

## **PROPERTY DAMAGE ADDENDUM TO LOUISIANA RESIDENTIAL AGREEMENT TO BUY OR SELL**

BY:

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Many residential and commercial properties were partially or substantially damaged by Hurricane Laura. This article addresses issues that Buyers and Sellers should consider when natural disasters strike during a pending real estate transaction. A sample amendment to the Louisiana Residential Agreement to Buy or Sell with several options for Buyers and Sellers is provided.

**1. Does the mandatory Louisiana Residential Agreement to Buy or Sell (“RPA”) form provide an automatic extension of the contract deadlines because of natural disasters like Hurricane Laura?**

**Short Answer:** No, but Buyers and Sellers may want to consider an amendment to the Louisiana Residential Agreement to Buy or Sell. A sample amendment is provided. This sample form is not a mandatory form.

The RPA form does not contain an Act of God or Fortuitous Event Clause which might provide an automatic extension. In the absence of such a provision, it is possible that the RPA could be deemed in default upon the expiration of the deadline for closing, despite the occurrence of such disaster. Generally, there is no Louisiana law that specifically grants purchasers in private contracts an automatic extension of time to perform such obligations in the event of a natural disaster. However, the parties may certainly agree in writing to extensions of deadlines in the RPA. Also, government Orders or the concepts of equity may impact the granting of additional time to complete a transaction. See [Transaction Guidance After a Natural Disaster](#) published by the Louisiana REALTORS® for further discussion.

If the Buyer and Seller are agreeable, an amendment of the RPA could be signed. A sample amendment with several options Buyers and Sellers can consider is attached. An annotated version with explanation on using the form is also attached.

**2. A Buyer and Seller signed an RPA, but before the closing, Hurricane Laura struck and damaged the property. What happens with an insurance claim for the damage to the property?**

**Short Answer:** It depends on the language of the insurance policy and whether the claim is assigned to the Buyer. The lender may also be involved if there is a mortgage on the property.

Many insurance policies contain “anti-assignment” clauses which state the policy itself cannot be assigned without the consent of the insurance company. However, a post-loss claim where the

assignment is made after the loss event may be assignable.<sup>1</sup> The specific contract language of the insurance policy should be reviewed to determine the rights and obligations of the parties.

Further, if the Seller has a mortgage on the property, the Seller will need to consult with his or her lender regarding the damage to the property and making an insurance claim. Many mortgages include a provision that insurance proceeds will be assigned to the lender.<sup>2</sup> In such a case, the payment checks from the insurance company will be made payable to both the Seller and the lender. The lender will hold the insurance proceeds and disburse payments of the insurance proceeds to the homeowner as repairs are incrementally made to the property. Depending on the extent of the required repairs, this process may cause delays.

The RPA does not address assignment of insurance claims. Without an assignment, only the Seller would be able to bring a claim for loss or damages under an insurance policy that was in place at the time of the damage, because the Buyer would not have standing to bring such a claim. In such an instance, a Seller could reduce the purchase price by the amount of the claim that the Seller stood to recover, in order to put the Buyer in the same place that he or she would have been had no loss occurred.

If permissible by the insurance policy and lender, if there is a mortgage on the property, the Seller may assign the insurance claim to the Buyer. Then, the Buyer would have the right, per the assignment, to collect the proceeds of the insurance claim and make the repairs to the property. The sales price would not be reduced. The parties may consider using the sample addendum to the RPA to put their agreed upon terms in writing.

**3. My property sustained flood damage in Hurricane Laura. I have flood insurance through the National Flood Insurance Program (NFIP). Where can I find information on next steps and guidance for handling my claim?**

**Short Answer:** Contact your insurance agent to report the loss as soon as possible. Also see [FEMA guidance](#) related to Hurricane Laura, flood insurance claims, and what to expect during the claims process. The NFIP Claims Handbook may be found [here](#).

**4. If there are no utilities to the property due to a natural disaster like Hurricane Laura, can the closing still go forward?**

**Short Answer:** Maybe, but there may be a delay until utilities are restored.

*Residential Real Estate:*

The RPA provides the seller must provide utilities for the due diligence period and the final walkthrough of the property. The seller must also provide immediate access to the property.<sup>3</sup> If the utilities are not provided or available the deadline for the due diligence period is extended until the utilities are provided.

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<sup>1</sup> See *In re Katrina Canal Breaches Litig.*, 645 F.3d 703, 706 (5th Cir. 2011).

<sup>2</sup> See La. R.S. 9:5386 (a mortgage may include a pledge of the mortgagor's rights to insurance).

<sup>3</sup> See RPA, lines 175-180.

*Commercial Real Estate:*

For commercial properties, this will be very contract-specific as to whether loss of utilities will allow for any delay under the circumstances. The specific contract should be examined carefully.

DISCLAIMER

Information and additional guidance and orders regarding the pandemic are being issued daily. The information in the article was last updated on September 22, 2020.

These materials are to be used for informational purposes and should not be construed as specific legal advice. These materials are not designed to cover every aspect of a legal situation for every factual circumstance that may arise regarding the subject matter included.

This publication is for reference purposes only and association members or other readers are responsible for contacting their own attorneys or other professional advisors for legal or contract advice. The comments provided herein solely represent the opinions of the authors and is not a guarantee of interpretation of the law or contracts by any court or by the Louisiana Real Estate Commission.

Property Description (Address, City, State, Zip) \_\_\_\_\_

PROPERTY DAMAGE ADDENDUM

The following terms and conditions are hereby incorporated in and made a part of as an addendum to, the Louisiana Residential Agreement to Buy or Sell (the "Agreement") in which \_\_\_\_\_ is referred to as BUYER and \_\_\_\_\_ is referred to as SELLER (collectively, the "Parties"). The Agreement is attached hereto.

The BUYER and SELLER acknowledge that the Property was damaged as a result of Hurricane Laura. The Property sustained the following damage: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (the "Damage").

Accordingly, some of the terms and conditions of the Agreement are not possible or practical as a result of the Damage, the parties therefore agree as follows.

- 1.  If checked: BUYER and SELLER agree to postpone the Act of Sale set forth in Lines 37-41 of the Agreement until \_\_\_\_\_.
- 2.  If checked: BUYER and SELLER agree to postpone the Act of Sale set forth in Lines 37-41 of the Agreement until \_\_\_\_\_ ("New Closing Date"). BUYER and SELLER agree to extend deadlines in the following sections in the Agreement to accommodate repair to the Damage as follows:
  - a. Contingency for Sale of Buyer's Other Property (Lines 46-48) for a maximum of \_\_\_ days or \_\_\_ days prior to the New Closing Date, whichever is earlier;
  - b. Financing (Lines 77-85) for a maximum of \_\_\_ days or \_\_\_ days prior to the New Closing Date, whichever is earlier;
  - c. Appraisals (Lines 97-105) for a maximum of \_\_\_ days or \_\_\_ days prior to the New Closing Date, whichever is earlier;
  - d. Inspection and Due Diligence Period (Lines 161-200) for a maximum of \_\_\_ days or \_\_\_ days prior to the New Closing Date whichever is earlier.
- 3.  If checked: BUYER and SELLER agree to postpone the Act of Sale set forth in Lines 37-41 of the Agreement until \_\_\_\_\_ or until \_\_\_ days after utilities are restored to the Property, whichever is earlier.
- 4.  If checked: SELLER and BUYER agree that the following repairs of the Damage will be completed by SELLER and inspected by the appropriate authorities, if required by law no later than \_\_\_\_\_ (the "Repair Date"): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (the "Repairs"). Failure of the SELLER to make the agreed upon Repairs is a default of the Agreement and subject to all remedies contained in Lines 258-266 of the Agreement.
- 5.  If checked: SELLER and BUYER agree the Purchase Price in Lines 33-35 will be reduced to \_\_\_\_\_
- 6.  If checked: SELLER and BUYER agree to the following terms: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THE TERMS SELECTED AND PROVIDED HEREIN SUPERSEDE THE EXISTING TERMS OF THE AGREEMENT ALL OTHER PROVISIONS OF THE AGREEMENT REMAIN IN FULL FORCE AND EFFECT.

X \_\_\_\_\_  
Buyer's Signature Date

X \_\_\_\_\_  
Seller's Signature Date

\_\_\_\_\_  
Print Buyer's Full Name (First, Middle, Last)

\_\_\_\_\_  
Print Seller's Full Name (First, Middle, Last)

X \_\_\_\_\_  
Buyer's Signature Date

X \_\_\_\_\_  
Seller's Signature Date

\_\_\_\_\_  
Print Buyer's Full Name (First, Middle, Last)

\_\_\_\_\_  
Print Seller's Full Name (First, Middle, Last)

DISCLAIMER

This sample form is to be used for informational purposes and should not be construed as specific legal advice. These materials are not designed to cover every aspect of a legal situation for every factual circumstance that may arise regarding the subject matter included.

Association members or other readers are responsible for contacting their own attorneys or other professional advisors for legal or contract advice. The sample form is not a guarantee of interpretation of the law or contracts by any court or by the Louisiana Real Estate Commission.

Property Description (Address, City, State, Zip) \_\_\_\_\_

PROPERTY DAMAGE ADDENDUM [Annotated]

The following terms and conditions are hereby incorporated in and made a part of as an addendum to, the Louisiana Residential Agreement to Buy or Sell (the "Agreement") in which \_\_\_\_\_ [Buyer] is referred to as BUYER and \_\_\_\_\_ [Seller] is referred to as SELLER (collectively, the "Parties"). The Agreement is attached hereto.

The BUYER and SELLER acknowledge that the Property was damaged as a result of Hurricane Laura. The Property sustained the following damage: \_\_\_\_\_

\_\_\_\_\_ [describe all damage the Property received] \_\_\_\_\_

\_\_\_\_\_ (the "Damage").

Accordingly, some of the terms and conditions of the Agreement are not possible or practical as a result of the Damage, the parties thereafter agree as follows.

1.  If checked: BUYER and SELLER agree to postpone the Act of Sale set forth in Lines 37-41 of the Agreement until [fill in date of Closing] \_\_\_\_\_. Check this box if the parties ONLY want to postpone the deadline for signing the Act of Sale. **The closing is just delayed in this section, the BUYER and SELLER are not given additional rights to terminate the Agreement.**
2.  If checked: BUYER and SELLER agree to postpone the Act of Sale set forth in Lines 37-41 of the Agreement until until [fill in date of Closing] ("New Closing Date"). BUYER and SELLER agree to extend deadlines in the following sections in the Agreement to accommodate repair to the Damage as follows:
  - a. Contingency for Sale of Buyer's Other Property (Lines 46-48) for a maximum of \_\_\_\_ days or \_\_\_\_ days prior to the New Closing Date, whichever is earlier;
  - b. Financing (Lines 77-85) for a maximum of \_\_\_\_ days or \_\_\_\_ days prior to the New Closing Date, whichever is earlier;
  - c. Appraisals (Lines 97-105) for a maximum of \_\_\_\_ days or \_\_\_\_ days prior to the New Closing Date, whichever is earlier;
  - d. Inspection and Due Diligence Period (Lines 161-200) for a maximum of \_\_\_\_ days or \_\_\_\_ days prior to the New Closing Date whichever is earlier.

Check this box if the parties want to postpone the deadline for signing the Act of Sale AND other deadlines in the Agreement for:

- a. BUYER to sell other property – Contingency for Sale of Buyer's Other Property (Lines 46-48);
- b. BUYER to obtain Financing – Financing (Lines 77-85);
- c. BUYER to obtain an appraisal – Appraisals (Line 97-105);
- d. BUYER to inspect the Property or perform inspections – Inspection and Due Diligence Period (Lines 161-200)

The deadlines will be extended for the maximum of the number of calendar days filled in the blank in this section. To ensure that the extended deadlines do not exceed the new date of the Closing, the extended deadlines cannot be later than the agreed upon calendar days prior to the Closing. The remainder of the Agreement remains as written. **The Closing and other deadlines are just delayed in this section, the BUYER and SELLER are not given additional rights to terminate the Agreement.**

3.  If checked: BUYER and SELLER agree to postpone the Act of Sale set forth in Lines 37-41 of the Agreement until [fill in date of Closing] \_\_\_\_ or until [number of days after utilities are turned on prior to Closing] days after utilities are restored to the Property, whichever is earlier. This option can be used if the delay needed is primarily for return of utilities.
4.  If checked: SELLER and BUYER agree that repair of the following Damage will be completed inspected by the appropriate authorities, if applicable by law no late than \_\_\_\_\_ [deadline for repair] \_\_\_\_\_ (the "Repair Date"): \_\_\_\_\_

