonable) value of the property
- This is a requirement of VA (38CFR36.4303(k)(4))
- The veteran will incur no penalty for canceling
- Buyer(s) and Seller(s) acknowledge this form

“It is expressly agreed that, notwithstanding any other provisions of this contract, the purchaser shall not incur any penalty by forfeiture of earnest money or otherwise be obligated to complete the purchase of the property described herein, if the contract purchase price or cost exceeds the reasonable value of the property established by the Department of Veterans Affairs. The purchaser shall, however, have the privilege and option of proceeding with the consummation of this contract without regard to the amount of the reasonable value established by the Department of Veterans Affairs. (Authority: 38 U.S.C. 501, 3703(c)(1))”

- Veteran can proceed with the purchase regardless of value and pay the difference in cash from the Veteran's own resources
- Either party can cancel the contract and return the Veteran's earnest money deposit
- Seller can reduce the price or renegotiate
- The parties can choose to share in the difference
- If the contract already has an agreement in place regarding value, the purchase may continue as agreed (contract amendment dates have precedence)
- Purchase is still subject MPR's and clear termite and any other required warranties (new construction)
- The wording of this clause is dictated by Federal Regulation and should not be changed
- The law and regulation state that no loan shall be guaranteed unless the clause is signed by both buyer and seller
- This could invalidate the clause altogether and thereby cancel any VA Guaranty

VA Assumption

- All VA loans are fully assumable with qualification
- Anyone (not necessarily a Veteran) can assume a VA loan
- Occupancy is not required by the assumer, and it can be for an investment
- This process is called a Release of Liability (ROL)
- VA loan servicers process the ROL
- Both seller and buyer must request the ROL from the servicer
- The assumer (buyer) will be required to pay a .5% VA Funding Fee (unless an exempt Veteran) plus a processing fee
- The buyer is assuming the remaining balance of the loan as well as the remaining term
- If the purchase price exceeds the remaining balance on the VA loan, the buyer can obtain secondary financing to provide the difference to the seller (Veteran)
- The terms on secondary financing must be in general conformance to the VA loan, i.e., fully amortize, no balloon, must be assumable
- If the Veteran sells to another Veteran, the buyer/assumer can substitute their entitlement
- This is called a Substitution Of Entitlement (SOE)
- After the servicer processes the ROL, it is then sent to VA to process the SOE and transfer the full obligation to the buyer
- Both Seller and Buyer must request this in writing during the assumption process
- The Buyer must have sufficient remaining entitlement to cover the original loan

PROS

- In a difficult market this could assist a Veteran that must move or face early termination of their loan (foreclosure)
- A low interest rate VA loan may be advantageous in an increasing rate market and of substantial value as a sales factor
- This is a very good option for a Veteran that may never use entitlement again

CONS

- Veteran's entitlement is tied to that home until the VA loan has been paid in full (or sold) and only the liability for the loan is removed
- The assumer can let someone else assume the loan in the future
- Any future assumers might default on the loan and the Veteran's entitlement is gone unless the Veteran repays VA's loss