

VA Lenders Handbook (VA Pamphlet 26-7), Chapter 9, Topic 2 — Escape Clause and Notice of Value (NOV)

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2. Escape Clause and Notice of Value (NOV) Change Date July 30, 2019 • This chapter has been revised in its entirety. a. Sales Contract The Escape Clause must be contained in the sales contract for all VA-guaranteed loans. The lender is responsible for ensuring that the paragraph is in the sales contract prior to closing. In the event the clause is not in the sales contract, VA may not guaranty the loan. b. Builders and Realtors The builders/realtors that initiate contracts on new construction must ensure that the Escape Clause is in the contract and the contract is signed by the Veteran and seller. c. Upgrades Upgrades are not considered earnest money and the builder is not required to refund this money. When the NOV is below the sales contract price, this clause protects the Veteran with negotiation of the sales contract. d. Escape Clause If the sales contract was signed by the Veteran prior to receipt of the NOV, the contract must include, or be amended to include, the clause below. “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 or 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 (38 U.S.C. 501, 3703(c)(1)).” This clause may be found at 38 C.F.R. 36.4303(k)(4) in its entirety. VA Pamphlet 26-7, Revised Chapter 9: Legal Instruments, Liens, Escrows, and Related Issues 9-5

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