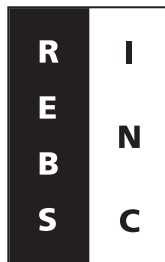


Your Guide to the

# CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT

& Related Forms



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(213) 739-8227 FAX (213) 480-0864  
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# INTRODUCTION

This booklet will discuss the entire revised C.A.R. California Residential Purchase Agreement and Joint Escrow Instructions (RPA) and related addenda. The purchase agreement and related addenda contain the essential terms for the formation of a real estate contract. A copy of the RPA and the addenda referenced within it, and others, can be found at the end of this booklet and should be used in conjunction with your reading.

The Purchase Agreement is adequately detailed to address most issues involved in the purchase and sale of real property. Extensive modification or drafting of additional paragraphs may be considered to be the unauthorized practice of law and should be avoided.



# I

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA-CA, PAGE 1)

### Title

CALIFORNIA  
ASSOCIATION  
OF REALTORS®

**CALIFORNIA  
RESIDENTIAL PURCHASE AGREEMENT  
AND JOINT ESCROW INSTRUCTIONS**  
For Use With Single Family Residential Property — Attached or Detached  
(C.A.R. Form RPA-CA, Revised 11/14)

The word “California” reflects the fact that the form is available for use throughout the state. The words “and Joint Escrow Instructions” reflect that the form includes an instruction to the escrow holder by both the buyer and the seller (see paragraph 20) and includes space for the escrow holder to sign for receipt of the document (see page 10 of the contract).

The subtitle indicates the form is intended for use with single family properties that may be attached or detached. Thus, the form is for condominiums as well as a house. If the property being sold contains multiple units, such as a duplex, triplex or fourplex, then the user should consider using another form such as the Residential Income Property Purchase Agreement (C.A.R. form RIPA).

Other forms are available for single family sales in specific situations. If the property is being sold by a decedent’s estate, a conservator or a guardian, then the Probate Purchase Agreement (C.A.R. form PPA) should be considered. If a personal property mobilehome or even a mobilehome that has been converted to real property, the user is advised to consider the Mobilehome Purchase Agreement (C.A.R. form MHPA). If the home is not yet built but will be constructed during escrow, especially in a subdivision, then the New Construction Purchase Agreement (C.A.R. form NCPA) is appropriate. If the property owner lives in the property and is facing foreclosure and the buyer is an investor purchaser, the Notice of Default Purchase Agreement (C.A.R. form NODPA) should be used. If the seller is selling vacant land and the buyer will be separately contracting with a builder to construct a residence, then the Vacant Land Purchase Agreement (C.A.R. form VLPA) is more appropriate.

Date Prepared: \_\_\_\_\_

The date inserted in the blank line is the date the form is prepared by the real estate licensee. The purpose for this line is to make it easy to refer back to the RPA when inserting another form into the transaction such as an addendum or counter offer.

Since it is not possible to know for sure at the time of preparation when the buyer and seller will sign, if at all, the date prepared is a more certain date for reference purposes than the date signed or the date the contract is entered into. Problems associated with identifying the contract by a signing date arise if multiple parties sign on different dates. Trying to identify the contract by the date it becomes binding on both parties is problematic as well since there is no contract formation date to refer to if the “other” form is a counter offer. Also, the contract formation date is not always evident from the RPA itself. As discussed in paragraph 32, contract formation does not occur on the final signature indicating acceptance but rather when the communication of that acceptance has been personally received by the person who made the last offer or counter offer, or that person’s agent. Ideally, this date will be noticed in the Confirmation of Acceptance paragraph or the Escrow Holder Acknowledgment paragraph on page 10, but these paragraphs are not always completed.

## Numbered Paragraphs

### 1. Offer

- |    |   |
|----|---|
| 1. | <b>OFFER:</b>   |
| A. | <b>THIS IS AN OFFER FROM</b> _____ (“Buyer”).   |
| B. | <b>THE REAL PROPERTY</b> to be acquired is _____, situated in _____ (City), _____ County, California, _____ (Zip Code), Assessor’s Parcel No. _____ (“Property”). |
| C. | <b>THE PURCHASE PRICE</b> offered is _____ Dollars \$ _____.  |
| D. | <b>CLOSE OF ESCROW</b> shall occur on _____ (date)(or _____ <b>Days</b> After Acceptance).  |
| E. | Buyer and Seller are referred to herein as the “Parties.” Brokers are not Parties to this Agreement.  |

The title of this paragraph identifies the document as being an offer. As such, it is capable of being accepted, as defined in paragraph 32, and creating a binding contract. Thus, initially the RPA is an offer. Only when signed by both parties and communication of acceptance occurs does it become a contract.

#### 1.A.

Here is where the identity of the buyers is revealed. If there is not enough room to write the names of all buyers then indicate that additional buyers will be named in an Addendum or by using the Additional Signature Addendum (C.A.R. form ASA) or even in paragraph 6 for Other Terms. If one or more of the buyers is an entity, such as a corporation or LLC, or a trustee of a trust, then make sure to include the Representative Capacity Signature Addendum (C.A.R. form RCSA) (see paragraph 19) to properly identify the buyer by a complete title. If the RCSA is used at the time the offer is made, it is acceptable to use an abbreviated name in paragraph 1, such as Buyer 1, trustee.

If there is going to be seller financing involved in the sale, it is essential that all buyers be properly identifiable so the seller has the ability to perform due diligence before agreeing to the financing.

The RPA does not permit the contract to be assigned without the prior consent of the seller (see paragraph 26). Merely inserting the words “or assignee” into paragraph 1.A. is not necessarily enough to signal the seller’s consent.

Adding the language “or nominee” is an old practice that some real estate licensees may remember. That practice has fallen out of favor because a nominee, unlike an assignee, is not bound to the agreement. Thus when a buyer uses this language, whether or not the buyer appoints a nominee to take the buyer’s place, there is a question as to whether an enforceable contract has been entered into in the first place since there may be no obligation to perform. The use of “or nominee” is not recommended.

Do not identify the buyers with anything that looks like a manner of taking title (e.g., husband and wife, an unmarried man etc.). There is no place in the agreement to designate vesting so that you will not be tempted to give tax or legal advice. This may also avoid any claim of discrimination based upon familial status under the Federal Fair Housing laws.

**1.B. Description: Clearly identify the property by address or legal description.**

**Real Property to be Acquired**

This is the description of the property for purchase. The description will likely be a property address. There is also a space for the assessor’s parcel number.

**1.C.**

This is the price the buyer offers to pay the seller.

It does not include closing costs, insurance premiums or funding fees that the buyer may also be required to pay.

**1.D. Close of Escrow**

Choose either a specific date for the close of escrow (COE) or a certain number of days after the offer is accepted for the close of escrow. Some buyers or sellers may have to close by a certain date for tax reasons (such as a tax deferred exchange or transfer of property tax base), employment transfers, or other personal reasons. If either party requires a “date specific” COE, be sure to address that in the contract. If a date certain close of escrow is important, make sure to check a calendar before filling in the date in this paragraph. Escrow cannot close on a Saturday, Sunday or legal holiday. If the COE is based on a number of days following acceptance, the contract provides that if the closing date falls on a Saturday, Sunday or legal holiday, the contractual COE will instead be on the next calendar day (see paragraph 30F).

**1.E.**

The RPA is an agreement between buyer and seller, not the brokers. Whether representing buyer or seller or both, a broker is not responsible for compliance with the terms of the RPA and should not be held responsible if either buyer or seller refuses or fails to meet one or more of their responsibilities. Brokers are referenced for purpose of confirming agency (see paragraph 2B and paragraph

B of the Broker Box on page 10) but this does not make the broker a responsible party under the RPA for any other purpose. Broker duties are also mentioned in other parts of the RPA, such as 10A(2) but such a mention merely reiterates certain statutory obligations and establishes rights as between buyer and seller if those legal duties have not been satisfied. Pursuant to paragraph 20C, brokers are limited parties to the escrow, not the underlying contract, and even then only a party to the escrow for the limited purpose of addressing compensation issues.

**2. AGENCY:**

- A. DISCLOSURE:** The Parties each acknowledge receipt of a  "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD).
- B. CONFIRMATION:** The following agency relationships are hereby confirmed for this transaction:  
 Listing Agent \_\_\_\_\_ (Print Firm Name) is the agent of (check one):  
 the Seller exclusively; or  both the Buyer and Seller.  
 Selling Agent \_\_\_\_\_ (Print Firm Name) (if not the same as the Listing Agent) is the agent of (check one):  the Buyer exclusively; or  the Seller exclusively; or  both the Buyer and Seller.
- C. POTENTIALLY COMPETING BUYERS AND SELLERS:** The Parties each acknowledge receipt of a  "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

**2. Agency:**

**2A. Disclosure**

Buyer and seller acknowledge prior receipt of a Disclosure Regarding Real Estate Agency Relationships (C.A.R. form AD). The requirement to deliver the AD form is a broker obligation. But, because failure to do so may have consequences affecting the buyer and seller, it is important for the parties themselves to acknowledge in the RPA that the duty was satisfied.

The AD form is titled "Disclosure Regarding Real Estate Agency Relationships" but it is merely a disclosure of the types of agency relationships possible in a real estate transaction, not a disclosure of the actual agency relationship applicable to the particular transaction. The actual agency relationship is revealed in paragraph 2.B.

Delivery of the AD form is the first written step required by Civil Code §§2079.13 et seq. This form is required to be presented (i) by the listing agent to the seller prior to taking a listing, (ii) by the buyer's agent to the buyer prior to signing a contract to purchase, and (iii) by the buyer's agent to the seller prior to presenting the offer (if the buyer's agent is not also the listing agent). In zipForm® there are three versions of the AD form. The content of all three forms is exactly the same and includes all of the required statutory language. The only difference is what names are pre-filled and which signature lines are blocked. AD-1 is to be used by the listing agent and the seller. AD-2 is to be used by the buyer's agent and the buyer, and may also be signed by the seller. AD-3 is for use by the buyer's agent and the seller. If AD-2 is given by the buyer's agent to the seller, there is no need to also use the AD-3.

**2.B. Confirmation**

A confirmation of the agency relationships applicable to the transaction needs to be signed concurrent with the execution of the RPA. The confirmation can be in the body of the RPA, as in paragraph 2.B. or on a separate form, Confirmation of Real Estate Agency Relationships (C.A.R. form AC) which should be attached

as an addendum to the RPA. This is the only confirmation that is required under Civil Code Section 2079.17 and no additional confirmation is needed if complete and accurate. If the parties do not agree to what is set forth in this paragraph or if this confirmation is blank or partially blank, then a counter offer will need to be written and the AC form must be attached to the counter offer. Since 2.B. is part of the contract between the buyer and seller, and since the brokers are not parties to the contract, the brokers' agreement to the confirmation of agency is found in paragraph B of the Broker Box below the parties' signatures on page 10.

**2.C. Potentially Competing Buyers and Sellers**

Paragraphs 2.A. and 2.B. establish the possible and actual agency relationships between the brokers and the particular parties to the transaction contemplated by the RPA. There are, however, agency relationships that exist outside of the particular transaction that may impact the decisions made by buyer and seller. The Possible Representation of More than One Buyer or Seller (C.A.R. form PRBS) form advises the principals of the fact that either broker may represent other principals who might compete with buyer and seller for the property being purchased. For example, an office representing the buyer may also represent other buyers who are or may be making offers on the same property. Similarly, the office representing the seller may have listings from other sellers whose properties are similar to seller's property, and therefore may appeal to the same types of buyers interested in the seller's property. By attaching the PRBS form to the RPA, there leaves little room for misunderstanding on these points. For those brokers whose policy is to make this type of disclosure even before the offer is made, brokers representing sellers may use Possible Representation of More Than One Seller (C.A.R. form PRMS) and brokers representing buyers may use Possible Representation of More Than One Buyer (C.A.R. form PRMB).

**3. FINANCE TERMS:** Buyer represents that funds will be good when deposited with Escrow Holder.

**3. Financing**

There are many different elements to financing the purchase price, some of which come direct from the buyer, such as the initial deposit, an increased deposit and down payment or balance of purchase price. The Buyer represents that the funds will be good when deposited with escrow. This representation is a promise by the buyer, not a contingency. If there is not enough money in an account to cover funds given to escrow, the buyer could be in breach of the contract and the Seller may be entitled to cancel the sale pursuant to paragraph 14C(2). The joint escrow instruction paragraph, 20D, obligates escrow to notify the brokers immediately if the deposit is not made or there are insufficient funds.

**A. INITIAL DEPOSIT:** Deposit shall be in the amount of .....\$ \_\_\_\_\_  
**(1)** Buyer Direct Deposit: Buyer shall deliver deposit directly to Escrow Holder by electronic funds transfer,  cashier's check,  personal check,  other \_\_\_\_\_ within 3 business days after Acceptance (or \_\_\_\_\_);  
**OR (2)**  Buyer Deposit with Agent: Buyer has given the deposit by personal check (or \_\_\_\_\_) to the agent submitting the offer (or to \_\_\_\_\_), made payable to \_\_\_\_\_. The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder within 3 business days after Acceptance (or \_\_\_\_\_).  
Deposit checks given to agent shall be an original signed check and not a copy.  
(Note: Initial and increased deposits checks received by agent shall be recorded in Broker's trust fund log.)

### 3.A. Initial Deposit

The RPA provides in 3.A.(1) that the buyer will make the deposit directly into escrow within the prescribed time. The initial deposit will be made by an electronic fund transfer, unless the box is checked indicating the deposit will be made by cashier or personal check. The most common method of electronic transfer at the time of this writing is by wire transfer. However, with changes in technology, other methods of electronic transfer may be acceptable to the escrow holder so the buyer should confirm with escrow holder before using any method other than wire transfer.

An alternative method of making the deposit is provided for in paragraph 3.A.(2). When this option is checked, the buyer agrees that a personal check has already been given to the agent submitting the offer. Usually this is the buyer's agent but may be a dual agent or seller's exclusive agent on an in-house sale. If given to anyone else, that should be specified in the blank line. If the deposit is given to the agent, indicate to whom the check is made payable. This will usually be the broker or a title or escrow company. If an agent elects to receive a check from the buyer, it is important to remember the check should be an original and not a copy. If the check is cashed, the money becomes trust funds that cannot be commingled with a broker's own funds. Any violation may subject the broker to disciplinary action by the Real Estate Commissioner, including suspension or revocation of the real estate license. Deposits must be recorded in a broker's trust fund log whether or not they are cashed and placed into the broker's trust account or in a neutral escrow account. If the agent is in receipt of a check made payable to a third person or has been instructed in writing not to deposit until acceptance, the agent must still record receipt of the deposit in a trust log.

Regardless of whether the deposit is to be made by buyer directly or given to an agent, it must be placed in escrow by the third business day after the offer has been accepted unless the parties contractually agree to a different time period. An example of a different time period would be "until this back-up offer is in primary position" or "the inspection contingency has been removed."

If the agent is in receipt of the buyer's check, and the check is post-dated, although not illegal, the fact that there is a post-dated check may affect the seller's decision and must be disclosed.

**B. INCREASED DEPOSIT:** Buyer shall deposit with Escrow Holder an increased deposit in the amount of .....\$ \_\_\_\_\_ within \_\_\_\_\_ Days After Acceptance (or \_\_\_\_\_).  
If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount in a separate liquidated damages clause (C.A.R. Form RID) at the time the increased deposit is delivered to Escrow Holder.

### B. Increased Deposit

Sometimes a buyer's initial deposit is not large enough to provide incentive for the buyer to complete the purchase because the buyer might be willing to lose the relatively small amount of the deposit in case the buyer breaches. In such cases the buyer might be willing to increase the deposit during the escrow



period. The increase can happen within a specific number of days or upon a particular condition such as “upon removal of the inspection contingency.” As with the initial deposit, if the increased deposit is not made on time, seller is entitled to cancel the sale after first giving the buyer a Notice to Buyer to Perform (CAR form NBP).

However, if the parties agreed to liquidated damages in the contract (see paragraph 21B), the increased deposit will not be counted toward the amount of liquidated damages unless a separate receipt liquidated damage clause is signed or initialed at the time of the increased deposit (C.A.R. form RID complies with this requirement). In the event the new liquidated damage clause is not included with the increased deposit, the seller’s remedy for the buyer’s breach will be limited to the initial deposit amount only.

C.  **ALL CASH OFFER:** No loan is needed to purchase the Property. Written verification of sufficient funds to close this transaction IS ATTACHED to this offer or  Buyer shall, within **3 (or \_\_\_\_\_) Days** After Acceptance, Deliver to Seller such verification.

### C. All Cash Offer

This paragraph must be checked to apply.

Cash offers have become increasingly common. What was once a financing method limited to investors and the ultra-wealthy has spread to include many property types in many price ranges. If this paragraph is checked, the loan paragraphs in 3D and 3I are not applicable. The RPA requires the all cash buyer to give written verification of funds necessary to close at the time the offer is made but a box can be checked delaying the verification for 3 or some other specified calendar days following acceptance. If the buyer does not provide the verification in time, or the seller disapproves the verification, then the seller may cancel after first giving the buyer a Notice to Buyer to Perform (see paragraph 14C(2)).

Sometimes a buyer makes an all cash offer to make the offer appear stronger in a competitive market. If a buyer does not really have the ability to purchase the property with cash on hand, another way to write the offer would be to fill in the loan amount necessary in paragraph 3D but to then check the No Loan Contingency paragraph (2J4). This way, the buyer is accurately representing his/her intentions but informing the seller that the buyer will take the risk of not being able to get a loan. Essentially, the buyer will be removing the loan contingency simultaneously with making the offer.

Sometimes a buyer has sufficient cash to purchase the property but for financial reasons prefers to get a loan. If this type of buyer applies for and receives a loan in time to close escrow as specified in the agreement, the seller’s legal remedies are limited at best. If the all cash buyer decides not to purchase if a loan cannot be obtained, the seller may pursue that buyer for breach of contract.

Because some all cash buyers are less than forthcoming with their intentions, it is important for the seller to review the buyer’s verification of funds. There

is however no guarantee that a person entering into a contract will perform even if the verifications are sufficient.

**D. LOAN(S):**

- (1) **FIRST LOAN:** in the amount of .....\$ \_\_\_\_\_  
 This loan will be conventional financing or  FHA,  VA,  Seller financing (C.A.R. Form SFA),  assumed financing (C.A.R. Form AFA),  Other \_\_\_\_\_. This loan shall be at a fixed rate not to exceed \_\_\_\_\_% or,  an adjustable rate loan with initial rate not to exceed \_\_\_\_\_%. Regardless of the type of loan, Buyer shall pay points not to exceed \_\_\_\_\_% of the loan amount.
- (2)  **SECOND LOAN** in the amount of .....\$ \_\_\_\_\_  
 This loan will be conventional financing or  Seller financing (C.A.R. Form SFA),  assumed financing (C.A.R. Form AFA),  Other \_\_\_\_\_. This loan shall be at a fixed rate not to exceed \_\_\_\_\_% or,  an adjustable rate loan with initial rate not to exceed \_\_\_\_\_%. Regardless of the type of loan, Buyer shall pay points not to exceed \_\_\_\_\_% of the loan amount.
- (3) **FHA/VA:** For any FHA or VA loan specified in 3D(1), Buyer has **17 (or \_\_\_\_)** Days After Acceptance to Deliver to Seller written notice (C.A.R. Form FVA) of any lender-required repairs or costs that Buyer requests Seller to pay for or otherwise correct. Seller has no obligation to pay or satisfy lender requirements unless agreed in writing. A FHA/VA amendatory clause (C.A.R. Form FVAC) shall be a part of this transaction.

**D. Loans**

The most common way buyers purchase residential property is to make a deposit and down payment and finance the balance of the purchase price. More often than not, a single lender will provide the financing. There are times when two loans are needed. The default position in the RPA is that the contract is contingent upon obtaining the designated loan(s) specified in paragraph 3D (see paragraph 3J(2)). Paragraph 3D(1) addresses the terms of the primary loan needed to purchase the property. If that loan will be FHA or VA financing, then the third paragraph in this section will automatically apply. Paragraph 3D(2) addresses the terms of the secondary loan, if any, needed to purchase the property.

In both of these paragraphs, the default position is that the buyer will obtain a fixed rate loan using conventional financing. The default provisions may be altered to provide for FHA financing, VA financing, seller financing or assumed financing and the fixed rate default may be changed to an adjustable. Whether fixed or adjustable, the rate should be specified. Since it is possible to “buy down” the interest rate on a loan, an amount should be specified indicating the maximum points to be paid by buyer. In the event of seller financing or assumed financing, not only should the applicable box be checked but the applicable addendum (C.A.R. Form SFA or AFA) should be attached to the offer, completed and signed.

When completing the space for interest rate, it is preferable not to use the phrase “best available rate and terms or market rate.” Allow for market fluctuations by using the upper limits of what the buyer will pay. If the market is lower, the lender will use the current market rate and the buyer will not complain! If the seller feels the buyer’s proposed maximum rate is unrealistically low, the seller can counter with a higher specified rate.

There is no pre-printed option to select a “subject to” option and it is not recommended that this type of financing be written in to the contract without the advice of counsel. There is a significant liability for both the seller and the buyer on loans taken “subject to.” If a loan with a due on sale clause is

taken over “subject to” without the consent of the lender, the loan may be accelerated (called immediately due and payable). The buyer may lose the property to foreclosure if unable to secure new financing. In that situation, the seller may be held personally liable for the amount of the loan or the amount of the deficiency, if permitted by law. While California has adopted legal limitations on the lender’s ability to hold a seller personally liable following a foreclosure, those limitations do not apply to VA loans. The VA can hold the veteran borrowers liable for the loan unless there has been a substitution of eligibility and release of liability.

### **(3) FHA/VA**

Loans obtained under programs administered by the Federal Housing Administration (FHA) or Veteran’s Administration (VA) may contain restrictions on the amount of points or fees that a borrower is allowed to pay. Further, lenders under these programs may require the property to be in a particular condition prior to the loan being made and the buyer acquiring title. Consequently, as a condition of loan approval, the lender may require the seller to agree to pay for certain repairs to the property, such as those for wood destroying pests and organisms.

This paragraph gives the buyer a set period of time, defaulted to 17 days, to identify those costs the FHA or VA lender will require the seller to pay or conditions that must be met before the loan will be issued. Within that time, buyer shall provide notice to the seller of these lender requirements. Once on notice, the seller can decide whether to agree to these additional requirements. If the seller agrees, an addendum to the contract should be signed by both buyer and seller. The FHA or VA Notice and Addendum (C.A.R. form FVA) may be used to satisfy this notice requirement and the seller’s response to it. If the seller does not agree, the buyer will not be able to get the FHA or VA loan specified. In this case, if alternative financing cannot be arranged to allow the buyer to close escrow and the buyer has already removed the loan contingency, then the buyer will be in breach of contract. However, if the buyer has not yet removed the loan contingency, the buyer may exercise the right to cancel or can use this right as leverage to try to get the seller to agree to some or all of the terms requested (more like required) by the FHA/VA lender.

Lenders making VA or FHA loans have a regulatory obligation to include a clause allowing the buyer to cancel without penalty if the property does not appraise at the purchase price. Unfortunately, the lender has no authority to require the seller to agree to such a term after the contract has been entered into between buyer and seller. If the buyer has removed the appraisal contingency set out in the contract and the seller does not modify the contract by agreeing to the lender’s term, the buyer is at risk of being in default if the FHA or VA lender will not loan in the event of a low appraisal. CAR has created a form titled “FHA/VA Amendatory Clause” applicable only to these types of loans, which gives the buyer the contractual right to cancel if the property does not appraise.

<b>E. ADDITIONAL FINANCING TERMS:</b> _____	
<b>F. BALANCE OF DOWN PAYMENT OR PURCHASE PRICE</b> in the amount of..... \$ _____ to be deposited with Escrow Holder pursuant to Escrow Holder instructions.	
<b>G. PURCHASE PRICE (TOTAL):</b> .....\$ _____	

**E. Additional Financing Terms**

This paragraph is only for terms that relate to financing but do not add to the total purchase price. For additional terms and conditions other than financing, use paragraph 6 or 7 or an addendum.

**F. Balance of Down Payment or Purchase Price**

If there is an initial or increased deposit, the remaining amount of cash that the buyer needs to deposit with escrow, otherwise known as the down payment, should be specified here. In the event of an all cash offer, this amount will be the balance of the purchase price after deducting the initial and any increased deposit. The amount inserted here must be deposited with the escrow holder within the time specified by the escrow holder. Usually, escrow holders will require the down payment to be made by wire transfer or some other electronic means. Before making any such payments, it is wise to confirm the instructions directly with the escrow holder.

**G. Total Purchase Price**

Be sure the columns add up! The amount should be written out in numbers in the column to the right.

The amount of the purchase price is the market value as negotiated between the buyer and seller. It is not determined by the lender’s appraisal.

Buyer's Initials (____)(____)	Seller's Initials (____)(____)
-------------------------------	--------------------------------

**Buyer and Seller Initial Blocks**

At the bottom of pages 1 – 9 are initial blocks for buyer and seller. Buyer initial blocks are on the left side of the page. Seller initial blocks are on the right side of the page. Although it is not contractually or legally required that all pages be initialed by the parties, it is recommended. The buyer and seller signature on the last pages of the RPA indicates their consent to the terms of the contract. The initials on the previous pages indicate that the buyer and seller have seen all pages that are part of the contract and that no pages are missing or have been changed. While one of the reasons for this may have originated when forms were routinely printed and manually signed, so there was a possibility that individual pages could be misplaced in the shuffle, such a likelihood is diminished in the age of electronic forms and electronic signatures. Still, even in the electronic age, the initials on each page give at least some assurance that the parties are aware of all pages and have not simply electronically skipped the entire contract to go directly to the signature page.

# II

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA-CA , PAGE 2)

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

Date: \_\_\_\_\_

### Property Address

At the top of each page 2 through 10 there is a line for property address and date. Of course the address of the property being purchased should be placed in the first blank line. The date prepared at the top of page 1 should be put into the second blank line. The purpose of this information is to identify which offer the page belongs to in case it is printed out and misplaced.

**H. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS:** Buyer (or Buyer's lender or loan broker pursuant to paragraph 3J(1)) shall, within **3 (or \_\_\_\_ ) Days** After Acceptance, Deliver to Seller written verification of Buyer's down payment and closing costs. ( Verification attached.)

### H. Verification of Down Payment and Closing Costs

If a buyer does not have, or is unable to obtain by close of escrow, the required down payment and closing costs, then the transaction is not likely to be completed. As a result, the seller's property will have been held off the market for a period of time and the process for the seller of finding another buyer, opening another escrow, and seeing a new transaction to completion will have to begin again. The buyer will have spent time and incurred costs unnecessarily and, in addition, could be forced to forfeit the buyer's deposit to the seller. While the buyer may be in breach of contract, and legal remedies are available to the seller, some sellers will prefer to avoid being put in that situation in the first place. One way to accomplish that goal is for the buyer (or buyer's lender or loan broker) to verify the down payment and closing costs early in the transaction. This paragraph provides for the verification to be made within 3 calendar days or other specified period. The timing coincides with the time the buyer has to provide a prequalification or preapproval letter (see 3J(1)).

If the buyer has such verification before the offer is made, the offer is strengthened by attaching the verification to the offer because the seller can have more confidence in the buyer from the inception. At the end of this paragraph, a box can be checked indicating that the verification is attached to the offer.

**I. APPRAISAL CONTINGENCY AND REMOVAL:** This Agreement is (or  is NOT) contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the purchase price. Buyer shall, as specified in paragraph 14B(3), in writing, remove the appraisal contingency or cancel this Agreement within **17 (or \_\_\_) Days** After Acceptance.

### **I. Appraisal Contingency and Removal**

The default position in the contract is that a licensed or certified appraiser must value the property at no less than the specified purchase price. Even if a lender is willing to lend the amount specified in paragraph 3D, the buyer is not obligated to purchase if the property appraises low. Many valuation tools are available online, or real estate brokers may be willing to give their opinion of the property's value but only an opinion of value from a licensed or certified appraiser satisfies the requirement of this contingency. If the box is checked at the beginning of this paragraph, then obtaining a full price appraisal is not a contingency of the agreement. While there may be circumstances where opting out of the appraisal contingency makes sense, such as a transfer between co-owners who are knowledgeable of the property's value, these are rare.

When a buyer is getting a loan to purchase the property, not only must the buyer qualify for the loan by demonstrating an ability to pay back the lender but the property must also qualify as it typically provides the security for the loan in the event the buyer defaults. The lender's only real or practical recourse may be to foreclose on the property. This is why lenders get appraisals as part of the loan process. For buyers who are not obtaining a loan (see 3C) or who have made an offer without a loan contingency (see 3J(4)), they may want to get an independent appraisal to justify the purchase price.

Where an appraisal contingency is in place and the appraisal comes in low during the contingency period, the buyer may cancel the agreement or try to renegotiate with the seller. The seller is under no obligation to agree to reduce purchase price though.

The appraisal contingency must be removed or the buyer must cancel the contract within 17 calendar days after acceptance of the contract. However, the time to remove the loan contingency is not until 21 calendar days after acceptance of the contract. If the buyer removes the appraisal contingency before finding out if the property appraises and then the lender refuses to loan because of a low appraisal, the buyer cannot use the loan contingency as a legal excuse to cancel the contract (see paragraph 3J(2)). Essentially, the loan contingency becomes a buyer qualification contingency once the appraisal contingency is removed. Any other result would render the loan contingency's independence meaningless if the buyer has a loan contingency. Cautious buyers will not remove the appraisal contingency if the property's value is in doubt or be prepared to suffer the consequence by removing that contingency before the appraisal has been returned.

## J. All Cash Offer

### (1) Loan Applications

**(1) LOAN APPLICATIONS:** Within 3 (or \_\_\_) Days After Acceptance, Buyer shall Deliver to Seller a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in paragraph 3D. If any loan specified in paragraph 3D is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate.  Letter attached.)

If a loan is needed to purchase the property, the buyer needs to show the seller that the buyer is diligently trying to obtain the necessary loan. If the buyer does not do so, the seller may reconsider the decision to sell to this buyer. The first step for the buyer is to apply for a loan. The buyer is given a default period of 3 calendar days to prove to the seller that the buyer has fulfilled this requirement.

If the buyer does not provide a letter from a lender showing the buyer is either pre-qualified or pre-approved, the seller may cancel the agreement. Different lenders use different terminology in these letters. These letters are not guarantees that the buyer will be given the loan that was applied for. Instead, these letters provide the seller with some assurance that the buyer has started the process of getting a loan and that a third party has made at least a preliminary assessment of the buyer's ability to actually qualify for the loan.

Whether the buyer provides a pre-qualification or a pre-approval letter, it must be based upon a written application and credit report.

If such a letter has been obtained before the offer is written, attaching the letter to the offer strengthens the buyer's offer. A box can be checked at the end of this paragraph indicating that such a letter is indeed attached.

### (2) Loan Contingency

**(2) LOAN CONTINGENCY:** Buyer shall act diligently and in good faith to obtain the designated loan(s). Buyer's qualification for the loan(s) specified above **is a contingency** of this Agreement unless otherwise agreed in writing. If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan. Buyer's contractual obligations regarding deposit, balance of down payment and closing costs **are not contingencies** of this Agreement.

Obtaining of the loans specified is a contingency of the agreement, unless this is an all cash offer (see paragraph 3C) or unless the buyer specifies that getting a loan is not a contingency (see paragraph 3J(4)). The buyer is required to make a good faith effort to obtain the specified financing. While there is no specific test to determine good faith, it would be fair to assume that at a minimum the buyer has to apply for financing with a reputable lender or loan broker and provide any necessary and relevant documentation requested by the lender.

Obtaining deposit, down payment and closing costs are not contingencies. This is consistent with the theory that a person cannot cause their own contingency to fail. If the buyer does not have or cannot get the money for these items, even though the lender may not make the loan, it is because of the buyer's own actions. In that scenario, the buyer may be in breach of contract and the

seller may be entitled to legal remedies such as keeping the buyer's deposit or canceling the sale.

If there is an appraisal contingency and the buyer removes the appraisal contingency before finding out if the property appraises and then the lender refuses to loan because of a low appraisal, the buyer cannot use the loan contingency as a legal excuse to cancel the contract if the buyer is qualified for the loan. Essentially, the loan contingency becomes a buyer qualification contingency once the appraisal contingency is removed. Cautious buyers will not remove the appraisal contingency if the property's value is in doubt or be prepared to suffer the consequence by removing that contingency before the appraisal has been returned.

### (3) Loan Contingency Removal

**(3) LOAN CONTINGENCY REMOVAL:**

Within **21 (or \_\_\_) Days** After Acceptance, Buyer shall, as specified in paragraph 14, in writing, remove the loan contingency or cancel this Agreement. If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.

The loan contingency is to be removed within 21 calendar days or an otherwise specified time. Once the contingency is removed, the buyer has created a covenant to complete the transaction even if the lender does not fund the loan. If this happens, even if the buyer does not have the ability to complete the purchase without the loan, the buyer will be in breach of contract and the seller will have legal remedies including monetary damages if there are no independent reasons for the buyer not to complete the purchase. This is true even if the buyer is not "at fault" or the cause of the lender's decision not to loan.

The appraisal contingency is a separate contingency from the loan contingency. Even if the buyer has removed the loan contingency, if the buyer has not separately removed the appraisal contingency, the buyer may still have a contractual excuse to get out of the contract if the property does not appraise. Be aware however that the default time to remove the appraisal contingency is before the time to remove the loan contingency. These two related contingencies should be carefully considered before any decision is made to remove one or the other.

### (4) No Loan Contingency

**(4)  NO LOAN CONTINGENCY:** Obtaining any loan specified above is NOT a contingency of this Agreement. If Buyer does not obtain the loan and as a result does not purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.

This is an optional paragraph. If checked, it has the same effect on the transaction as if an existing loan contingency is removed. The buyer has created a covenant to complete the transaction even if the lender does not fund the loan. Even if the buyer may not have the ability to complete the purchase without the loan, the buyer will be in breach of contract and the seller will have legal remedies including monetary damages.

This paragraph is often incorporated into the agreement in a competitive bidding situation when (i) a buyer is confident in obtaining the designated



loan and willing to risk losing the deposit or other legal remedies if in fact the loan cannot be obtained or (ii) instead of writing an all-cash offer, the buyer who may have the ability to pay cash prefers to get a loan. In the latter situation, the buyer may not want to write an offer conditioned on getting a loan because to do so may put the buyer in a competitive disadvantage against other bidders.

### (5) Lender Limits on Buyer Credits

**(5) LENDER LIMITS ON BUYER CREDITS:** Any credit to Buyer, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.

It is not uncommon for buyers to ask sellers to pay for some costs that a buyer may otherwise be responsible for in the transaction. The advantage for doing so for the buyer is that the buyer will not have to come up with money "out-of-pocket" to pay those costs and can effectively finance the cost. The seller's incentive for doing so is that it may enable a sale to come together and the seller is satisfied with the net amount received after deducting these seller-paid buyer's costs from the purchase price. Lenders can consider a buyer's inability to pay buyer costs as a negative factor in qualifying a buyer for a loan. Nonetheless, many lenders allow a seller to pay certain buyer costs without affecting the buyer's qualification. Lenders will often set limits on how much the seller can pay. In order to avoid lender fraud, the lender needs to be informed of the amount of the credit that the seller is willing to give to the buyer. If the lender imposed limit is less than the amount the seller agreed to credit to the buyer, then the differential can affect the buyer's ability to qualify for the loan. The RPA predetermines what will happen in such an event. The seller credit is reduced to that amount approved by the lender. However, the purchase price is not adjusted to make up the difference. The buyer will be responsible for paying their transaction costs and the purchase price remains the same. If the loan contingency has not yet been removed, the buyer and seller may wish to negotiate a purchase price reduction that takes into consideration the fact that the lender will not allow the full credit that buyer and seller have agreed to but the contract will not do this automatically for them.

### K. Buyer Stated Financing

**K. BUYER STATED FINANCING:** Seller is relying on Buyer's representation of the type of financing specified (including but not limited to, as applicable, all cash, amount of down payment, or contingent or non contingent loan). Seller has agreed to a specific closing date, purchase price and to sell to Buyer in reliance on Buyer's covenant concerning financing. Buyer shall pursue the financing specified in this Agreement. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in the Agreement and the availability of any such alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

This paragraph informs the parties that seller has relied on the type of financing the buyer specified in the offer. Sellers may have to choose among various offers and the financing specified can influence the seller's decision. A seller may believe that a buyer who writes an offer indicating the ability to pay all-cash or to make a certain down payment but who has no intention or ability

to pursue that financing method has committed a material misrepresentation and obtained the seller's acceptance of the buyer's offer by way of fraud. Had the seller know the true situation, the seller may not have agreed to the particular price, closing date or other terms or even agreed to the offer at all. Nonetheless, if the buyer in fact closes the escrow on time by paying the full price agreed-to, even if by pursuing financing other than that specified in paragraph 3, there may be little legal consequence available to the seller to make up for the feeling of being taken advantage of or misled. Still, the seller has no contractual duty to make it easier for the buyer to pursue financing not specified in the RPA such as by cooperating with a buyer's efforts to seek alternate financing. Further, if the buyer seeks but is unable to obtain alternate financing, buyer may be in breach of contract for failing to try to get the financing specified in the Agreement.

#### 4. Sale of Buyer's Property

##### 4. SALE OF BUYER'S PROPERTY:

- A. This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer.  
 OR B.  This Agreement and Buyer's ability to obtain financing are contingent upon the sale of property owned by Buyer as specified in the attached addendum (C.A.R. Form COP).

Many buyers rely on the sale of their current residence in order to get funds necessary to meet the down payment requirement of the purchase of property specified in the RPA. Others need to sell their current residence because they are still making payments on a loan for the existing residence and cannot qualify for a loan on the purchase while having that obligation. In those types of situations, the buyer will likely make the purchase conditioned on the sale of the buyer's existing property. The default position in the RPA is that the sale of buyer's property is not a contingency unless paragraph 4B is checked. In that case, a separate addendum (Contingency for Sale of Buyer's Property, C.A.R. form COP) needs to be attached, completed and signed.

#### 5. Addenda and Advisories

##### 5. ADDENDA AND ADVISORIES:

- |   |  |
|---|--|
| A. ADDENDA:   | <input type="checkbox"/> Addendum # _____ (C.A.R. Form ADM)                                |
| <input type="checkbox"/> Back Up Offer Addendum (C.A.R. Form BUO)                       | <input type="checkbox"/> Court Confirmation Addendum (C.A.R. Form CCA)                     |
| <input type="checkbox"/> Septic, Well and Property Monument Addendum (C.A.R. Form SWPI) |  |
| <input type="checkbox"/> Short Sale Addendum (C.A.R. Form SSA)                          | <input type="checkbox"/> Other _____   |
| B. BUYER AND SELLER ADVISORIES:   |  |
| <input type="checkbox"/> Probate Advisory (C.A.R. Form PAK)                             | <input checked="" type="checkbox"/> Statewide Buyer and Seller Advisory (C.A.R. Form SBSA) |
| <input type="checkbox"/> Trust Advisory (C.A.R. Form TA)                                | <input type="checkbox"/> REO Advisory (C.A.R. Form REO)                                    |
| <input type="checkbox"/> Short Sale Information and Advisory (C.A.R. Form SSIA)         | <input type="checkbox"/> Other _____   |

While the RPA is intended as a comprehensive document, it cannot cover all situations, especially those that are not likely to be present in most transactions. Still, there are some situations which occur often enough that it helps to reference those situations in the body of the contract even if the terms are spelled out in another form. Many such situations are identified in this paragraph. Paragraph A lists common addenda. Some items are important enough to bring to the buyer's and seller's attention but information about

these items is to be distinguished from contractual obligations of the buyer and seller to each other. Paragraph B lists commonly used Advisories.

C.A.R. Form ADM, Addendum \_\_\_ is the first item listed. Here the parties can write out terms unique to their specific situation. As more than one addendum form may be used in a particular transaction, it is essentially important to complete the blank line so different addenda do not get confused with one another. When a seller is already in contract with another buyer, the Back Up Offer Addendum (C.A.R. form BUO) should be used to make the contract contingent on the cancellation of that other contract so seller is not obligated to sell the property to different buyers and the second buyer understands their true position. The Court Confirmation Addendum should be used when either of the parties has to go to court to get approval of the sale or purchase. Examples might include divorcing sellers who need family law court approval or a buyer or seller who is going through bankruptcy and cannot complete the transaction without approval of the bankruptcy court. If the property is being sold by a former owner's estate, or the current owner's conservator or guardian then the Probate Purchase Agreement should be considered. Market conditions will dictate if short sales are the norm or the exception but in any case where the property is sold subject to the seller's lender approval, the Short Sale Addendum (C.A.R. form SSA) should be added to the transaction, In rural areas and many suburban communities, properties are not connected to a public sewer system or generate their own water. In such cases the Septic Inspection, Well Inspection, Property Monument and Allocation of Cost Addendum (C.A.R. form SWPI) is advisable as it addresses many concerns specific to those types of properties.

Paragraph B lists commonly used Advisories. The first is the Buyer's Inspection Advisory (C.A.R. form BIA), which is prepackaged with the Purchase Agreement. The form itself should be gone over thoroughly with the buyer and seller and signatures obtained. The Statewide Buyer and Seller Advisory (C.A.R. form SBSA) is more comprehensive than the BIA form. It contains information not only about items the buyer should consider or potentially have inspected but clauses in the contract. Other advisories include the Trust Advisory (C.A.R. form TA), Probate Advisory (C.A.R. form PAK), and REO Advisory (C.A.R. form REO) which, as applicable, disclose the common requirements and exemptions from statutory duties that apply to those types of sales.

**6. Other Terms**

OTHER TERMS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C.A.R. Form ADM, Addendum \_\_\_ is the first item listed. If there is not enough room in the three lines in this paragraph to write out additional terms, the Addendum may be used to write out terms unique to their specific situation. As more than one addendum form may be used in a particular transaction, it

is essentially important to complete the blank line so different addenda do not get confused with one another.

### 7. Allocation of Costs

**7. ALLOCATION OF COSTS**

**A. INSPECTIONS, REPORTS AND CERTIFICATES:** Unless otherwise agreed in writing, this paragraph only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; it **does not determine who is to pay for any work recommended or identified in the Report.**

- (1)  Buyer  Seller shall pay for a natural hazard zone disclosure report, including  environmental and tax reports  Other: \_\_\_\_\_ prepared by \_\_\_\_\_.
- (2)  Buyer  Seller shall pay for the following Report \_\_\_\_\_ prepared by \_\_\_\_\_.
- (3)  Buyer  Seller shall pay for the following Report \_\_\_\_\_ prepared by \_\_\_\_\_.

This paragraph allows the buyer and seller to determine who is going to pay for particular costs in the transaction. While custom and practice dictates which party pays for certain costs in many areas of the state, all of these items are in fact negotiable and there is no single statewide practice.

#### A Inspections, Reports and Certificates

The caption to this paragraph explicitly reminds the buyer and seller that it only concerns the cost of the report, inspection, function or service and not any recommendations made by the report or inspection or service. Recommended repairs or services, unless written into this paragraph, are negotiable items.

#### A (1.) – (3.) Other Inspections and Reports

Paragraph 1 determines if either party will pay for reports that disclose if the property is in certain "natural hazard" zones and who will provide those reports. Private companies are available which, for a fee, provide zone disclosure reports on property transactions. The statewide requirement for such zones is limited to natural hazards such as earthquakes, floods and fires, and these private companies can provide a limited report only covering six such zones (two for each hazard). Many companies provide information exceeding the statewide minimum disclosure and cover local hazards and contractually required information as well for an additional fee.

Two additional paragraphs do not identify any specific inspection or report but can be filled-in to address common inspections for particular areas or types of properties.

# III

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA-CA, PAGE 3)

### B(1.) & (2.) Government Requirements and Retrofit

#### B. GOVERNMENT REQUIREMENTS AND RETROFIT:

- (1)  Buyer  Seller shall pay for smoke alarm and carbon monoxide device installation and water heater bracing, if required by Law. Prior to Close Of Escrow ("COE"), Seller shall provide Buyer written statement(s) of compliance in accordance with state and local Law, unless Seller is exempt.
- (2) (i)  Buyer  Seller shall pay the cost of compliance with any other minimum mandatory government inspections and reports if required as a condition of closing escrow under any Law.  
(ii)  Buyer  Seller shall pay the cost of compliance with any other minimum mandatory government retrofit standards required as a condition of closing escrow under any Law, whether the work is required to be completed before or after COE.  
(iii) Buyer shall be provided, within the time specified in paragraph 14A, a copy of any required government conducted or point-of-sale inspection report prepared pursuant to this Agreement or in anticipation of this sale of the Property.

**7B(1):** Smoke alarm installation, carbon monoxide device installations and water heater bracing requirements apply whether or not a property is for sale. However, the parties are free to negotiate who will pay for compliance of these requirements. Regardless of who pays, unless exempt, a statement of compliance is required to be signed by the seller and delivered to the buyer indicating smoke alarm(s) and water heaters are properly installed. The statement of compliance can be found in Section IID of the Real Estate Transfer Disclosure Statement (C.A.R. form TDS) or separately in the Water Heater and Smoke Detector Statement of Compliance (C.A.R. form WHSD). There is no statement of compliance required for the proper installation of carbon monoxide detectors. Commencing July 1, 2014, new smoke alarms are required to have non-removable, non-replaceable batteries with a ten year life. Older smoke alarms that are operable may continue to be used. Local government may have imposed requirements concerning whether smoke alarms can be battery operated only or must have an electrical connection to the property.

**7B(2)(i):** Many communities require the property to be inspected and a report prepared indicating if the property has met retrofit standards. Examples include the installation of low flow toilets and shower heads, weather stripping, and tempered glass in showers or sliding doors. Check with your city or county for local mandatory retrofit. This paragraph determines who is to pay for the inspection and report only, not any repairs recommended.

**7B(2)(ii):** Here the parties specify who will pay for mandatory retrofit itself. In some communities the actual retrofit can be performed within a certain period of time after close of escrow. The obligation to make the retrofit is usually triggered by the sale itself and thus it is appropriate for the parties to determine in the contract for sale which one will incur that expense.

**7B(2)(iii):** If an inspection is required due to the sale, the buyer shall be provided with a copy of the report following the inspection. Even if the seller gets the report before the contract is sold, and even if the seller makes the required or recommended repairs or retrofit prior to the sale, the buyer must still be provided with a copy of the report.

### C(1.) & (2.) Escrow and Title Costs

**C. ESCROW AND TITLE:**

- (1) (a)  Buyer  Seller shall pay escrow fee \_\_\_\_\_.  
 (b) Escrow Holder shall be \_\_\_\_\_.  
 (c) The Parties shall, within **5 (or \_\_\_\_ ) Days** After receipt, sign and return Escrow Holder's general provisions.
- (2) (a)  Buyer  Seller shall pay for **owner's** title insurance policy specified in paragraph 13E \_\_\_\_\_.  
 (b) Owner's title policy to be issued by \_\_\_\_\_.  
 (Buyer shall pay for any title insurance policy insuring Buyer's **lender**, unless otherwise agreed in writing.)

Here the parties designate who is to pay for escrow fees and who will provide those services. Escrow fee refers only to the "bare" escrow fee and does not involve items such as notary fee, document fee, recording, etc. This paragraph also designates who is to pay for the title policy and who provides that service. The title policy referenced here is for an owner's policy. The particular type of owner's title policy is clarified in paragraph 13. The buyer is to pay for any required lender's title policy unless otherwise agreed. Aside from the few exceptions discussed below, these items are negotiable and either party may select the service provider or make payment for the same part of the contract terms.

For VA transactions, the seller must pay the entire escrow fee.

If the seller is the lender of the former owner and had acquired the property through a foreclosure (REO), then California law prohibits the REO seller from requiring the buyer to pay for a particular title or escrow service provider. However, if the seller notifies buyer in writing of the buyer's right not to use the services desired or recommended by the REO seller, then there is no violation of the law if the buyer agrees to such services. The REO Advisory form (C.A.R. Form REO) (see paragraph 5B) may be used to notify the buyer of this right. If the REO seller is paying for the title and escrow costs, then the seller need not give the notice and may require the buyer to use the services chosen by the seller.

The Real Estate Settlement Procedure Act, RESPA, is a federal law that may also restrict the seller's to select a title company, whether or not the seller is an REO, if the buyer is paying for all or part of the title costs. RESPA does not impose any restrictions on the selection of the escrow company.

### D(1.) –(8.) Other Costs

**D. OTHER COSTS:**

- (1)  Buyer  Seller shall pay County transfer tax or fee \_\_\_\_\_.  
 (2)  Buyer  Seller shall pay City transfer tax or fee \_\_\_\_\_.  
 (3)  Buyer  Seller shall pay Homeowners' Association ("HOA") transfer fee \_\_\_\_\_.  
 (4) Seller shall pay HOA fees for preparing documents required to be delivered by Civil Code § 4525.  
 (5)  Buyer  Seller shall pay HOA fees for preparing all documents other than those required by Civil Code § 4525.  
 (6)  Buyer  Seller shall pay for any private transfer fee \_\_\_\_\_.  
 (7)  Buyer  Seller shall pay for \_\_\_\_\_.  
 (8)  Buyer  Seller shall pay for \_\_\_\_\_.

(9)  Buyer  Seller shall pay for the cost, not to exceed \$ \_\_\_\_\_, of a standard (or  upgraded) one-year home warranty plan, issued by \_\_\_\_\_, with the following optional coverages:  Air Conditioner  Pool/Spa  Other: \_\_\_\_\_.  
 Buyer is informed that home warranty plans have many optional coverages in addition to those listed above. Buyer is advised to investigate these coverages to determine those that may be suitable for Buyer.  
**OR  Buyer waives the purchase of a home warranty plan. Nothing in this paragraph precludes Buyer's purchasing a home warranty plan during the term of this Agreement.**

In paragraphs (1) and (2) the parties designate who is to pay for county and/or city transfer fees. If a particular cost is going to be split, check both boxes and write that down in the blank line following the tax or fee.

The county transfer tax is \$.55 per \$500. Half of that fee goes to the county and the other half goes to the city, unless the city has a separate transfer fee, in which case the county keeps the entire amount.

The city transfer tax or fee is set by the city. It is a fee charged upon sale (transfer) of property in addition to the county transfer fee.

Paragraphs (3), (4) and (5) cover who is to pay for various fees associated with any Homeowner Association (HOA) that has responsibility for and authority over property located within the Association. A HOA transfer fee is usually a charge for changing records from the seller to the buyer, including information the HOA needs to keep for sending out notices. A HOA document preparation fee is usually a charge for preparing documents that the seller has to provide to the buyer during the course of the real estate transaction (see paragraph 10F). A private transfer fee is a charge that often is forwarded to some kind of non-profit organization or other entity that does not necessarily benefit the property or the HOA. Many HOAs charge additional fees and call those fees by different names. Examples include HOA Certification Fee (which may be used to satisfy a lender requirement) or Community Enhancement Fee. These types of additional HOA fees can be written into paragraphs (6) and (7). Paragraphs (6) and (7) may also be used for any other cost commonly occurring in a particular area, whether or not the property is governed by a HOA.

Paragraph (8) identifies who, if anybody, is going to pay for a home warranty plan, who will issue the plan and whether it will be a standard or upgraded policy and also whether the policy will include additional coverages for items such as air conditioner, pool and spa, or other designated item.

### 8. Items Included and Excluded from Purchase Price

**8. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:**

**A. Note to Buyer and Seller**

**A. NOTE TO BUYER AND SELLER:** Items listed as included or excluded in the MLS, flyers or marketing materials are **not** included in the purchase price or excluded from the sale unless specified in paragraph 8 B or C.

Information about the property from other sources, such as MLS or advertising, is not determinative but rather the contract is the final word on what is or is not included. Just because something is mentioned in the MLS or in an ad does

not mean it will be part of the actual sale. If there is any doubt about items to be included, they should be specifically written in to the RPA.

### B. Items Included in Sale

- B. ITEMS INCLUDED IN SALE:** Except as otherwise specified or disclosed,
- (1) All EXISTING fixtures and fittings that are attached to the Property;
  - (2) EXISTING electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar power systems, built-in appliances, window and door screens, awnings, shutters, window coverings, attached floor coverings, television antennas, satellite dishes, air coolers/conditioners, pool/spa equipment, garage door openers/remote controls, mailbox, in-ground landscaping, trees/shrubs, water features and fountains, water softeners, water purifiers, security systems/alarms and the following if checked:  all stove(s), except \_\_\_\_\_;  all refrigerator(s) except \_\_\_\_\_;  all washer(s) and dryer(s), except \_\_\_\_\_;
  - (3) Existing integrated phone and home automation systems, including necessary components such as internet connected hardware or devices, control units (other than non-dedicated mobile devices, electronics and computers) and applicable software, permissions, passwords, codes and access information, are ( are NOT) included in the sale.

**Paragraph B(1)** refers to fixtures and fittings. There is no universal definition of fixtures that would apply in every case but fixtures are generally things that are physically attached to the real estate.

**Paragraph B(2)** addresses items that may already fall within the general definition of fixtures (such as electrical, mechanical and plumbing systems and in ground landscaping) and other items that may be more traditionally thought of as items of personal property (such as gas logs and grates and garage door openers and remote controls) and other items that do not easily fit into either category (such as built in appliances, window screens, mailbox, and water features and fountains and solar power systems). By contract, all items mentioned in paragraph 8B(2) remain with the property. Certain items present what seems to be a perennial problem for buyers, sellers and brokers. By contract, if the applicable box is checked, all stoves, refrigerators and washers and dryers remain with the property. This applies not just to the primary item but any secondary ones as well. An example could be a refrigerator kept in the garage for additional storage or a washer or dryer not in the primary place for doing laundry such as a laundry room or garage but nonetheless kept on the property. Should the buyer want the primary item but not the secondary one, the box should be checked and the undesired item should be listed in the blank line following the item.

**Paragraph B(3)** addresses “integrated phone and home automation systems.” This is the best name C.A.R. could use to describe the wide variety of systems that allow a property owner to remotely control various operations inside and outside of a home such as thermostat, lights, appliances, sprinkler system, television, and alarms, among others. The default position in the contract is that these automation systems are included in the sale but control units that are not devoted exclusively to the automation system, such as smart phones and tablets, can remain with the seller. Further, while passwords, codes and access software are to be given to the buyer, any buyer would be wise to change them upon taking possession, just like it is a good idea to change door locks.



**(4) LEASED OR LIENED ITEMS AND SYSTEMS:** Seller shall, within the time specified in paragraph 14A, (i) disclose to Buyer if any item or system specified in paragraph 8B or otherwise included in the sale is leased, or not owned by Seller, or specifically subject to a lien or other encumbrance, and (ii) Deliver to Buyer all written materials (such as lease, warranty, etc.) concerning any such item. Buyer's ability to assume any such lease, or willingness to accept the Property subject to any such lien or encumbrance, is a contingency of this Agreement as specified in paragraph 14B.

**(5)** The following additional items: \_\_\_\_\_

**(6)** Seller represents that all items included in the purchase price, unless otherwise specified, (i) are owned by Seller and shall be transferred free and clear of liens and encumbrances, except the items and systems identified pursuant to 8B(4) and \_\_\_\_\_, and (ii) are transferred without Seller warranty regardless of value.

**Paragraph B(4)** concerns items that have not before been specifically addressed in the RPA. Some of the items that are included in the sale pursuant to B(2) may not be owned by seller but instead leased. Common examples include solar panels and other component parts of a solar power system, propane tanks and water softeners, and sometimes home automation systems or components. It is also possible for items such as those mentioned to be owned by the seller but subject to lien rights by the seller of the systems. The contract now explicitly (i) requires the seller to disclose leased or liened items to the buyer; (ii) obligates the seller to provide any documentation concerning such items, such as the lease itself, any warranty, any lien rights, payments, reversion rights or balloon payments, and transferability of or change in terms upon sale, to name a few; and (iii) gives the buyer a contingency period to review the documentation and cancel the sale if not satisfied.

**Paragraph B(5)** is used to list any other items included in the sale that are not specified above.

**Paragraph B(6)** is a seller's representation of ownership except for those items identified in the disclosure pursuant to B(4) and anything else specified.

**Paragraph B(7)** indicates that none of the items included in the sale are encumbered, ie, they are owned outright by the seller. This applies to items whether they are real or personal property. This representation would not apply to any liened item identified pursuant to the disclosure required by B(4).

### C. Items Excluded from Sale:

**C. ITEMS EXCLUDED FROM SALE:** Unless otherwise specified, the following items are excluded from sale: (i) audio and video components (such as flat screen TVs, speakers and other items) if any such item is not itself attached to the Property, even if a bracket or other mechanism attached to the component or item is attached to the Property; (ii) furniture and other items secured to the Property for earthquake purposes; and (iii) \_\_\_\_\_

\_\_\_\_\_. Brackets attached to walls, floors or ceilings for any such component, furniture or item shall remain with the Property (or  will be removed and holes or other damage shall be repaired, but not painted).

Some items are explicitly excluded. The mere attachment of an item to the property by way of a bracket does not in and of itself mean the item itself is included. This rule would apply to televisions, speakers and furniture secured for earthquake purposes. There is a reminder here that even though the TV, for example, is excluded from the sale, any brackets are to remain with the property, or if checked the brackets can be removed but holes need to be repaired (or patched) but even so painting is not required. This requirement is consistent with the Repairs paragraph that specifies that exact restoration may not be possible (see paragraph 15).



# IV

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA-CA, PAGE 4)

### 9. Closing and Possession

#### 9. CLOSING AND POSSESSION:

- A.** Buyer intends (or  does not intend) to occupy the Property as Buyer's primary residence.
- B. Seller-occupied or vacant property:** Possession shall be delivered to Buyer: (i) at 6 PM or ( AM/ PM) on the date of Close Of Escrow; (ii)  no later than \_\_\_ Days After Close Of Escrow; or (iii)  at  AM/ PM on \_\_\_\_\_.
- C. Seller remaining in possession After Close Of Escrow:** If Seller has the right to remain in possession after Close Of Escrow, (i) the Parties are advised to sign a separate occupancy agreement such as  C.A.R. Form SIP, for Seller continued occupancy of less than 30 days,  C.A.R. Form RLAS for Seller continued occupancy of 30 days or more; and (ii) the Parties are advised to consult with their insurance and legal advisors for information about liability and damage or injury to persons and personal and real property; and (iii) Buyer is advised to consult with Buyer's lender about the impact of Seller's occupancy on Buyer's loan.

#### A. Buyer occupancy

Whether the buyer intends to occupy the property is important for matters such as liquidated damages, loan qualification, loan rate and terms, and, in the case of a distressed property sale, whether the RPA or alternate form such as the Notice of Default Purchase Agreement (C.A.R. form NODPA) should be used. The default position is that the buyer intends to occupy. If this is not the case, it should be noted by checking the appropriate box.

#### B. Seller-occupied or vacant property

Occupancy is to be delivered to the buyer at 6:00 p.m. on the date of close of escrow, or some other specified time and date. The default time to 6:00 p.m. allows for late recordings. If the seller remains in the property (e.g., COE + three (3) days) or the buyer moves in early, then a landlord/tenant relationship is possibly established. In either case, when title and possession do not occur at the same time, the parties should enter into a written agreement to document this different legal relationship. For seller continued occupancy after COE, the "Residential Lease Agreement After Sale" (C.A.R. form RLAS) should be used for occupancy of 30 or more calendar days. If the seller continued occupancy will be for less than 30 days, even if for only one day, the Seller in Possession (C.A.R. form SIP) should be used. The use of these forms protects the buyer in case the seller does not move out as promised and protects the seller in case the property is not properly maintained by the buyer owner. In most cases it is not recommended to allow a buyer to move into the property before COE, but if the situation cannot be avoided, the relationship should be documented by the "Interim Occupancy Agreement" (C.A.R. form IOA). These forms clarify the responsibilities and obligations of the parties.

Occupancy is also important for insurance purposes. Generally speaking, in the event that the property is damaged or destroyed through no fault of the buyer before the title is transferred, the risk of loss falls on the seller. However, if the buyer moves in before escrow closes, the risk shifts to the buyer. If the seller continues to occupy the property after COE, the buyer is not protected by the hazard insurance policy the seller held while owning the property and likewise since the seller's former hazard insurance no longer will be in effect, the seller may need a renter's policy to protect the seller's personal property.

Parties should consult their insurance advisors whenever title and occupancy do not transfer on the same date.

#### D. Tenant-occupied property

**D. Tenant-occupied property: Property shall be vacant** at least 5 (or \_\_\_) Days Prior to Close Of Escrow, unless otherwise agreed in writing. **Note to Seller: If you are unable to deliver Property vacant in accordance with rent control and other applicable Law, you may be in breach of this Agreement.**  
**OR**  **Tenant to remain in possession** (C.A.R. Form TIP).

**Paragraph D.** The default position is that the property shall be vacant. If the property is tenant-occupied, it is the seller's responsibility to deliver the property vacant unless otherwise agreed. The property needs to be vacant before the scheduled close of escrow so that the buyer may make a final inspection. The seller has the obligation to comply with lease requirements, rent control and other laws affecting the landlord/tenant relationship. If these obligations make vacancy impractical or impossible, then the tenant to remain in possession option should be checked.

Tenant to remain in possession: The box for this optional paragraph should be checked to indicate that the tenants are to continue to occupy the property. In this case, the Tenant in Possession form (C.A.R. form TIP) should be used. That form provides for the seller to give the buyer documentation concerning the tenancy. Since the buyer will become a landlord upon close of escrow, the buyer's review of the documents becomes a contingency of the sale. Unless otherwise specified in writing, seller does not make any representations regarding rent control and other items affecting the tenancy. Buyer should use the investigation contingency to examine laws and factors affecting landlord and tenant rights.

**E.** At Close Of Escrow: Seller assigns to Buyer any assignable warranty rights for items included in the sale; and Seller shall Deliver to Buyer available Copies of any such warranties. Brokers cannot and will not determine the assignability of any warranties.  
**F.** At Close Of Escrow, unless otherwise agreed in writing, Seller shall provide keys, passwords, codes and/or means to operate all locks, mailboxes, security systems, alarms, home automation systems and internet connected devices included in the purchase price, and garage door openers. If the Property is a condominium or located in a common interest subdivision, Buyer may be required to pay a deposit to the Homeowners' Association ("HOA") to obtain keys to accessible HOA facilities.

**Paragraph E** addresses warranties. Third-party warranties are automatically assigned by the contract on close of escrow. Seller should give buyer any documentation concerning these warranties. The broker does not determine assignability of warranties.

**Paragraph F** concerns keys and means of opening all locks are to be delivered to the buyer at the time of possession (see paragraph 8B(3) for more information). The buyer will pay for HOA key deposits.

## 10. Statutory Disclosures (Including Lead-Based Paint Hazard Disclosures) and Cancellation Rights

### 10. STATUTORY AND OTHER DISCLOSURES (INCLUDING LEAD-BASED PAINT HAZARD DISCLOSURES) AND CANCELLATION RIGHTS:

**A. (1)** Seller shall, within the time specified in paragraph 14A, Deliver to Buyer: (i) if required by Law, a fully completed: Federal Lead-Based Paint Disclosures (C.A.R. Form FLD) and pamphlet ("Lead Disclosures"); and (ii) unless exempt, fully completed disclosures or notices required by sections 1102 et. seq. and 1103 et. seq. of the Civil Code ("Statutory Disclosures"). Statutory Disclosures include, but are not limited to, a Real Estate Transfer Disclosure Statement ("TDS"), Natural Hazard Disclosure Statement ("NHD"), notice or actual knowledge of release of illegal controlled substance, notice of special tax and/or assessments (or, if allowed, substantially equivalent notice regarding the Mello-Roos Community Facilities Act of 1982 and Improvement Bond Act of 1915) and, if Seller has actual knowledge, of industrial use and military ordnance location (C.A.R. Form SPQ or SSD).

**A (1.)** California law creates a requirement for all sellers of one-to-four residential units (including lease options), unless exempt, to deliver to a buyer two mandated forms created by the legislature: a Transfer Disclosure Statement (TDS) and a Natural Hazards Disclosure (NHD) Statement (see paragraph 10B below for more on the NHD). If the property is in a Mello-Roos District, or subject to an assessment pursuant to the Improvement Bond Act of 1915, the seller must make a good faith effort to obtain a disclosure notice from the taxing authority and to deliver such notice to the buyer. Nothing in the law imposes a duty to discover a special tax or district not actually known to the agents. A Mello-Roos District is created under the Mello-Roos Community Facilities Act, which authorizes the district to issue bonds and levy special taxes to finance designated public facilities and services.

Additionally, if the seller has actual knowledge that there has been a release of illegal substances on the property or if the property is in or affected by an industrial use zone (a zone or district allowing manufacturing, commercial or airport use) or is located within one mile of a former military ordnance location which may contain potentially explosive munitions, this fact must be disclosed to the buyer. Seller exemptions from the TDS and NHD forms and these other obligations include:

- Properties covered by a public report. (Re-Sales cannot use this exemption.)
- Court Ordered Sales (i.e., probate, bankruptcy, etc.).
- Foreclosure, deed in lieu, REO Properties.
- Transfers between CO-Owners or Spouses.

Federal law requires sellers of all residential properties constructed prior to 1978 to provide a buyer with a Lead-Based Paint notice as an attachment to the contract, a disclosure of known lead paint, lead hazard reports, and a lead pamphlet (either the separate federal lead booklet or the state Combined Hazards Book).

Disclosures in the TDS do not eliminate the seller's obligations to disclose all known material facts.

- (2) Any Statutory Disclosure required by this paragraph is considered fully completed if Seller has answered all questions and completed and signed the seller section(s) and the Listing Agent, if any, has completed and signed the listing broker section(s), or, if applicable, an Agent Visual Inspection Disclosure (C.A.R. Form AVID). Nothing stated herein relieves a Buyer's Broker, if any, from the obligation to (i) conduct a reasonably competent and diligent visual inspection of the accessible areas of the Property and disclose, on Section IV of the TDS, or an AVID, material facts affecting the value or desirability of the Property that were or should have been revealed by such an inspection or (ii) complete any sections on all disclosures required to be completed by Buyer's Broker.

As discussed in paragraph 10A(7), if certain disclosures are provided after a buyer has made an offer, the buyer has a rescission right upon receiving the disclosures. The federal lead paint disclosure form and the California TDS form each have sections to be completed by the seller, the listing broker and the buyer's broker. None of the statutes state whether the rescission rights commence after the seller makes the disclosures or whether one or both brokers need to have made disclosures as well before the buyer's rescission rights begin. Paragraph 10A(1) obligates a seller to deliver "fully completed" disclosure forms to the buyer and the RPA defines the quoted phrase as having the seller and listing broker's sections completed. The rationale is that the buyer will be in possession of disclosures prepared by those closest to the property, the seller and the listing broker, before having to make a decision about whether to continue with or cancel (rescind) the sale pursuant to the statutes. By leaving off the buyer's broker sections from the definition of "fully completed", the RPA takes away an incentive of the buyer's own broker to delay completing those forms in order to extend or stretch out the buyer's right to rescind until the latest possible time. The buyer should be responsible for the buyer's own agent's delays, not the seller. Paragraph 10A(2) does remind the parties that just because the buyer's broker is not treated as being included in the definition of "fully completed" the contract does not in any way excuse the buyer's broker from fulfilling the statutory duties. The "fully completed", definition encourages full disclosure at the earliest practical time.

- (3) **Note to Buyer and Seller:** Waiver of Statutory and Lead Disclosures is prohibited by Law.  
 (4) Seller, unless exempt from the obligation to provide TDS, shall, within the time specified in paragraph 14A, complete and provide Buyer with a Seller Property Questionnaire (C.A.R. Form SPQ) **OR**  Supplemental Contractual and Statutory Disclosure (C.A.R. Form SSD).  
 (5) Buyer shall, within the time specified in paragraph 14B(1), return Signed Copies of the Statutory, Lead and other disclosures to Seller.

Sometimes buyers believe that they do not need the disclosures and the seller believes it is pointless to provide them. An example could be where the buyer intends to demolish the home and rebuild and is buying the property for land value only and in an as-is condition. By statute, buyers cannot give up their rights to receive these statutorily required disclosures and sellers cannot relinquish the obligations to provide those disclosures, regardless of the circumstances. Paragraph 10A(3) reflects this legal reality.

The disclosures mentioned in 10A(1) are statutorily required. Other disclosures have been created that help provide a more complete picture of the condition of the property being transferred. Providing these additional disclosures, though not mandated by law, represents a good risk management practice. The buyer gets more information about the property early in the transaction. The seller minimizes the possibility of forgetting about an event or condition affecting

the property or having a dispute with the buyer over whether a disclosure was actually made thus reducing the risk of a buyer claim or lawsuit at a later point in time. Accordingly, the RPA provides in paragraph 10A(4) that when a seller has to give the statutory disclosures, the seller must also give the voluntary disclosures specified in the Seller Property Questionnaire (C.A.R. form SPQ). If for some reason the seller is not willing to do so, then the box in this paragraph should be checked and the seller should instead provide the Supplemental Contractual and Statutory Disclosure (C.A.R. form SSD) because that form itemizes disclosures that are required to be made by the contract or for which the law imposes a disclosure obligation but never created a separate form on which to make the disclosures.

Because buyers have a limited-time statutory and contractual rescission right upon receiving these fully completed disclosures, the seller has an interest in knowing when the possibility of buyer rescission ends. One way to confirm the beginning and ending dates of the rescission rights is for the seller to know that the buyer has received the fully completed disclosures. Paragraph 10A(5) requires buyer to return the disclosures to the seller providing proof buyer received the disclosures and when.

- (6) In the event Seller or Listing Broker, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer, Seller shall promptly provide a subsequent or amended disclosure or notice, in writing, covering those items. **However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies of which Buyer is otherwise aware, or which are disclosed in reports provided to or obtained by Buyer or ordered and paid for by Buyer.**
- (7) If any disclosure or notice specified in paragraph 10A(1), or subsequent or amended disclosure or notice is Delivered to Buyer after the offer is Signed, Buyer shall have the right to cancel this Agreement within **3 Days** After Delivery in person, or **5 Days** After Delivery by deposit in the mail, by giving written notice of cancellation to Seller or Seller's agent.

It is possible that in spite of the seller's best, good faith efforts to complete the disclosure forms in the first instance that the seller may later become aware of adverse material conditions or even a correction that needs to be made to the previously provided disclosure. If the buyer is otherwise unaware of the condition or true state of the property, the seller has to give the buyer a subsequent or amended written disclosure. There is an exception to this rule about seller subsequent disclosure if the condition is disclosed in a report provided to or obtained by the buyer, or ordered and paid for by buyer. No separate seller disclosure is required in these two situations because the buyer is presumed to have knowledge of matters in those reports.

If the Transfer Disclosure Statement (TDS), NHD and Lead-Based Paint Disclosures and pamphlet (lead disclosures) and other disclosures were not given to the buyer before the buyer made an offer, the RPA requires that they must be given after acceptance within the number of days specified in paragraph 14. Delivery of the TDS, NHD or lead or other disclosures after the buyer has signed the RPA triggers a cancellation period of three (3) days from personal receipt or five (5) days if delivery is by mail. If the buyer receives the TDS, NHD or lead disclosures before signing the RPA, there is no cancellation period. Although a completed transaction cannot be rescinded for failure of a seller to give a TDS, the pre-sale cancellation right exists even if the seller never provides the buyer with a TDS. That a buyer may cancel before the

seller provides the disclosure makes sense as a rule to the contrary would give a seller an incentive not to make the required disclosures.

*NOTE: Some areas have “local option” disclosures, which are required by local ordinance. There is a statutory format for these disclosures in Civil Code Section 1102 which is to be used. Delivery of the “local option” disclosure form triggers a three (3) or five (5) day rescission period (see A(7)).*

**B. NATURAL AND ENVIRONMENTAL HAZARD DISCLOSURES AND OTHER BOOKLETS:** Within the time specified in paragraph 14A, Seller shall, if required by Law: (i) Deliver to Buyer earthquake guide(s) (and questionnaire), environmental hazards booklet, and home energy rating pamphlet; (ii) disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; and Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.

As determined in paragraph 10A(1), the seller must, within the time specified in paragraph 14, provide to the buyer the NHD form, unless an exemption applies. The NHD form covers six (6) natural hazard zone disclosures (Earthquake Fault Zone, Seismic Hazard Zone, State Fire Responsibility Area, Very High Fire Hazard Severity Zone, Flood Zone A and Inundation Zones). This paragraph 10B informs the parties that even if the seller is exempt from providing a NHD form itself, the seller nonetheless has a statutory obligation to disclose if the property is in any of those 6 zones. The disclosure could be made on a NHD form or it could be made elsewhere. Today, the presence of third party reporting companies is so prevalent that it is of almost no import whether the seller is required to deliver the specific TDS form or is exempt, the disclosure of these 6 zones are almost always made in one of these third party reporting companies' reports.

### **Earthquake and Seismic Hazard Zones Disclosure**

The six natural hazard zones that must be disclosed (whether on the NHD or not) are as follows:

2 earthquake zones: Earthquake Fault Zone and Seismic Hazard Zone. The law requires a seller's agent, or a seller without an agent, to disclose to the buyer if the property is in an Earthquake Fault Zone (formerly called “Special Studies”) or Seismic Hazard Zone when the seller's agent or seller has actual knowledge that the property is in an identified area or when maps or a notice of where to get the maps is posted at the County Assessor, Recorder or Planning Office. Construction or development may be restricted in these zones.

2 flood zones: Special Flood Hazard Areas (Zone A) and Inundation Zones. Special Flood Hazard Areas are designated by the Federal Emergency Management Agency (FEMA). A seller's agent, or seller without an agent, must disclose if the property is in a Flood Zone A. Flood insurance coverage is generally required on these properties. The seller must also notify the buyer that the buyer must obtain and maintain flood insurance if the seller has received Federal Disaster Assistance on the property. The federal government has subsidized insurance rates for properties in these zones but such subsidies have been narrowed, cut back or eliminated. It is best to check with your



insurance advisor or lender about the cost of insuring property located in these zones.

Inundation zones are those areas subject to flooding in the event of a dam failure. A seller's agent, or seller without an agent, must disclose to a buyer if the property is located in an inundation zone.

2 fire zones: State Fire Responsibility Areas (SRA) and Very High Fire Severity Zones. The law requires a seller to disclose to the buyer if the property is located in an SRA when the seller has actual knowledge that the property is in an SRA or when maps are available through the County Assessor. The seller must also inform the buyer that the state has no responsibility to provide fire protection services to any building or structure located within the SRA unless an agreement has been reached with a local firefighting agency, and that the buyer may have to maintain firebreaks and other maintenance requirements may have to be met.

Properties located in a Very High Fire Severity Zone are subject to high fire risks. A seller must disclose to a buyer if the property is located in this fire zone and that the property may have maintenance requirements on it, such as maintaining firebreaks, or clearing brush, etc.

### **Earthquake Safety**

Effective January 1, 1993, the Government Code requires a disclosure in the form of a booklet regarding the earthquake safety or seismic deficiencies of structures of certain types of construction, depending upon the year built.

“The Homeowner’s Guide to Earthquake Safety” (booklet) is used for conventional light frame construction structures built prior to 1960. The seller must also disclose any known seismic deficiencies (see page 47 of the booklet).

It is the responsibility of the licensee to give the booklet to the seller. The seller is responsible for completing the questionnaire page and then giving the entire booklet to the buyer.

“The Commercial Property Guide to Earthquake Safety” is used for masonry or pre-cast concrete structures with wood frame floors and roofs built prior to 1975. Although the title says “commercial,” this booklet is also used for residential structures that meet the construction material description.

Exemptions to the delivery of the booklet are the same as for the TDS with an additional exemption if the buyer agrees in writing to demolish the property within one year.

The broker or seller who delivers the booklet to the buyer, even on exempt properties, is not required to provide additional information regarding earthquake hazards in general.

### **Environmental Hazard Booklet**

The Environmental Hazard Booklet discusses common environmental hazards: asbestos; formaldehyde; hazardous waste; household hazardous waste; lead; mold; and radon. The broker and seller who delivers the booklet is not required to provide additional information regarding any of those items unless the broker or seller has specific knowledge about the presence of those items on the property being sold.

**The Earthquake booklet and Environmental Hazard booklet are available online via Epubs™ in zipForm®.**

### **Home Energy Ratings Pamphlet**

This pamphlet discusses the importance of making a home energy efficient as well as advantages of using solar power. The law does not mandate that the pamphlet be given in a transaction but there are benefits in doing so in that the seller and listing broker get legal protection for advising the buyer of these issues.

**C. WITHHOLDING TAXES:** Within the time specified in paragraph 14A, to avoid required withholding, Seller shall Deliver to Buyer or qualified substitute, an affidavit sufficient to comply with federal (FIRPTA) and California withholding Law (C.A.R. Form AS or QS).

### **C. Withholding Taxes**

There are two tax withholding laws that affect the transfer of all real property in California: Federal law and California law.

Under Federal law, the buyer is responsible for withholding 10% of the seller's gross selling price (not of the "net proceeds") if the seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act (FIRPTA). Under California law, 3 1/3% of the gross selling price must be withheld for out-of-state entities, such as corporations or trusts, or any individual sellers. However, for individual sellers no withholding is required if the property being sold is the seller's principal residence for tax purposes; the sales price does not exceed \$100,000; or the property is part of a 1031 tax deferred exchange. Usually the escrow holder handles the withholding provided it has been given appropriate documentation.

Withholding is required unless an exemption applies. If an exemption from withholding applies, the seller needs to provide the buyer with documentation demonstrating the exemption. An exemption from withholding is not an exemption from documentation.

The Seller's Affidavit of Nonforeign Status and/or California Withholding Exemption (C.A.R. form AS) can be used to demonstrate the seller is exempt from the Federal or state withholding laws or both. To satisfy the Federal withholding law, the buyer must be provided with a completed AS form. Because this form contains the seller's social security number or taxpayer identification number many sellers are reluctant to release that information to the buyer. If the number is crossed out, the buyer will not be receiving a completed AS form. Because of seller's legitimate concerns, Federal law was amended to allow a title or escrow company to receive the AS form and then

notify the buyer that under that form, no withholding is required. The title or escrow company does not need to verify the seller's representations in the AS. When this is done, the buyer should receive a Qualified Substitute Declaration of Possession of Transferor's Affidavit of Nonforeign Status (C.A.R. Form QS), which will satisfy the federal requirement. Another exemption from the federal withholding law applies for properties sold for no more than \$300,000 that will be lived in by the buyer. A Buyer's Affidavit (C.A.R. form AB) may be used to document this exemption. Either exemption must be documented and the documentation retained by the buyer and the broker for five years in the event of an audit by the IRS or the Franchise Tax Board.

California exemptions are listed in the California section of the AS form.

**D. MEGAN'S LAW DATABASE DISCLOSURE:** Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at [www.meganslaw.ca.gov](http://www.meganslaw.ca.gov). Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides. (Neither Seller nor Brokers are required to check this website. If Buyer wants further information, Broker recommends that Buyer obtain information from this website during Buyer's inspection contingency period. Brokers do not have expertise in this area.)

#### **D. Megan's Law Database Disclosure**

This paragraph, required by statute, informs a buyer that information is available on the Internet regarding the location of registered sexual offenders.

**E. NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES:** This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov/>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Web site.

#### **E. Notice Regarding Gas and Hazardous Liquid Transmission Pipelines**

The California legislature required this paragraph be inserted into real property contracts so that concerned prospective homeowners can make their own determination of whether the property they are interested in buying is too close to a gas or hazardous liquid pipeline to be safe given that there is a possibility that such pipelines may leak or explode.



# V

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA-CA, PAGE 5)

### F. Condominium/Planned Unit Development Disclosures

#### F. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:

(1) **SELLER HAS: 7 (or \_\_\_) Days** After Acceptance to disclose to Buyer if the Property is a condominium, or is located in a planned development or other common interest subdivision (C.A.R. Form SPQ or SSD).  
(2) If the Property is a condominium or is located in a planned development or other common interest subdivision, Seller has **3 (or \_\_\_) Days** After Acceptance to request from the HOA (C.A.R. Form HOA1): (i) Copies of any documents required by Law; (ii) disclosure of any pending or anticipated claim or litigation by or against the HOA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of HOA minutes for regular and special meetings; and (v) the names and contact information of all HOAs governing the Property (collectively, "CI Disclosures"). Seller shall itemize and Deliver to Buyer all CI Disclosures received from the HOA and any CI Disclosures in Seller's possession. Buyer's approval of CI Disclosures is a contingency of this Agreement as specified in paragraph 14B(3). The Party specified in paragraph 7, as directed by escrow, shall deposit funds into escrow or direct to HOA or management company to pay for any of the above.

- (1). Sometimes a buyer may not be aware that the property is part of a development where property is shared in common with other owners or where the property is subject to certain rules along with other owners. This paragraph provides that the seller will make this information known to the buyer.
- (2). The seller must promptly request and provide the contractually required documents specified, including statements about age restrictions, preliminary list of defects, if any, or written notice of settlements involving common area defects and including the names and contact information for the Homeowners Association governing the property. This agreement requires the delivery of 12 months of Homeowners Association (HOA) minutes. Legally required documents are specified on a separate form (Homeowners Association Information Request, C.A.R. Form HOA). Other parts of the RPA (see paragraph 7D) may provide that the seller is responsible for paying costs associated with acquiring this information. If so, the escrow holder may require payment from seller before placing or completing the order and instruct the seller how and to whom such payments should be made directly (see paragraph 20A).

### 11. Condition of Property

- 11. CONDITION OF PROPERTY:** Unless otherwise agreed in writing: (i) the Property is sold (a) "AS-IS" in its PRESENT physical condition as of the date of Acceptance and (b) subject to Buyer's Investigation rights; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow.
- A. Seller shall, within the time specified in paragraph 14A, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, and make any and all other disclosures required by law.
  - B. Buyer has the right to conduct Buyer Investigations of the Property and, as specified in paragraph 14B, based upon information discovered in those investigations: (i) cancel this Agreement; or (ii) request that Seller make Repairs or take other action.
  - C. **Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had permits issued.**

Property sold using the RPA is sold in an “As-Is” condition. What this means is that at close of escrow the buyer is purchasing the property in its existing condition on the date of acceptance. The seller is not obligated to repair defects that exist as of that date. The seller does however have to disclose known material defects. The seller is also responsible for maintaining the property in the condition it was in on the date of acceptance. As-is does not mean you take the property as you find it on the date of close of escrow but rather you take the property as it was on the date of acceptance. The buyer has the ability to determine that condition by reviewing the seller disclosures and making an independent investigation of the property to discover its true condition (see paragraph 12). If the buyer is not satisfied with the condition, the buyer is allowed to ask the seller to make repairs. If the seller cannot or will not do so, the buyer has the right to cancel the sale as long as the inspection contingency remains in effect.

One of the facts the seller is required to disclose is whether any insurance claims affecting the property have been filed within the past five years. Depending on the nature and types of such claims, the property may be uninsurable or insurance may be expensive or difficult to obtain. The buyer’s lender is likely to obtain a document referred to as a CLUE report which identifies certain property insurance claims. Even if the buyer or lender gets a CLUE report, that report is not a substitute for the seller making his or her own disclosure. The last line in 11C indicates the property may not have been built according to code, may not be in compliance with current law and may not have had permits issued for all or some of the structural improvements. Some are under the mistaken belief that a seller cannot sell a property with health or safety defects. The seller can, provided the seller makes full disclosure of what is known and provided there are no local laws requiring certain defects to be cured upon sale.

## 12. Buyer’s Investigation of Property and Matters Affecting

### 12. BUYER’S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:

**A.** Buyer’s acceptance of the condition of, and any other matter affecting the Property, is a contingency of this Agreement as specified in this paragraph and paragraph 14B. Within the time specified in paragraph 14B(1), Buyer shall have the right, at Buyer’s expense unless otherwise agreed, to conduct inspections, investigations, tests, surveys and other studies (“Buyer Investigations”), including, but not limited to, the right to: **(i)** inspect for lead-based paint and other lead-based paint hazards; **(ii)** inspect for wood destroying pests and organisms. Any inspection for wood destroying pests and organisms shall be prepared by a registered Structural Pest Control company; shall cover the main building and attached structures; may cover detached structures; shall NOT include water tests of shower pans on upper level units unless the owners of property below the shower consent; shall NOT include roof coverings; and, if the Property is a unit in a condominium or other common interest subdivision, the inspection shall include only the separate interest and any exclusive-use areas being transferred, and shall NOT include common areas; and shall include a report (“Pest Control Report”) showing the findings of the company which shall be separated into sections for evident infestation or infections (Section 1) and for conditions likely to lead to infestation or infection (Section 2); **(iii)** review the registered sex offender database; **(iv)** confirm the insurability of Buyer and the Property including the availability and cost of flood and fire insurance; **(v)** review and seek approval of leases that may need to be assumed by Buyer; and **(vi)** satisfy Buyer as to any matter specified in the attached Buyer’s Inspection Advisory (C.A.R. Form BIA). Without Seller’s prior written consent, Buyer shall neither make nor cause to be made: **(i)** invasive or destructive Buyer Investigations except to the extent required to prepare a Pest Control Report; or **(ii)** inspections by any governmental building or zoning inspector or government employee, unless required by Law.

### Property

This paragraph gives the buyer the right to investigate or inspect the property as a contingency of the agreement. Then, under paragraph 14, the buyer must either remove the contingency associated with this investigation or cancel the agreement. The buyer inspection right is almost limitless but specific mentions are made for lead-based paint investigations, wood destroying pest inspections, registered sex

offender investigations, insurance inquiries and review and approval of leased items included in the sale pursuant to paragraph 8.

The right to inspect for wood destroying pests and organisms is very specific. Parameters of that inspection require the inspector to be a registered structural pest control company. Other parameters limit the inspection to separate interests and exclusive use common areas if the property is located in a common interest subdivision or condominium. (The buyer is not restricted from examining or viewing these areas that are off limits to the pest control company.) If a wood destroying pests and organisms inspection is made, the inspection company shall issue a written report and separate its findings into areas of evident infestation or infection, commonly known as Section 1, and areas likely to lead to infestation or infection, commonly known as Section 2. There is no obligation in this paragraph requiring a seller to correct any section 1 or section 2 deficiencies identified in the report. If the buyer desires corrective work, the buyer will make the claim on the Request for Repair (C.A.R. form RR) along with any other desired repair or accommodation. Language has been added to the RR form to make it easy for the buyer to specify section 1 or section 2 requests. If the seller does not agree, the buyer retains the right to cancel the contract as long as the inspection contingency has not been removed (see paragraph 14). Essentially, the wood destroying pests and organisms inspection operates as any other inspection the buyer wishes to obtain. If the buyer want to negotiate for the seller to pay for the inspection (but not necessarily the repairs), that can be accommodated by writing a request using paragraph 7. Freedom to negotiate the inspection and the response to the report are benefits of the RPA.

The last sentence of paragraph 12 lists a few other limitations on the buyer's inspection right. Inspections by government entities are not to be done without the seller's prior approval and invasive or destructive testing, other than that necessary to perform a wood destroying pests and organisms inspection, is to be avoided.

- B.** Seller shall make the Property available for all Buyer Investigations. Buyer shall (i) as specified in paragraph 14B, complete Buyer Investigations and either remove the contingency or cancel this Agreement, and (ii) give Seller, at no cost, complete Copies of all such Investigation reports obtained by Buyer, which obligation shall survive the termination of this Agreement.
- C.** Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is made available to Buyer.
- D. Buyer indemnity and seller protection for entry upon property:** Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-Responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.

Other clauses in this paragraph tie the inspection and request rights to those specified in paragraph 14, and assure that the seller is entitled to a copy of all reports obtained by the buyer, at no cost to the seller (paragraph B). Paragraph C requires the seller to have utilities turned on not just for the buyer's initial inspection but through the date buyer is given possession.

Lastly, paragraph D instructs that the buyer shall not damage the seller's property while performing inspections or repairs and shall take steps to assure that the seller will not be harmed, such as by hiring insured workers and indemnifying the seller. The seller is also cautioned that recording certain notices may help protect the seller's interest.

### 13. Title and Vesting

#### 13. TITLE AND VESTING:

**A.** Within the time specified in paragraph 14, Buyer shall be provided a current preliminary title report ("Preliminary Report"). The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. Buyer's review of the Preliminary Report and any other matters which may affect title are a contingency of this Agreement as specified in paragraph 14B. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities. Seller shall within 7 Days After Acceptance, give Escrow Holder a completed Statement of Information.

**A.** The buyer has a specified amount of time to review the preliminary report (PR) and give the seller a written notice to take corrective action. The title company should search not just the property but the general index to determine if any liens affect the seller. In the past, a general index search often occurred right before the close of escrow to make sure the seller could deliver clear title. Getting the information up front in the transaction helps the buyer decide whether to continue with the transaction before incurring excess costs and expenses. In order to aid the ability of the title company to perform a general index search early in the transaction, the seller will have to give a seller information document, called a Statement of Information, to the title company at the commencement of the transaction. A general index search will not be performed on all sellers, however, particularly those who are selling property they acquired through foreclosure, and corporations and governmental entities. The PR may not contain all items affecting title and is only an "inducement to purchase a title insurance policy." In the event an item of record is not disclosed in the PR, and the title policy is issued, the title company is liable only for the face amount of the policy.

**B.** Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record (which Seller is obligated to pay off) unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing.

**C.** Within the time specified in paragraph 14A, Seller has a duty to disclose to Buyer all matters known to Seller affecting title, whether of record or not.

**B.** Unless otherwise specified by the buyer in writing, all matters on record will remain on the title, such as easements, CC&Rs, etc. These matters may be found in the PR or discovered prior to COE. However, existing monetary liens on the property must be removed from the title unless agreed to as part of the contract. These would be liens that were recorded against the property for money the seller owes to another. Because the property title is being conveyed in an as-is condition, there is another reminder to the seller in paragraph C (as there is in paragraph 11) to disclose all known title matters, even those not appearing on a preliminary report or otherwise of record.



**D.** At Close Of Escrow, Buyer shall receive a grant deed conveying title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's leasehold interest), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's supplemental escrow instructions. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.

Buyer is entitled to receive title to the property by a grant deed if a fee interest is being transferred. A stock certificate or assignment of lease will instead be issued in other more rare circumstances. The transfer will include oil, mineral, and water rights if currently owned by the seller. Sometime these rights had been transferred long before the seller took title to the property and a title company can provide guidance if these are important issues to the buyer.

Vesting shall be designated in the buyer's escrow instructions. The agent should never advise on how to take title.



# VI

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA-CA, PAGE 6)

E. Buyer shall receive a CLTA/ALTA "Homeowner's Policy of Title Insurance", if applicable to the type of property and buyer. If not, Escrow Holder shall notify Buyer. A title company can provide information about the availability, coverage, and cost of other title policies and endorsements. If the Homeowner's Policy is not available, Buyer shall choose another policy, instruct Escrow Holder in writing and shall pay any increase in cost.

E. This paragraph provides that a buyer is to receive a "Homeowner's Policy of Title Insurance." This particular type of policy has been adopted by both the American Land Title Association (ALTA) and the California Land Title Association (CLTA). Whether an ALTA or CLTA policy the Homeowner's Policy offers the same coverage and contains advantages over a CLTA standard coverage policy or ALTA-R in terms of certain post-policy forgeries, boundary disputes, transfers to trusts and permit and map act problems. However, the Homeowner's Policy is only available for buyers who are natural persons and may not be available for some properties, particularly in rural areas. If the property or buyer does not qualify for the Homeowner's Policy, then the buyer should discuss with the title company what other options are available and then notify the escrow company in writing of the buyer's replacement choice.

### 14. Time Periods; Removal of Contingencies; Cancellation Rights

**14. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS:** The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).

Time periods for each contingency or contractual obligation are either stated in the applicable paragraph or, if not, are specified in paragraph 14 by default. Time periods begin on the first calendar day following acceptance. These time periods are critical for the satisfaction or removal of contingencies. The Statute of Frauds requires real estate contracts to be in writing to be enforceable. The RPA requires that any amendment to the contract in terms of cancellation or removal of contingencies (including altering the time during which either must be accomplished) must also be in writing. C.A.R. forms Contingency Removal (C.A.R. form CR) or Cancellation of Contract, Release of Deposit and Joint Escrow Instructions (C.A.R. form CC) may be used as the required writing. Verbal contingency removal or cancellation is not enforceable and should not be relied upon. Documenting these important steps in a transaction reduces the possibility of misunderstanding and disputes later on. Not only must cancellation and contingency removal be in writing, they must be exercised in good faith. Good faith means honesty in fact and may not always be easy to determine. But

in the absence of good faith, a buyer, for example, could cancel a contract for any reason or no reason at all. Such an open-ended right to cancel may make the contract “usurious” and unenforceable.

**A. SELLER HAS: 7 (or \_\_\_) Days** After Acceptance to Deliver to Buyer all Reports, disclosures and information for which Seller is responsible under paragraphs 5, 6, 7, 8B(4), 10A, B, C, and F, 11A, 13A, and 19. If, by the time specified, Seller has not delivered any such item, Buyer after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP) may cancel this Agreement.

**A.** This clause establishes how many days the seller has to give specified information to the buyer. If no number is written into the blank, then the seller has seven (7) calendar days to provide the buyer with the items specified. Examples would be natural hazard zone disclosures (see paragraph 5A), mandatory government reports (see paragraph 5B(2)(ii)), the list of items transferred included in the sale that are leased (see paragraph 8B(4)), lead paint disclosures (see paragraph 10A(1)), the Transfer Disclosure Statement (see paragraph 10A(1)), the Seller Property Questionnaire (see paragraph 10A(4)), Homeowners Association documents (see paragraph 10F), the Preliminary Report (see paragraph 13A) and proof of authority to act in a representative capacity (see paragraph 19). Certain items, such the Preliminary Report, natural hazard disclosure reports, government reports and Homeowners Association documents need to be requested from others and should be requested early on in order to provide them to the buyer within the required time. If buyer does not get the information the seller has contractually agreed to provide, buyer must notify the seller using the Notice to Seller to Perform (C.A.R. form NSP). While this form cannot make the seller perform, it may provide a non-threatening manner to inform the seller of the contractual obligation. If the seller still does not provide the necessary documentation after the time provided in the NSP, the buyer has the contractual right to cancel.

**B. (1) BUYER HAS: 17 (or \_\_\_) Days** After Acceptance, unless otherwise agreed in writing, to:

- (i) complete all Buyer Investigations; review all disclosures, reports, lease documents to be assumed by Buyer pursuant to paragraph 8B(4), and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property; and (ii) Deliver to Seller Signed Copies of Statutory and Lead Disclosures and other disclosures Delivered by Seller in accordance with paragraph 10A.
- (2) Within the time specified in paragraph 14B(1), Buyer may request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to (C.A.R. Form RRRR) Buyer's requests.
- (3) By the end of the time specified in paragraph 14B(1) (or as otherwise specified in this Agreement), Buyer shall Deliver to Seller a removal of the applicable contingency or cancellation (C.A.R. Form CR or CC) of this Agreement. However, if any report, disclosure or information for which Seller is responsible is not Delivered within the time specified in paragraph 14A, then Buyer has **5 (or \_\_\_) Days** After Delivery of any such items, or the time specified in paragraph 14B(1), whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.

This clause gives the buyer 17 days after acceptance to complete inspections, and investigations, and review reports and other information for which the buyer is responsible, and either remove contingencies and thereby continue with the transaction or cancel the agreement. The 17-day time period can be changed by checking the appropriate box and writing in a different number in the blank line.

The buyer must complete all investigations and review of reports, such as getting a home inspection, reviewing the lead-based paint and hazard disclosures, and investigating the insurability of the buyer and the property within the specified time. Additionally, also within the specified time, the buyer must return copies of signed statutory disclosures to the seller.

The buyer may request that the seller make repairs or take other action regarding the property. The Request for Repair form (C.A.R. form RR) may be used for this purpose. In section 1 of the RR, the buyer asks the seller to make repairs, give the buyer a credit toward the purchase price or reduce the purchase price. In section 2 of the RR, the seller responds to buyer's request by agreeing to all, some or none of what the buyer requested. In section 3 of the RR, the buyer responds by either accepting the seller's response or seeking to continue the negotiation. The seller is not obligated to make repairs. If no agreement is reached, the buyer may cancel.

The buyer must, in writing, either remove their contingencies or cancel the agreement. C.A.R. Contingency Removal (C.A.R. form CR) or Cancellation of Contract, Release of Deposit and Joint Escrow Instructions (C.A.R. form CC).

It is important to remember that the buyer must accomplish all three things above during the 17, or other defined, days: (1) Make buyer's own investigation and review reports provided by buyer's inspectors and from the seller; (2) Make any request for repairs or otherwise negotiate over the property's condition with the seller; and (3) remove contingencies or cancel. The 17 days is not the beginning of the process but the end.

There may be times when a buyer is contractually entitled to more time to take the designated action. If within the time in paragraph 14A, the seller is unable to deliver any of the contractually required documents, the buyer's obligation to remove the contingency associated with that item is not triggered until five days after the item is delivered to buyer (see paragraph 14B(3)).

**(4) Continuation of Contingency:** Even after the end of the time specified in paragraph 14B(1) and before Seller cancels, if at all, pursuant to paragraph 14C, Buyer retains the right, in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to paragraph 14C(1).

As stated in the opening caption, removal of contingencies or cancellation must be in writing to be effective. The RPA applies the "active" method of contingency removal, NOT the "passive" method. Silence does not make the contingency go away nor create a cancellation. This clause clarifies that if neither buyer nor seller has taken any action in writing, the buyer retains the right to make requests of the seller, remove contingencies or cancel the agreement even after the expiration of the time in paragraph 14B(1).

### C. Seller Right to Cancel

#### C. SELLER RIGHT TO CANCEL:

- (1) Seller right to Cancel; Buyer Contingencies:** If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
- (2) Seller right to Cancel; Buyer Contract Obligations:** If, by the time specified in this Agreement, Buyer does not take the following action(s), then Seller, after first delivering to Buyer a NBP may cancel this Agreement: **(i)** Deposit funds as required by paragraph 3A, or 3B or if the funds deposited pursuant to paragraph 3A or 3B are not good when deposited; **(ii)** Deliver a notice of FHA or VA costs or terms as required by paragraph 3D(3) (C.A.R. Form FVA); **(iii)** Deliver a letter as required by paragraph 3J(1); **(iv)** Deliver verification, or a satisfactory verification if Seller reasonably disapproves of the verification already provided, as required by paragraph 3C or 3H; **(v)** Return Statutory and Lead Disclosures as required by paragraph 10A(5); or **(vi)** Sign or initial a separate liquidated damages form for an increased deposit as required by paragraphs 3B and 21B; or **(vii)** Provide evidence of authority to sign in a representative capacity as specified in paragraph 19. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.

If buyer does not do what the buyer promised to do (either remove contingencies or cancel), since silence or no-action is not approval, the contract will remain in limbo unless seller takes affirmative action. Paragraph 14C(1) gives the seller the opportunity to cancel after first giving the buyer a chance to comply with the contract. Before the seller can cancel, the seller must first have given the buyer a Notice to Buyer to Perform (C.A.R. form NBP) (see paragraph 14D).

Similarly, sometimes a buyer does not do what the buyer promised to do in areas that are not contingencies. For example, the contract requires the buyer to make a deposit (see paragraph 3A) or sign a new liquidated damage clause upon making an increased deposit (see paragraph 21B) or provide verification of down payment (see paragraph 3H). Common law in California allows one party to cancel if the other party has committed a material breach. But are the buyer's obligations material or not? The RPA solves this open question by creating a contractual right to cancel but only after the seller has delivered to buyer a Notice to Buyer to Perform (C.A.R. form NBP). Paragraph 14C(2) establishes the seller's right to cancel after first giving the NBP to the buyer.

Whether the seller cancels because the buyer failed to remove contingencies or because the buyer failed to take some other specified action, when the seller cancels after issuing a NBP to the buyer, both paragraph 14C(1) and 14C(2) require the seller to authorize the return of the buyer's deposit.

**D. NOTICE TO BUYER OR SELLER TO PERFORM:** The NBP or NSP shall: (i) be in writing; (ii) be signed by the applicable Buyer or Seller; and (iii) give the other Party at least **2** (or \_\_\_) Days After Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A NBP or NSP may not be Delivered any earlier than **2 Days** Prior to the expiration of the applicable time for the other Party to remove a contingency or cancel this Agreement or meet an obligation specified in paragraph 14.

Whether a Notice to Buyer to Perform is issued pursuant to paragraph 14C or a Notice to Seller to Perform is issued pursuant to 14A, the party issuing the notice must give the other party at least 2 days, or until the previously agreed time (whichever occurs last), to either take the action specified in the agreement (remove contingencies or cancel or take the identified contractual action for the buyer) (deliver the required document for the seller). The 2 day notice period can be changed by checking the appropriate box and writing in a different number in the blank line. The purpose of the NBP and NSP is to prevent the buyer from being surprised by the seller's attempt to cancel or a seller from being surprised that the buyer did not get certain information and therefore wants to cancel. For example, sometimes one of the parties believes ongoing, good faith negotiations indicate a waiver of the obligation to take the action specified in the contract. By delivering a notice to perform, there is a document establishing that no more time or delay will be allowed and that party is reasserting the need to comply with the contract.

- E. EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES:** If Buyer removes, in writing, any contingency or cancellation rights, unless otherwise specified in writing, Buyer shall conclusively be deemed to have: **(i)** completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; **(ii)** elected to proceed with the transaction; and **(iii)** assumed all liability, responsibility and expense for Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.
- F. CLOSE OF ESCROW:** Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a demand to close escrow (C.A.R. Form DCE). The DCE shall: **(i)** be signed by the applicable Buyer or Seller; and **(ii)** give the other Party at least **3 (or \_\_\_\_\_) Days** After Delivery to close escrow. A DCE may not be Delivered any earlier than **3 Days** Prior to the scheduled close of escrow.

**Paragraph 14E** specifies that once buyer removes contingencies, buyer is precluded from raising certain legal objections that might have been able to be put forth while the contingencies were still in place.

Paragraph 14E addresses the situation where one party or the other will not close the escrow as scheduled. When the buyer refuses to close on time, and has already removed all contingencies, a seller should use the Demand to Close Escrow (C.A.R. form DCE) instead of using the NBP. The reason is that the seller must return a buyer's deposit after cancelling following the issuance of a NBP but there is no such obligation to do so following the issuance of a DCE. The buyer who has already removed all contingencies is more than likely going to be in breach of contract for failure to close and accordingly may not have a legal right to have the deposit returned. Whether the DCE is issued by a seller or a buyer, the form puts the receiving party on notice that escrow must be closed in three days (or other specified time) or risk cancellation.

C.A.R. form CC may be used to cancel the contract. Even though one party

- G. EFFECT OF CANCELLATION ON DEPOSITS:** If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to Sign mutual instructions to cancel the sale and escrow and release deposits, if any, to the party entitled to the funds, less fees and costs incurred by that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. Except as specified below, **release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award.** If either Party fails to execute mutual instructions to cancel, one Party may make a written demand to Escrow Holder for the deposit. Escrow Holder, upon receipt, shall promptly deliver notice of the demand to the other Party. If, within 10 Days After Escrow Holder's notice, the other Party does not object to the demand, Escrow Holder shall disburse the deposit to the Party making the demand. If Escrow Holder complies with the preceding process, each Party shall be deemed to have released Escrow Holder from any and all claims or liability related to the disbursement of the deposit. Escrow Holder, at its discretion, may nonetheless require mutual cancellation instructions. **A Party may be subject to a civil penalty of up to \$1,000 for refusal to sign cancellation instructions if no good faith dispute exists as to who is entitled to the deposited funds (Civil Code §1057.3).**

has contractual rights to cancel under certain circumstances, both parties are required to sign a cancellation of escrow. There are times when buyer and seller disagree on who is entitled to the deposit money. Sometimes the RPA provides an answer to that question, such as when a seller cancels after first issuing a NBP. Other times the answer is not so clear cut. The second part of C.A.R. form CC allows the parties to disagree on the release of deposit but agree on dissolution of the transaction.

There are times when a party refuses to sign escrow instructions releasing the deposit, not for any apparent legitimate reason but rather what appears to be nothing more than an effort to make life difficult for the other party. Inaction by one forces the other party to either take legal action or enter into some sort of settlement discussion to avoid the time and expense of pursuing legal action. There are other times when a party has simply disappeared or is completely unresponsive and it is not possible to get that party to sign on any instruction. The RPA now provides that if one party makes a demand for

the deposit (C.A.R. form SDRD or BDRD) and the other does not object in 10 days, escrow has authority to release the deposit to the party making the demand. If an objection is made, escrow will continue to hold the funds until a mutual instruction has been made.

California law imposes a penalty on a party who refuses to release funds if there is no good faith dispute over who is entitled to the funds.

## 15. Repairs

**15. FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final verification of the Property within **5 (or  \_\_\_)** Days Prior to Close Of Escrow, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: **(i)** the Property is maintained pursuant to paragraph 11; **(ii)** Repairs have been completed as agreed; and **(iii)** Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).

Any repairs, including those performed pursuant to a pest control report or those separately agreed upon by the seller, are to be done with permits and in compliance with building codes and completed before buyer's final verification of condition. Work performed at the seller's expense may be performed by the seller. Exact restoration of appearance is not required. The seller is required to get invoices and paid receipts and provide them to the buyer.



# VII

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA-CA, PAGE 7)

### 16. Final Verification of Condition

**16. REPAIRS:** Repairs shall be completed prior to final verification of condition unless otherwise agreed in writing. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. It is understood that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: **(i)** obtain invoices and paid receipts for Repairs performed by others; **(ii)** prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and **(iii)** provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.

This clause is the authorization for a final “walk-through” five (or number specified) calendar days prior to COE. The clause does not give the buyer the right to inspect for everything and anything or the right to get out of the contract if the buyer discovers something that should have been noticed during the inspection contingency period. Instead, the purpose of this clause is to allow the buyer to verify that the condition of the property is as agreed upon in the contract and that the seller has complied with repair and other obligations. The buyer does not have a cancellation right under this clause, per se, but rather the buyer may discover something that the seller has not done (such as maintain the property in the condition it was in on the date of acceptance or make a required repair) and that failure may trigger rights and remedies for breach of contract under other paragraphs.

### 17. Prorations of Property Taxes and Other Items

**17. PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless otherwise agreed in writing, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, rents, HOA regular, special, and emergency dues and assessments imposed prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special assessments that are now a lien but not yet due. Property will be reassessed upon change of ownership. Any supplemental tax bills shall be paid as follows: **(i)** for periods after Close Of Escrow, by Buyer; and **(ii)** for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information). TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be made based on a 30-day month.

Sellers make and receive payments for a variety of things such as taxes, rents, HOA dues and government liens that may cover periods for which the seller no longer owns the property. In the case of payments made by the seller, the buyer would receive a windfall if the seller made a payment that primarily benefitted the buyer. In the case of receiving payments, the opposite is true. For example, if the property were being leased, and rent is due on the first of the month and the escrow closes on the fifth, the seller would have received the full rent but the buyer would have responsibility for the tenant for the entire balance of the month.

In order to prevent a windfall one way or the other, certain costs and receipts are prorated between buyer and seller to reflect their ownership interest in the property.

The buyer will receive NO CREDIT however toward the purchase price for Mello-Roos or other governmental special assessments, or HOA “special” assessment assumed by the buyer.

The end of this paragraph refers to a supplemental tax bill the buyer will receive from the tax collector to pay the amount of increased taxes owed after the COE and before the next tax period. Usually the taxes collected through the escrow are based upon the tax bill of the prior owner. This makes the tax collected less than the amount based upon this new sales price if the property is worth more than the seller bought it for. Escrow has no responsibility for estimating the new property taxes that will be assessed after escrow has closed, so any effort to prorate based upon the supplemental tax bill is to be handled directly between the parties. In addition to this paragraph in the contract, the buyer is advised of this in the Statewide Buyer and Seller Advisory (C.A.R. form SBSA) and may also be provided with a Notice of Your “Supplemental” Property Tax Bill (C.A.R. form SPT) that also contains the relevant statutory language.

Prorations will be made based on a 30-day month, whether the actual month of the transaction has 28, 29, 30 or 31 days.

## 18. Brokers

### 18. BROKERS:

- A. COMPENSATION:** Seller or Buyer, or both, as applicable, agree to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
- B. SCOPE OF DUTY:** Buyer and Seller acknowledge and agree that Broker: **(i)** Does not decide what price Buyer should pay or Seller should accept; **(ii)** Does not guarantee the condition of the Property; **(iii)** Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; **(iv)** Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; **(v)** Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Broker; **(vi)** Shall not be responsible for inspecting public records or permits concerning the title or use of Property; **(vii)** Shall not be responsible for identifying the location of boundary lines or other items affecting title; **(viii)** Shall not be responsible for verifying square footage, representations of others or information contained in Investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; **(ix)** Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; **(x)** Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and **(xi)** Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.

**18A.** This paragraph provides that compensation that either buyer or seller owes the broker arising from the transaction must be specified in a separate compensation agreement. The listing broker will typically have a listing agreement such as the Residential Listing Agreement (C.A.R. form RLA). The broker representing the buyer may be compensated from the listing broker pursuant to the MLS. If the broker representing the buyer is not a member of the MLS in which the property is listed, or the property is not listed in the MLS at all, then that broker is not entitled to compensation unless an agreement with the listing broker is put in writing (see paragraph D inside the Real Estate Broker box on page 10). The Cooperating Broker Compensation Agreement (C.A.R. form CBC) may be used

to satisfy this written requirement. The broker representing the buyer may even have an agreement signed by the buyer to pay the broker directly, such as the Buyer Representation Agreement (C.A.R. form BRE).

Compensation owing under any such agreement is due at COE if the transaction is successfully completed. If the sale does not close because the buyer defaults, then, under the terms of the listing agreement, the seller owes compensation to the listing broker only if and when the seller collects damages. (The broker is entitled to no more than half of the damages collected, not to exceed the amount of commission.)

The seller irrevocably assigns the compensation to the broker to be paid from the seller's proceeds in escrow (see paragraph 20C). In the event of a commission dispute, the funds will typically be held in escrow (and not released to the seller) until the dispute is resolved.

**18B.** Buyers and sellers sometimes do not understand the role of a real estate broker in the transaction. This paragraph both educates the parties of the broker's proper role and represents the parties' consent to the limitations on what a broker can do for them. For example, while a broker may provide guidance on the value of a property, the decision on what price to pay or what price to accept is up to the buyer and seller. As another example, even though the broker has a duty to conduct a visual inspection of the property, such an inspection will not cover off-site areas, or public records, or serve as a substitute for the buyer hiring inspectors to examine the property. If the buyer needs advice outside the scope of the broker's knowledge, the buyer should seek the assistance of an appropriate professional, such as an attorney, accountant, insurance agent or title company.

## 19. Representative Capacity

**19. REPRESENTATIVE CAPACITY:** If one or more Parties is signing this Agreement in a representative capacity and not for him/herself as an individual then that Party shall so indicate in paragraph 31 or 32 and attach a Representative Capacity Signature Addendum (C.A.R. Form RCSA). Wherever the signature or initials of the representative identified in the RCSA appear on this Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Party acting in a representative capacity shall Deliver to the other Party and Escrow Holder, within 3 Days After Acceptance, evidence of authority to act in that capacity (such as but not limited to: applicable trust document, or portion thereof, letters testamentary, court order, power of attorney, resolution, or formation documents of the business entity).

Many times the person who is authorized to sign the contract is not actually the buyer or seller. For example, if the buyer is a corporation, an officer of the corporation typically has authority to sign agreements on behalf of the corporation. If property is held in trust, the trustee of the trust has authority to enter in the agreement. The trustee may or may not be the person who put the property in trust in the first place and may not be the occupant. Ideally, the person signing the contract will always do so by including that person's proper title, such as President, Managing Partner, Trustee, Executor, Attorney in Fact (for those holding a power of attorney) and the like. This is not always done, and is difficult to accomplish when initials are inserted into the agreement instead of a full blown signature and is also difficult when using electronic signatures. Because of these situations, C.A.R. created the Representative Capacity Signature Addendum (C.A.R. form RCSA). The RCSA has two purposes: First, it lets all parties know that the

person who is signing is doing so in a representative capacity and not in his or her own right. Second, it is an agreement that even if the person signing does not indicate the official title each time a signature or initial is required, it is presumed to be done in the representative capacity. Paragraph 19 not only requires the use of the RCSA in the transaction but also that the representative provide some kind of proof that the representative has authority to act. This proof can be a copy of relevant portions of a trust, a power of attorney, a court order or resolution of a corporate or LLC board of directors, for example. The proof shall be provided to the other party and to the escrow holder.

## 20. Joint Escrow Instructions to Escrow Holder

### 20. JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:

**A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder**, which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: paragraphs 1, 3, 4B, 5A, 6, 7, 10C, 13, 14G, 17, 18A, 19, 20, 26, 29, 30, 31, 32 and paragraph D of the section titled Real Estate Brokers on page 10. If a Copy of the separate compensation agreement(s) provided for in paragraph 18A, or paragraph D of the section titled Real Estate Brokers on page 10 is deposited with Escrow Holder by Broker, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder and will execute such provisions within the time specified in paragraph 7C(1)(c). To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller will execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within 3 (or \_\_\_\_ ) Days, shall pay to Escrow Holder or HOA or HOA management company or others any fee required by paragraphs 7, 10 or elsewhere in this Agreement.

**20A.** Selected portions of the purchase agreement are instructions from the buyer and seller to the escrow holder. Thus, the RPA is both an agreement between the parties and an agreement of the escrow holder to the parties and vice versa. The RPA is not the only agreement or authorization involving escrow. Buyer and seller may receive additional instructions directly from the escrow holder and they agree to sign reasonably necessary forms to complete the transaction. If a broker compensation agreement is deposited with escrow holder, escrow is instructed to disperse compensation pursuant to that separate compensation agreement (see paragraph 18A and the Real Estate Broker box on page 10). Lastly, and importantly, this paragraph reflects an agreement by both parties to make payments to escrow holder, or to others as directed by escrow holder, for services or obligations specified elsewhere in the RPA.

**B.** A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within **3 Days After Acceptance** (or \_\_\_\_\_). Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title company when received from Seller. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under paragraph 10C, Escrow Holder shall deliver to Buyer a Qualified Substitute statement that complies with federal Law.

**20B.** The parties have three (3) business days to deliver the agreement to the escrow holder, unless a different period is agreed-upon by the parties. The time to do this will generally correlate to the pre-printed time the deposit is placed with escrow. Failure to submit the agreement to escrow will not invalidate the agreement between the buyer and seller.

- C. Brokers are a party to the escrow for the sole purpose of compensation pursuant to paragraph 18A and paragraph D of the section titled Real Estate Brokers on page 10. Buyer and Seller irrevocably assign to Brokers compensation specified in paragraph 18A, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.

20C. Brokers are not parties to the RPA but are parties to the escrow solely for the purpose of compensation. The Buyer and seller agree to irrevocably assign any broker compensation provided for in paragraphs 18. This clause prevents the parties from changing compensation instruction to the brokers without the brokers' consent.



# VIII

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA-CA, PAGE 8)

- D. Upon receipt, Escrow Holder shall provide Seller and Seller's Broker verification of Buyer's deposit of funds pursuant to paragraph 3A and 3B. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify all Brokers: (i) if Buyer's initial or any additional deposit or down payment is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.
- E. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within 3 Days after mutual execution of the amendment.

**20 D and E.** Escrow agrees to notify the brokers if the buyer fails to make a required deposit or if buyer and seller submit cancellation instructions to escrow. This allows brokers to monitor the transaction for compliance and address concerns or issues by either broker's client. The Buyer and seller agree to provide escrow with a copy of any amendment affecting any paragraph that is also an escrow instruction. This allows the escrow holder to properly perform its functions and to act in accordance with current, as opposed to outdated, instructions.

### 21. Remedies for Breach of Contract

- 21. REMEDIES FOR BUYER'S BREACH OF CONTRACT:**
  - A. Any clause added by the Parties specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase in violation of this Agreement shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.

**21A.** California law has specific requirements that must be met if a seller is to keep all or part of a buyer's deposit after a buyer has breached. Paragraph 21B satisfies the legal requirements. There are times though when a seller wants to try to insert a clause in the contract that the seller believes is more effective. One such insertion provides for an early release of the deposit from escrow direct to a seller before close or a breach. Another such clause attempts to make the deposit nonrefundable. An early release of deposit to the seller is not illegal but, in and of itself, does not entitle the seller to keep the deposit. It does however make getting the deposit back more difficult for the buyer and may put the buyer at a disadvantage if the buyer cancels the contract for the failure of a contingency or if seller cancels the contract after giving the buyer a notice to perform (see paragraph 14). A nonrefundable deposit clause is often not thought through before being inserted into a contract. Such a clause may be considered a forfeiture, and therefore unenforceable, or may be considered an unlawful attempt to create liquidated damages without following the statutory requirements. If the nonrefundable clause has no limitations, then arguably it applies even if the seller breaches the contract. Similarly, if there

are no limitations, the deposit takes on the character of an option payment without the necessary attributes of an option. If it only applies in case the buyer breaches, then it fits within the definition of liquidated damages and is quite unnecessary if 21B is included as part of the contract. This paragraph warns the parties that clauses of the type discussed above are invalid unless independently satisfying legal requirements. Accordingly, if they are to be inserted, the party insisting on the clause should first discuss the issue with a lawyer.

**B. LIQUIDATED DAMAGES: If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. If the Property is a dwelling with no more than four units, one of which Buyer intends to occupy, then the amount retained shall be no more than 3% of the purchase price. Any excess shall be returned to Buyer. Release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award. AT TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R. FORM RID).**

Buyer's Initials \_\_\_\_\_/\_\_\_\_\_

Seller's Initials \_\_\_\_\_/\_\_\_\_\_

**21B.** A liquidated damage clause allows the parties to predetermine what the damages will be in the event the buyer is in breach of contract. Generally, these clauses permit the seller to keep the buyer's deposit. The clause must be separately signed or initialed and appear in certain size font. There are additional restraints on liquidated damage clauses inserted into contracts for the sale of residential properties:

- If the property being purchased IS a one-to-four unit dwelling that the buyer intends to occupy, a deposit actually paid that doesn't exceed 3% of the purchase price is presumed to be reasonable, and the seller may keep it. If the deposit actually paid exceeds 3%, the buyer is usually entitled to the balance. For properties other than one-to-four residential or that are not intended to be owner-occupied, the liquidated damage clause is still enforceable for a reasonable amount of the deposit, without identifying "reasonable" as 3%.
- If the deposit has been increased since the initial deposit was made, it will be included in the deposit the seller can keep only if the buyer and seller have signed or initialed a new liquidated damage clause at the time the increase was received. The Increased Deposit/Liquidated Damages Addendum (C.A.R. form RID) satisfies this requirement.

It is important to remember that the liquidated damage clause specifies the dollar amount the seller is entitled to; it does not authorize the automatic release of funds to the seller. The seller still has to prove the buyer breached the contract and did not perform for some valid contractual reason. Accordingly, the release of funds will require further written agreement of the parties or a judicial decision or arbitration award.

For this clause to be included as an obligation under this contract, it must be initialed by the buyer and the seller. If at least one, but not all parties initial, a counter offer is required until agreement is reached.



## 22. Dispute Resolution

### 22. DISPUTE RESOLUTION:

**A. MEDIATION:** The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action through the C.A.R. Real Estate Mediation Center for Consumers ([www.consumermediation.org](http://www.consumermediation.org)) or through any other mediation provider or service mutually agreed to by the Parties. The Parties **also agree to mediate any disputes or claims with Broker(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Broker.** Mediation fees, if any, shall be divided equally among the Parties involved. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED. **Exclusions from this mediation agreement are specified in paragraph 22C.**

### A. Mediation

Mediation is a process in which parties to a dispute talk about the dispute and negotiate with each other through and under the oversight of a neutral third party, called a mediator. The mediator is not empowered to impose a settlement upon the parties but can facilitate their ability to reach agreement.

This is not an “optional” clause that requires a check box or initialing. When the parties sign the RPA, they agree to attempt to resolve disputes through the mediation process before escalating the dispute by filing a court action or arbitration (see paragraph 22B).

Mediation is deemed so important and effective at resolving disputes that there is a potential penalty imposed on those buyers and sellers that do not give mediation a chance. Any party who does not attempt mediation before filing an arbitration or court action or any party who, before litigation or arbitration has been commenced, refuses to mediate after a demand has been made is not entitled to be awarded attorney’s fees even if they subsequently win the legal action. There are a few exceptions to this rule (see paragraph 22C) allowing, for example, a small claims court action to be filed without incurring the mediation-first penalty. This paragraph also provides that brokers may, but are not obligated to; join the buyer-seller mediation.

The RPA specifically identifies the C.A.R. Consumer Mediation Center by name but the parties are entitled to mediate a dispute with any other mediator or mediation provider of their mutual choosing. However, in order to prevent a dispute over where and through whom to mediate, in the absence of an agreement to the contrary, the parties agree to mediate using the services of the C.A.R. Consumer Mediation Center.

### B. Arbitration of Disputes

#### B. ARBITRATION OF DISPUTES:

The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The Parties also agree to arbitrate any disputes or claims with Broker(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of residential real estate Law experience, unless the parties mutually agree to a different arbitrator. The Parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 22C.

**“NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE ‘ARBITRATION OF DISPUTES’ PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE ‘ARBITRATION OF DISPUTES’ PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.”**

**“WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ‘ARBITRATION OF DISPUTES’ PROVISION TO NEUTRAL ARBITRATION.”**

Buyer's Initials \_\_\_\_\_/\_\_\_\_\_

Seller's Initials \_\_\_\_\_/\_\_\_\_\_

Arbitration is a process for resolving disputes in which a neutral third party decides for the parties who is right and who is wrong after listening to them present evidence. In a sense it is similar to going to court but the arbitrator will not be a sitting judge and there is no jury. Further distinctions between going to arbitration and going to court is that arbitration is private, the parties have to pay the services of the arbitrator, the parties get to choose their arbitrator and there is only a limited right to contest, or appeal, the arbitrator's decision. For this clause to be included as an obligation under this contract, it must be initialed by the buyer and the seller. If at least one, but not all, parties initial, a counter offer is required until agreement is reached.

Arbitration is always an option for the parties and may be agreed upon at some future time, if not initialed in this contract. However, it is usually more difficult to get an agreement to arbitrate once the dispute has occurred. By initialing in this contract, the parties are agreeing in advance to arbitrate.

The first paragraph contains the terms of the arbitration agreement. The second paragraph is the statutory NOTICE which must be in 10 point bold typeset.

The first sentence in the first paragraph in 22B is a reminder that non-binding mediation is a first step under this contract. It alerts the parties that a binding decision will be made by a neutral arbitrator, not a judge or jury. The second sentence provides that brokers may, but are not obligated to, join the buyer-seller arbitration. The next sentence states the arbitrator will be a retired judge, justice, or an attorney with at least five (5) years of residential real estate law experience. The parties can select someone else only if they mutually agree. Although neither a sitting judge nor a jury hears the case, the award rendered by the arbitrator may be filed with the Superior Court resulting in an enforceable court order. However, the decision of the arbitrator may not be appealed to a court except in rare circumstances that concern process issues rather than the substantive issues in the case. This paragraph also grants the right to discovery. This means the parties may request documents, interview witnesses, and otherwise “discover” the evidence the other party will use (fact finding). There are a few exceptions to the arbitration requirement (see paragraph 22C) allowing, for example, a small claims court action to be filed without violating or waiving the contractual requirement to arbitrate.

The second paragraph is the NOTICE to the parties required by statute. This clause puts the parties on notice that the agreement to arbitrate is voluntary, but once agreed upon, they will be compelled to arbitrate instead of litigate.

### C. Additional Mediation and Arbitration Terms

#### C. ADDITIONAL MEDIATION AND ARBITRATION TERMS:

- (1) **EXCLUSIONS:** The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; and (iii) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court.
- (2) **PRESERVATION OF ACTIONS:** The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (ii) the filing of a mechanic's lien.
- (3) **BROKERS:** Brokers shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Broker(s) participating in mediation or arbitration shall not be deemed a party to this Agreement.

(1.) Certain matters are excluded from the obligation to mediate and arbitrate because those matters can be resolved more expeditiously outside of arbitration or because special rules have been established by the legislature to deal with such issues. The excluded matters are: (i) Judicial or non-judicial foreclosures; (ii) Unlawful detainer actions; (iii) Small claims actions; and (iv) any matter within the jurisdiction of the probate or bankruptcy court.

(2.) Sometimes, even if a person has a valid legal claim that can be established in arbitration, in court, or through a mediator, the legal process does the person no good if the other party is able to transfer or hide or encumber assets. This paragraph allows a party to take certain legal actions to preserve the status quo without violating the obligation to mediate first and therefore without losing the right to receive prevailing party attorney fees if ultimately successful and without violating the obligation to arbitrate if 22B was initialed.

The filing of the following specific judicial actions does not constitute a violation of the mediation or arbitration provisions: (i) A lis pendens (a recorded notice intended to make third parties aware that there is a pending action affecting the property); (ii) An order of attachment so that assets cannot be liquidated to avoid an ultimate ruling in favor of the party filing the attachment; (iii) Appointment of a receiver to run a business or manage a property, (iv) Filing an injunction to start or stop an activity or action; and (v) Filing a mechanic's lien. With the exception of the lis pendens, all these preventative actions are rare in a residential real estate dispute.

#### (3.) Brokers

This paragraph clarifies that brokers cannot be compelled to arbitrate or mediate a dispute with the buyer or seller and further that if the broker agrees to arbitrate or mediate, by agreeing, the broker is not deemed to be a party to the transaction.

Buyers and sellers will often ask their broker if the broker recommends initialing the arbitration clause (and liquidated damage clause too). However, brokers should not advise the parties whether to initial the clause or not. The broker may give information to the parties to help them make up their own minds but the decision to initial, and thereby include the clause in the contract, is for the buyer or seller to make.



# IX

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA-CA, PAGE 9)

- 23. SELECTION OF SERVICE PROVIDERS:** Brokers do not guarantee the performance of any vendors, service or product providers (“Providers”), whether referred by Broker or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.
- 24. MULTIPLE LISTING SERVICE (“MLS”):** Brokers are authorized to report to the MLS a pending sale and, upon Close Of Escrow, the sales price and other terms of this transaction shall be provided to the MLS to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS.
- 25. ATTORNEY FEES:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 22A.

### 23. Selection of Service Providers

Brokers have many contacts in the real estate industry and are often asked by their buyer and seller clients to make recommendations to service providers. When a broker does so, the broker should give several names to the party. This paragraph states that the broker does not guarantee performance of any service providers and buyers and sellers can select any provider they want.

### 24. Multiple Listing Service (“MLS”)

Here the parties give permission to the brokers to disseminate price, terms, and financing to MLS and its entities.

### 25. Attorney Fees

The cost of pursuing or defending a legal action can be substantial. Often the cost of hiring an attorney exceeds the amount of the underlying dispute. So important are attorney fees that if the parties choose to “settle” a dispute, the attorney’s fees are usually one of the terms of the negotiated settlement.

This paragraph says that the loser in the dispute is obligated to pay not only the underlying judgment, or arbitration award, and not only the losing party’s attorney but also the attorney fees incurred by the winning party. If a party fails to mediate as required by paragraph 22A, then that party gives up the right to get attorney fees from the other side even if that party ultimately prevails. This paragraph is only between the buyer and the seller and does NOT include the broker(s).

- 26. ASSIGNMENT:** Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the separate written consent of Seller to a specified assignee. Such consent shall not be unreasonably withheld. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless otherwise agreed in writing by Seller.
- 27. EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.

## 26. Assignment

As a general rule, contracts in California are assignable. What this means is that one person can substitute another to take his or her place and receive the benefits of and meet the obligations of the contract. The assignment does not allow the original person (the assignor) to escape liability if the substitute (the assignee) fails to perform unless the other party to the contract signs a document releasing the assignor. There are certain exceptions to the general rule, for example, for personal service contracts or if the contract itself restricts or prohibits assignment. A real estate contract is not a personal service contract. Although if it involves seller financing, there is an argument it becomes one. So, in the absence of any language in the contract, either party can assign their rights and obligations without the need for approval of the other party. Paragraph 26 limits the ability to assign but not completely. First, the consent of the other party must be sought and obtained in writing. Second, the approving party has to be reasonable. Take note that the last sentence provides that the assignor remains responsible even in case of an assignment. Approval of an assignment can be documented on the Assignment of Agreement Addendum (C.A.R. form AOAA).

## 27. Equal Housing Opportunity

Under both Federal and California law, it is illegal to discriminate on the basis of many protected categories such as: race, color, religion, sex, handicap, familial status, or national origin.

### 28. TERMS AND CONDITIONS OF OFFER:

This is an offer to purchase the Property on the above terms and conditions. The liquidated damages paragraph or the arbitration of disputes paragraph is incorporated in this Agreement if initialed by all Parties or if incorporated by mutual agreement in a counter offer or addendum. If at least one but not all Parties initial, a counter offer is required until agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance. The Parties have read and acknowledge receipt of a Copy of the offer and agree to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing.

- 29. TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as otherwise specified, this Agreement shall be interpreted and disputes shall be resolved in accordance with the Laws of the State of California. **Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.**

## 28. Terms and Conditions of Offer

This document is the buyer's entire offer for the purchase of this property. There is an expiration date specified for the offer (see paragraph 31) after which time the offer is revoked. However, the buyer may revoke the offer at any time prior to communication of the seller's acceptance. Using a Withdrawal of Offer (C.A.R. form WOO) will document the buyer's revocation. The seller may consider other offers any time prior to acceptance of this buyer's offer.

If the seller does not accept the offer exactly as written, there must be a counter offer. Remember that the seller may not make changes on this document above the buyer's signature. The only exception is that the seller may initial either of the optional clauses (liquidated damages or arbitration) already initialed by the buyer. If the buyer has not initialed a clause which the seller wants, or if the seller does not want a clause that the buyer initialed, there must be a counter offer to clearly evidence the intent of the parties.

By signing the agreement, each party acknowledges the confirmation of the agency relationship.

Any photocopies or facsimiles will be considered the same as the original document. There is no need to have all signatures on one original; counterparts are acceptable.

## **29. Time of Essence; Entire Contract; Changes**

"Time is of the essence" is a phrase that means that the parties consider it important that any act required by the contract shall take place on the date and/or time stated, unless the period is mutually extended in writing. A party to the RPA can emphasize the importance of timely performance by issuing a notice to perform to either buyer or seller in advance of the stated time (see paragraph 14D).

The RPA is intended to incorporate all prior oral or written agreements so that the RPA reflects the entire agreement of the parties.

All changes must be in writing to be enforceable. Under the Statute of Frauds, Civil Code Section 1624, certain agreements must be in writing to be enforceable. These include: (i) A lease agreement for more than One Year; (ii) An employment (listing) agreement to find a purchaser for real property. The listing agreement only authorizes the broker to find a buyer; it does not authorize the broker to sign for the seller; (iii) An employment agreement to find a property for a buyer. The Buyer Representation agreement only authorizes the broker to locate property for, not enter into a contract on behalf of, a buyer; (iv) An authorization to purchase or sell property on the principal's behalf (power of attorney). Without this written power of attorney, the listing broker's signature on the acceptance as "Sam Seller by Bob Broker per phone" is not binding on the seller; and (v) An agreement for the sale of real property. This IS the RPA. Not only must the terms of this document be in writing, but all counter-offers, supplements, addenda, or modifications must be in writing. Anything not in writing is not enforceable.

## **30. Definitions**

- "Acceptance" means final acceptance after all counter offers and the communication of the final acceptance.
- "Agreement" is an all inclusive term meaning not just the RPA but all counter offers and incorporated addenda provided they are signed by the parties.
- "C.A.R. Form" means the most current version of the specific form referenced or another comparable form agreed to by the parties.

**30. DEFINITIONS:** As used in this Agreement:

- A. "Acceptance"** means the time the offer or final counter offer is accepted in writing by a Party and is delivered to and personally received by the other Party or that Party's authorized agent in accordance with the terms of this offer or a final counter offer.
- B. "Agreement"** means this document and any incorporated addenda, counter offers and written terms Signed by all Parties collectively forming the binding agreement between the Parties. All terms and conditions of any addenda checked and Signed are incorporated into this Agreement.
- C. "C.A.R. Form"** means the most current version of the specific form referenced or another comparable form agreed to by the parties.
- D. "Close Of Escrow"**, including "COE", means the date the grant deed, or other evidence of transfer of title, is recorded.
- E. "Copy"** means copy by any means including photocopy, NCR, facsimile and electronic.
- F. "Days"** means calendar days. However, after Acceptance, the last **Day** for performance of any act required by this Agreement (including Close Of Escrow) shall not include any Saturday, Sunday, or legal holiday and shall instead be the next Day.
- G. "Days After"** means the specified number of calendar days after the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59 PM on the final day.
- H. "Days Prior"** means the specified number of calendar days before the occurrence of the event specified, not counting the calendar date on which the specified event is scheduled to occur.
- I. "Deliver", "Delivered" or "Delivery"**, unless otherwise specified in writing, means and shall be effective upon: personal receipt by Buyer or Seller or the individual Real Estate Licensee for that principal as specified in the section titled Real Estate Brokers on page 10, regardless of the method used (i.e., messenger, mail, email, fax, other).
- J. "Electronic Copy" or "Electronic Signature"** means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.
- K. "Law"** means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
- L. "Repairs"** means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
- M. "Signed"** means either a handwritten or electronic signature on an original document, Copy or any counterpart.

- "Close Of Escrow" is the day of recording. The escrow holder may still have an "open escrow" in order to cut checks, complete closing statement, or hold funds for repairs. If scheduled close of escrow falls on a Saturday, Sunday or legal holiday, the close of escrow date is extended until the next business day (see paragraph 30F).
- "COPY" can be by any means including photocopy, facsimile or electronic.
- "Days" are calendar days. (Deposit of trust fund following "acceptance" is measured in business days.) However, Saturdays, Sundays and legal holidays do not count in the calculation of the time if they are the last day to perform an obligation or close escrow. Saturdays, Sundays and legal holidays do count if they are any day other than the last one.
- "Days After." When counting for time periods and notices, the acceptance or notice date is not counted as day one. The last day ends at 11:59 PM.
- "Deliver, Delivered or Delivery" of Various documents and notices is required by the contract. Delivery is only effective upon personal receipt by either the buyer or seller or that person's agent identified on page 10. Determining when a notice is delivered after the contract is entered into does not precisely match how one determines if a contract has been accepted in the first place. Determining acceptance is pursuant to paragraph 31.
- "Electronic COPY" or "Electronic Signature" means an electronic COPY or signature complying with California law.
- "Repairs" means any repairs including pest control and retrofitting.
- "Signed" includes handwritten and electronic signatures.



### 31. Expiration of Offer

**31. EXPIRATION OF OFFER:** This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless the offer is Signed by Seller and a Copy of the Signed offer is personally received by Buyer, or by \_\_\_\_\_, who is authorized to receive it, by 5:00 PM on the third Day after this offer is signed by Buyer (or by  \_\_\_\_\_ AM/PM, on \_\_\_\_\_(date)).

One or more Buyers is signing this Agreement in a representative capacity and not for him/herself as an individual. See attached Representative Capacity Signature Addendum (C.A.R. Form RCSA) for additional terms.

This clause specifies who is authorized to receive the seller’s acceptance on behalf of the buyer and how long the offer will remain open. It also specifies that the buyer or the person designated must personally receive the acceptance. The authority to receive the acceptance is not an authorization to accept or sign for any changes unless that authority is in the form of a power of attorney. It is a better practice for the buyer’s designated recipient to be an individual person rather than an office or brokerage company. If the designee is identified as the brokerage, then if anyone (such as a receptionist or secretary) in the brokerage office receives the signed and accepted offer, a contract is created. If the designee is a named person (such as the specific salesperson working with the buyer), then no contract is created until that person is in personal receipt.

### Buyer’s Signature Section

Date \_\_\_\_\_ BUYER \_\_\_\_\_  
 (Print name) \_\_\_\_\_

Date \_\_\_\_\_ BUYER \_\_\_\_\_  
 (Print name) \_\_\_\_\_

Additional Signature Addendum attached (C.A.R. Form ASA).

Everything above the buyer’s signature constitutes the entire and complete offer made by the buyer. The date on which the last buyer signs is used to determine how long the offer will remain open (3 calendar days). Remember that it is the acceptance date that is the “contract date.” Acceptance is not when the seller signs but instead when the buyer or specified agent is in receipt of the offer signed by the seller.

If the buyer is acting in a representative capacity, the box should be checked immediately above the signature lines and the Representative Capacity Signature Addendum (C.A.R. form RCSA) should be attached (see paragraph 19). If there are not enough lines for all buyer signatures, use the Additional Signature Addendum (C.A.R. form ASA).



# X

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA-CA, PAGE 10)

### 32. Acceptance of Offer

**32. ACCEPTANCE OF OFFER:** Seller warrants that Seller is the owner of the Property, or has the authority to execute this Agreement. Seller accepts the above offer, agrees to sell the Property on the above terms and conditions. Seller has read and acknowledges receipt of a Copy of this Agreement, and authorizes Broker to Deliver a Signed Copy to Buyer.

(If checked) SELLER'S ACCEPTANCE IS **SUBJECT TO ATTACHED COUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:** \_\_\_\_\_.

The seller warrants the authority to sell the property. The broker is authorized to deliver the signed contract to the buyer in order to create a valid acceptance. If a counter offer is to be issued, the box should be checked and the date of the counter offer written into the blank line. Acceptance is not when the seller signs but instead when the buyer or specified agent is in receipt of the offer signed by the seller.

#### A. Seller's Signature Section

One or more Sellers is signing this Agreement in a representative capacity and not for him/herself as an individual. See attached Representative Capacity Signature Addendum (C.A.R. Form RCSA) for additional terms.

Date \_\_\_\_\_ SELLER \_\_\_\_\_

**(Print name)** \_\_\_\_\_

Date \_\_\_\_\_ SELLER \_\_\_\_\_

**(Print name)** \_\_\_\_\_

Additional Signature Addendum attached (C.A.R. Form ASA).

By signing the agreement, the seller acknowledges the following: (i) agreement to sell the property on the exact terms and Conditions of the Offer; and (ii) Agreement to Pay the Identified broker the amount of Compensation for services set forth in a separate written agreement. If the seller is acting in a representative capacity, the box should be checked immediately above the signature lines and the Representative Capacity Signature Addendum (C.A.R. form RCSA) should be attached (see paragraph 19). If there are not enough lines for all buyer signatures, use the Additional Signature Addendum (C.A.R. form ASA).

**Confirmation of Acceptance**

(\_\_\_\_/\_\_\_\_/\_\_\_\_) (Do not initial if making a counter offer.) **CONFIRMATION OF ACCEPTANCE:** A Copy of Signed Acceptance was personally received by Buyer or Buyer's authorized agent on (date) \_\_\_\_\_ at \_\_\_\_\_ at \_\_\_\_\_  
AM/PM. **A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence the date that Confirmation of Acceptance has occurred.**

A contract is formed when the seller's acceptance is personally received by the buyer or the buyer's agent, whether or not this section is completed. This sentence is solely intended to provide evidence of the date of acceptance.

**Broker's Signature Section**

**REAL ESTATE BROKERS:**

**A. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.**

**B. Agency relationships are confirmed as stated in paragraph 2.**

**C.** If specified in paragraph 3A(2), Agent who submitted the offer for Buyer acknowledges receipt of deposit.

**D. COOPERATING BROKER COMPENSATION:** Listing Broker agrees to pay Cooperating Broker (**Selling Firm**) and Cooperating Broker agrees to accept, out of Listing Broker's proceeds in escrow, the amount specified in the MLS, provided Cooperating Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Listing Broker and Cooperating Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sale, then compensation must be specified in a separate written agreement (C.A.R. Form CBC). Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.

Real Estate Broker (Selling Firm) \_\_\_\_\_ CalBRE Lic. # \_\_\_\_\_

By \_\_\_\_\_ CalBRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_ CalBRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Real Estate Broker (Listing Firm) \_\_\_\_\_ CalBRE Lic. # \_\_\_\_\_

By \_\_\_\_\_ CalBRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_ CalBRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

This section covers the following:

- The Signature of the broker does not make the broker a Party to the contract.
- The Selling Broker signs to confirm the agency relationship and, if applicable, receipt of a deposit.
- The Listing Broker signs to confirm the agency relationship and agrees to pay the Selling Broker pursuant to the MLS offer of compensation (if the Selling Broker is a participant of that MLS or a reciprocal MLS) or pursuant to a separate written agreement such as a Cooperating Broker Compensation Agreement (C.A.R. form CBC). Verbal agreements between real estate licensees are enforceable if they can be proved. Here however both brokers agree that any compensation agreement must be in writing so that disputes between brokers can be avoided
- Space has been provided to indicate the CalBRE license number for the Listing Broker, the Selling Broker and the Associate-Licensee representing each.

### Escrow Holder Acknowledgement

<b>ESCROW HOLDER ACKNOWLEDGMENT:</b>	
Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, <input type="checkbox"/> a deposit in the amount of \$ _____), counter offer numbers _____ <input type="checkbox"/> Seller's Statement of Information and _____, and agrees to act as Escrow Holder subject to paragraph 20 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.	
Escrow Holder is advised that the date of Confirmation of Acceptance of the Agreement as between Buyer and Seller is _____	
Escrow Holder _____	Escrow # _____
By _____	Date _____
Address _____	
Phone/Fax/E-mail _____	
Escrow Holder has the following license number # _____	
<input type="checkbox"/> Department of Business Oversight, <input type="checkbox"/> Department of Insurance, <input type="checkbox"/> Bureau of Real Estate.	

The escrow holder acknowledges receipt of the contract and agrees to act as escrow holder. The escrow holder can also fill in the amount of any deposit and other documentation received, such as counter offers or addenda, and whether the seller's statement of information has been received. The escrow holder is also asked to identify the date that the parties have advised is the date of acceptance of the agreement. This date will most likely be used to calculate all other dates specified in the agreement such as close of escrow, document production and contingency removal.

### Presentation of Offer

<b>PRESENTATION OF OFFER:</b> ( _____ ) Listing Broker presented this offer to Seller on _____ (date). <small>Broker or Designee Initials</small>
--

There are times when a buyer or buyer's agent is unsure when or if an offer was presented. This paragraph allows the listing broker to make a representation about the presentation date.

### Rejection of Offer

<b>REJECTION OF OFFER:</b> ( _____ )( _____ ) No counter offer is being made. This offer was rejected by Seller on _____ (date). <small>Seller's Initials</small>
--

In this box the seller can indicate that the buyer's offer is rejected. While not required under the law, some buyers want to know that their offer was considered even if not accepted.

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## DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD)

California's legislature has determined that buyers and sellers of residential property containing one to four units should understand the relationships that may be entered into with a real estate broker (Civil Code sections 2079.14 and 2079.16). A broker may represent a buyer exclusively, a seller exclusively or both a buyer and a seller. This form identifies the type of agency relationships that are possible in a residential real estate transaction and the duties owed by the broker to the principal in each such relationship. This form does NOT however determine which relationships are applicable in a specific real estate transaction. This form provides information about agency, it does not determine agency. The broker working with the seller (the Listing Agent) is required to give the form to the seller prior to entering into a listing agreement. The broker working with the buyer (the Selling Agent) is required to give the form to the buyer at the earliest practical time but no later than the time the buyer signs a purchase offer. If the broker working with the buyer (the Selling Agent) is a different company from the Listing Agent, then the Selling Agent is also required to give the form to the seller prior to presenting the seller with the offer to purchase. Thus, the seller will always receive one AD form (from the Listing Agent) and possibly two (one from the Listing Agent and one from the Selling Agent). The buyer only needs to receive one AD form (from the Selling Agent).

For REALTORS®, there are three versions of the AD form in zipForm®. The content of the three forms is exactly the same. The only difference between the three is the allowable signatures. AD-1 is for the listing agent to give to the seller. The signature line in the box at the bottom of the page is locked because it is unnecessary for the seller to sign in the box as the seller already signs below. AD-2 is for the selling agent to give to the buyer and then after the buyer signs to give to the seller with the RPA for the seller to sign in the box at the bottom of the page. AD-3 is for the selling agent to give to the seller. The signature line in the box at the bottom of the form is blocked since the seller will sign up above and does not need to resign in the box at the bottom. Since the AD-2 can be used by the selling agent to get both buyer and seller signatures, the AD-3 will rarely be used. The AD-2 form is automatically attached to the RPA.



CALIFORNIA ASSOCIATION OF REALTORS®

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(As required by the Civil Code) (C.A.R. Form AD, Revised 11/12)

(If checked) This form is being provided in connection with a transaction for a leasehold interest in a dwelling exceeding one year as per Civil Code section 2079.13(j) and (l).

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A Fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

BUYER'S AGENT

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller.

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer. (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the

Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction.

A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form.

You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).

Buyer/Seller/Landlord/Tenant \_\_\_\_\_ Date \_\_\_\_\_

Buyer/Seller/Landlord/Tenant \_\_\_\_\_ Date \_\_\_\_\_

Agent \_\_\_\_\_ DRE Lic. # \_\_\_\_\_

By \_\_\_\_\_ Real Estate Broker (Firm) \_\_\_\_\_ DRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_ (Salesperson or Broker-Associate)

Agency Disclosure Compliance (Civil Code §2079.14):
• When the listing brokerage company also represents Buyer/Tenant: The Listing Agent shall have one AD form signed by Seller/Landlord and a different AD form signed by Buyer/Tenant.
• When Seller/Landlord and Buyer/Tenant are represented by different brokerage companies: (i) the Listing Agent shall have one AD form signed by Seller/Landlord and (ii) the Buyer's/Tenant's Agent shall have one AD form signed by Buyer/Tenant and either that same or a different AD form presented to Seller/Landlord for signature prior to presentation of the offer. If the same form is used, Seller may sign here:
Seller/Landlord \_\_\_\_\_ Date \_\_\_\_\_ Seller/Landlord \_\_\_\_\_ Date \_\_\_\_\_

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



AD REVISED 11/12 (PAGE 1 OF 2) Print Date

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 1 OF 2)



## CIVIL CODE SECTIONS 2079.24 (2079.16 APPEARS ON THE FRONT)

**2079.13** As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

**(a)** "Agent" means a person acting under provisions of title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. **(b)** "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. **(c)** "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee. **(d)** "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. **(e)** "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer. **(f)** "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. **(g)** "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent. **(h)** "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. **(i)** "Offer to purchase" means a written contract executed by a buyer acting through a selling agent which becomes the contract for the sale of the real property upon acceptance by the seller. **(j)** "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property which constitutes or is improved with one to four dwelling units, any leasehold in this type of property exceeding one year's duration, and mobile homes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. **(k)** "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase. **(l)** "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. **(m)** "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor. **(n)** "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. **(o)** "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

**2079.14** Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgement of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows: **(a)** The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. **(b)** The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a). **(c)** Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgement of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgement of receipt is required. **(d)** The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

**2079.15** In any circumstance in which the seller or buyer refuses to sign an acknowledgement of receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

**2079.16** Reproduced on Page 1 of this AD form.

**2079.17(a)** As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. **(b)** As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller.

**(c)** The confirmation required by subdivisions (a) and (b) shall be in the following form.

(DO NOT COMPLETE. SAMPLE ONLY) \_\_\_\_\_ is the agent of (check one):  the seller exclusively; or  both the buyer and seller.

(Name of Listing Agent)

(DO NOT COMPLETE. SAMPLE ONLY) \_\_\_\_\_ is the agent of (check one):  the buyer exclusively; or  the seller exclusively; or

(Name of Selling Agent if not the same as the Listing Agent)

both the buyer and seller.

**(d)** The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

**2079.18** No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

**2079.19** The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

**2079.20** Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

**2079.21** A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer. This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

**2079.22** Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

**2079.23** A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

**2079.24** Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.



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AD REVISED 11/12 (PAGE 2 OF 2)

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



## CONFIRMATION OF REAL ESTATE AGENCY RELATIONSHIPS (AC)

This form will only need to be used in a transaction if paragraph 2B in the RPA is not completed or is incorrect. California law requires that in an actual transaction for the sale of residential property improved with one to four units, the agency relationships between a brokerage company and a buyer and seller be disclosed in writing in either the purchase agreement itself or a separate document. The overwhelming majority of the time this legal requirement will be satisfied by the language in 2B. However, paragraph 2B may be incomplete or just wrong. In those instances a separate document will be required. Form AC can be used to meet the legal obligation to disclose in writing the actual agency relationships for the transaction.



CALIFORNIA ASSOCIATION OF REALTORS®

CONFIRMATION OF REAL ESTATE AGENCY RELATIONSHIPS

(As required by the Civil Code) (C.A.R. Form AC, Revised 04/08)

Subject Property Address \_\_\_\_\_

The following agency relationship(s) is/are hereby confirmed for this transaction:

LISTING AGENT: \_\_\_\_\_ (Print Firm Name)

is the agent of (check one):

- the Seller/ Landlord exclusively; or both the Buyer/Tenant and Seller/Landlord

SELLING AGENT: \_\_\_\_\_ (Print Firm Name)

(if not the same as Listing Agent)

is the agent of (check one):

- the Buyer/Tenant exclusively; or the Seller/Landlord exclusively; or both the Buyer/Tenant and Seller/Landlord

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS CONFIRMATION.

Seller/Landlord \_\_\_\_\_ Date \_\_\_\_\_

Seller/Landlord \_\_\_\_\_ Date \_\_\_\_\_

Buyer/Tenant \_\_\_\_\_ Date \_\_\_\_\_

Buyer/Tenant \_\_\_\_\_ Date \_\_\_\_\_

Real Estate Broker (Selling Firm) \_\_\_\_\_

By \_\_\_\_\_ Date \_\_\_\_\_

Real Estate Broker (Listing Firm) \_\_\_\_\_

By \_\_\_\_\_ Date \_\_\_\_\_

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



## **POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER - DISCLOSURE AND CONSENT (PRBS)**

### **POSSIBLE REPRESENTATION OF MORE THAN ONE SELLER - DISCLOSURE AND CONSENT (PRMS)**

### **POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER - DISCLOSURE AND CONSENT (PRMB)**

This form advises the principals of the fact that either broker may represent other principals who might compete with buyer and seller for the property being purchased. It also provides the principal's consent for the broker acting in that capacity for the potentially competing buyers or sellers. For example, one agent in an office may represent the buyer while another agent may represent other buyers who are making offers on the same property. Similarly, one person in an office may represent the seller while the same or other agents may have listings from other sellers whose properties are similar to seller's property, and therefore may appeal to the same types of buyers interested in the first seller's property. Whether a real estate brokerage is a small company with one or a few agents or a big company with potentially hundreds or thousands of agents, it is possible that potential conflicts can arise between principals represented by the same office. Disclosing the potential for multiple representation should be made as early as practicable. There is language to this effect in the body of the Residential Listing Agreement (C.A.R. form RLA). There is also a separate form, Possible Representation of More Than One Seller (C.A.R. form PRMS) that may be attached to the listing agreement. There is also language addressing multiple representation in the Buyer Representation Agreements (C.A.R. forms BRE and BRNE). If a buyer representation agreement is not used by the selling office, the agent working with a buyer can still make a disclosure of this possibility by using the form titled Possible Representation of More Than One Buyer (C.A.R. form PRMB). If neither of these forms has been provided to the principal, then the PRBS form can be used to satisfy the disclosure and consent. The PRBS form should not be confused with the AD form (mentioned above) and is also different from agency confirmation that appears in the RPA. The AD form addresses the agency relationship that a broker has with a buyer and seller in a particular transaction. The PRBS, PRMB and PRMS forms all address potentially agency overlap in the same office for one principal (buyer or seller) only as such overlap exists regardless of any individual transaction.



CALIFORNIA  
ASSOCIATION  
OF REALTORS®

**POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER  
OR SELLER - DISCLOSURE AND CONSENT**

(C.A.R. Form PRBS, 11/14)

A real estate broker (Broker), whether a corporation, partnership or sole proprietorship, may represent more than one buyer or seller. This multiple representation can occur through an individual licensed as a broker or salesperson or through different individual broker's or salespersons (associate licensees) acting under the Broker's license. The associate licensees may be working out of the same or different office locations.

**Multiple Buyers:** Broker (individually or through its associate licensees) may be working with many prospective buyers at the same time. These prospective buyers may have an interest in, and make offers on, the same properties. Some of these properties may be listed with Broker and some may not. Broker will not limit or restrict any particular buyer from making an offer on any particular property whether or not Broker represents other buyers interested in the same property.

**Multiple Sellers:** Broker (individually or through its associate licensees) may have listings on many properties at the same time. As a result, Broker will attempt to find buyers for each of those listed properties. Some listed properties may appeal to the same prospective buyers. Some properties may attract more prospective buyers than others. Some of these prospective buyers may be represented by Broker and some may not. Broker will market all listed properties to all prospective buyers whether or not Broker has another or other listed properties that may appeal to the same prospective buyers.

**Dual Agency:** If Seller is represented by Broker, Seller acknowledges that broker may represent prospective buyers of Seller's property and consents to Broker acting as a dual agent for both seller and buyer in that transaction. If Buyer is represented by Broker, buyer acknowledges that Broker may represent sellers of property that Buyer is interested in acquiring and consents to Broker acting as a dual agent for both buyer and seller with regard to that property.

In the event of dual agency, seller and buyer agree that: **(a)** Broker, without the prior written consent of the Buyer, will not disclose to seller that the Buyer is willing to pay a price greater than the offered price; **(b)** Broker, without the prior written consent of the seller, will not disclose to the buyer that seller is willing to sell property at a price less than the listing price; and **(c)** other than as set forth in (a) and (b) above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the property to both parties.

**Offers not necessarily confidential:** Buyer is advised that seller or listing agent may disclose the existence, terms, or conditions of buyer's offer unless all parties and their agent have signed a written confidentiality agreement. Whether any such information is actually disclosed depends on many factors, such as current market conditions, the prevailing practice in the real estate community, the listing agent's marketing strategy and the instructions of the seller.

Buyer and seller understand that Broker may represent more than one buyer or more than one seller and even both buyer and seller on the same transaction and consents to such relationships.

**Seller and/or Buyer acknowledges reading and understanding this Possible Representation of More Than One Buyer or Seller - Disclosure and Consent and agrees to the agency possibilities disclosed.**

Seller \_\_\_\_\_ Date \_\_\_\_\_  
Seller \_\_\_\_\_ Date \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_  
Buyer \_\_\_\_\_ Date \_\_\_\_\_

Real Estate Broker (Firm) \_\_\_\_\_ CalBRE Lic # \_\_\_\_\_ Date \_\_\_\_\_  
By \_\_\_\_\_ CalBRE Lic # \_\_\_\_\_ Date \_\_\_\_\_

Real Estate Broker (Firm) \_\_\_\_\_ CalBRE Lic # \_\_\_\_\_ Date \_\_\_\_\_  
By \_\_\_\_\_ CalBRE Lic # \_\_\_\_\_ Date \_\_\_\_\_

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



PRBS 11/14 (PAGE 1 OF 1) Print Date

**POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER (PRBS PAGE 1 OF 1)**



CALIFORNIA ASSOCIATION OF REALTORS®

POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER - DISCLOSURE AND CONSENT

(C.A.R. Form PRMB, 11/14)

A real estate broker (Broker), whether a corporation, partnership or sole proprietorship, may represent more than one buyer. This multiple representation can occur through an individual licensed as a broker or salesperson or through different individual brokers or salespersons (associate licensees) acting for the Broker. The associate licensees may be working out of the same or different office locations.

Multiple Buyers: Broker (individually or through its associate licensees) may be working with many prospective buyers at the same time. These prospective buyers may have an interest in, and make offers on, the same properties. Some of these properties may be listed with Broker and some may not. Broker will not limit or restrict any particular buyer from making an offer on any particular property whether or not Broker represents other buyers interested in the same property.

Dual Agency: Buyer acknowledges that Broker may represent sellers of property that Buyer is interested in acquiring and consents to Broker acting as a dual agent for both Buyer and Seller with regard to that property. In the event of dual agency, Buyer agree that: (a) Broker, without the prior written consent of the Buyer, will not disclose to Seller that the Buyer is willing to pay a price greater than the offered price; (b) Broker, without the prior written consent of the Seller, will not disclose to the Buyer that Seller is willing to sell property at a price less than the listing price; and (c) other than as set forth in (a) and (b) above, a Dual Agent is obligated to disclose known facts materially affecting the value or desirability of the property to both parties.

Offers not necessarily confidential: Buyer is advised that Seller or listing agent may disclose the existence, terms, or conditions of Buyer's offer unless all parties and their agent have signed a written confidentiality agreement. Whether any such information is actually disclosed depends on many factors, such as current market conditions, the prevailing practice in the real estate community, the listing agent's marketing strategy and the instructions of the Seller.

Buyer understands that Broker may represent more than one buyer and even both buyer and seller on the same transaction and consents to such relationships.

Buyer acknowledges reading and understanding this Possible Representation of More Than One Buyer - Disclosure and Consent and agrees to the agency possibilities disclosed.

Buyer \_\_\_\_\_ Date \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_

Real Estate Broker (Firm) \_\_\_\_\_ CalBRE Lic # \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_ CalBRE Lic # \_\_\_\_\_ Date \_\_\_\_\_

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PRMB 11/14 (PAGE 1 OF 1) Print Date

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_





CALIFORNIA  
ASSOCIATION  
OF REALTORS®

**POSSIBLE REPRESENTATION OF MORE THAN ONE SELLER -  
DISCLOSURE AND CONSENT**

(C.A.R. Form PRMS, 11/14)

A real estate broker (Broker), whether a corporation, partnership or sole proprietorship, may represent more than one seller. This multiple representation can occur through an individual licensed as a broker or salesperson or through different individual brokers or salespersons (associate licensees) acting for the Broker. The associate licensees may be working out of the same or different office locations.

**Multiple Sellers:** Broker (individually or through its associate licensees) may have listings on many properties at the same time. As a result, Broker will attempt to find buyers for each of those listed properties. Some listed properties may appeal to the same prospective buyers. Some properties may attract more prospective buyers than others. Some of these prospective buyers may be represented by Broker and some may not. Broker will market all listed properties to all prospective buyers whether or not Broker has another or other listed properties that may appeal to the same prospective buyers.

**Dual Agency:** Seller acknowledges that Broker may represent prospective buyers of Seller's property and consents to Broker acting as a dual agent for both Seller and Buyer in that transaction. In the event of dual agency, Seller agrees that: **(a)** Broker, without the prior written consent of the Buyer, will not disclose to Seller that the Buyer is willing to pay a price greater than the offered price; **(b)** Broker, without the prior written consent of the Seller, will not disclose to the Buyer that Seller is willing to sell property at a price less than the listing price; and **(c)** other than as set forth in (a) and (b) above, a Dual Agent is obligated to disclose known facts materially affecting the value or desirability of the property to both parties.

**Offers not necessarily confidential:** Seller is advised that Seller, listing agent or buyer's agent may disclose the existence, terms, or conditions of Buyer's offer unless all parties and their agent have signed a written confidentiality agreement. Whether any such information is actually disclosed depends on many factors, such as current market conditions, the prevailing practice in the real estate community, the listing or buyer's agent's marketing strategy and the instructions of the principals.

Seller understand that Broker may represent more than seller and even both buyer and seller on the same transaction and consents to such relationships.

**Seller acknowledges reading and understanding this Possible Representation of More Than One Seller - Disclosure and Consent and agrees to the agency possibilities disclosed.**

Seller \_\_\_\_\_ Date \_\_\_\_\_  
 Seller \_\_\_\_\_ Date \_\_\_\_\_  
 Real Estate Broker (Firm) \_\_\_\_\_ CalBRE Lic # \_\_\_\_\_ Date \_\_\_\_\_  
 By \_\_\_\_\_ CalBRE Lic # \_\_\_\_\_ Date \_\_\_\_\_

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**PRMS 11/14 (PAGE 1 OF 1) Print Date**

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



## SELLER FINANCING ADDENDUM AND DISCLOSURE (SFA)

This form satisfies the requirement of the law that disclosures be given between the buyer and the seller when the seller carries financing on residential one-to-four unit properties (Civil Code section 2956 – 2967). It is the responsibility of the arranger of credit to provide the form. For purposes of the seller financing disclosures, the arranger of credit is usually the agent representing the buyer.

This form is not just a disclosure, it also an addendum to the Purchase Agreement. The terms should be set forth specifically and not left to future interpretation.

The buyer has five (5) days (or days specified) to submit a loan application. The buyer authorizes, and will pay for, a credit report to be submitted to the seller. The buyer will also provide other documents requested by the seller such as tax returns, 1099's, etc. to the seller. The seller may cancel, in writing, if the documents are not provided or if Seller reasonably disapproves of them.

The terms in paragraphs 4-14 are only contractually included if checked. Even if a paragraph is not checked, a seller should read the paragraph anyway to make an independent decision about whether to include, by way of a counter offer, that term as part of the agreement. Many paragraphs contain advice about the acceptance of each term and what to look out for if the item is not checked. Also included:

- Statutory limits on late charges are specified here.
- Balloon and Pre-Payment Information should be included here.
- The Seller and lender have the Option to Call to loan due On Sale or to allow an assumption by a subsequent buyer.
- There IS no time requirement for a lender to file a Notice Of Default. The loan could be several months in arrears before the senior lender initiates a foreclosure action. That puts the junior lienholder in the difficult position of having to make up many months of back payments to protect the beneficial interest.
- The Notice of Delinquency takes care of the problem mentioned above by requiring that the senior lienholder notify the junior lienholder when the payment is four months in arrears.
- Tax Service IS the notice that property taxes have not been paid.
- Joint Protection Title Insurance covers the Seller's interest, as well as the lenders, in addition to the buyer's ownership interest.



The Seller must be added as a loss Payee on the Insurance Policy and, if not, should secure the endorsement or acquire a separate policy. Earthquake and flood insurance are not required unless specifically checked.

- Any Cash Proceeds to the buyer are referenced here.
- Information about negative amortization and deferred interest IS included here.
- Paragraphs 15 – 19 are additional optional paragraphs that are only included if the applicable box is checked.
- All-inclusive deed of trust or land sale contract language IS outlined here.
- Social Security numbers or tax I.D. numbers are needed for 1099' and other tax purposes.
- Other credit terms should be filled in here.
- The importance of recording documents IS included here.
- If junior financing terms are included, check the appropriate box and give an explanation.
- Paragraph 20 allows for the parties to outline estimates for senior loans and encumbrances.
- If there are other documents/disclosures the Seller wants from the buyer, they should be referenced in paragraph 21.
- Any substitution, deletion or addition of any person requires the Seller's written consent.
- Paragraph 23 contains the following warning and should be pointed out to the parties:
  - Warning to the Seller about the risk of the buyer's default.
  - Advisory regarding risk of getting paid on new financing at maturity If the loan is a balloon payment loan.
- Ordinarily, Contracts are freely assignable but, because the Seller IS relying on the financial resources and representation of the buyer, the contract may not be assigned without the seller's consent.



CALIFORNIA ASSOCIATION OF REALTORS®

SELLER FINANCING ADDENDUM AND DISCLOSURE (SEE IMPORTANT DISCLOSURE ON PAGE 4)

(California Civil Code §§2956-2967) (C.A.R. Form SFA, Revised 11/13)

This is an addendum to the [ ] Residential Purchase Agreement, [ ] Counter Offer, or [ ] Other \_\_\_\_\_, ("Agreement"), dated \_\_\_\_\_,

On property known as \_\_\_\_\_, ("Property"), between \_\_\_\_\_ ("Buyer"), and \_\_\_\_\_ ("Seller").

Seller agrees to extend credit to Buyer as follows:

- 1. PRINCIPAL; INTEREST; PAYMENT; MATURITY TERMS: [ ] Principal amount \$ \_\_\_\_\_, interest at \_\_\_\_\_% per annum, payable at approximately \$ \_\_\_\_\_ per [ ] month, [ ] year, or [ ] other \_\_\_\_\_.
2. LOAN APPLICATION; CREDIT REPORT: Within 5 (or [ ] \_\_\_\_\_) Days After Acceptance: (a) Buyer shall provide Seller a completed loan application...
3. CREDIT DOCUMENTS: This extension of credit by Seller will be evidenced by: [ ] Note and deed of trust; [ ] All-inclusive note and deed of trust; [ ] Installment land sale contract; [ ] Lease/option... OR [ ] Other (specify) \_\_\_\_\_

THE FOLLOWING TERMS APPLY ONLY IF CHECKED. SELLER IS ADVISED TO READ ALL TERMS, EVEN THOSE NOT CHECKED, TO UNDERSTAND WHAT IS OR IS NOT INCLUDED, AND, IF NOT INCLUDED, THE CONSEQUENCES THEREOF.

- 4. [ ] LATE CHARGE: If any payment is not made within \_\_\_\_\_ Days After it is due, a late charge of either \$ \_\_\_\_\_ or \_\_\_\_\_% of the installment due, may be charged to Buyer.
5. [ ] BALLOON PAYMENT: The extension of credit will provide for a balloon payment, in the amount of \$ \_\_\_\_\_ plus any accrued interest, which is due on \_\_\_\_\_ (date).
6. [ ] PREPAYMENT: If all or part of this extension of credit is paid early, Seller may charge a prepayment penalty as follows (if applicable): \_\_\_\_\_. Caution: California Civil Code §2954.9 contains limitations on prepayment penalties for residential one-to-four unit properties.
7. [ ] DUE ON SALE: If any interest in the Property is sold or otherwise transferred, Seller has the option to require immediate payment of the entire unpaid principal balance, plus any accrued interest.
8.\* [ ] REQUEST FOR COPY OF NOTICE OF DEFAULT: A request for a copy of Notice of Default as defined in California Civil Code §2924b will be recorded.
9.\* [ ] REQUEST FOR NOTICE OF DELINQUENCY: A request for Notice of Delinquency, as defined in California Civil Code §2924e, to be signed and paid for by Buyer, will be made to senior lienholders.
10.\* [ ] TAX SERVICE: A. If property taxes on the Property become delinquent, tax service will be arranged to report to Seller. B. [ ] Buyer, [ ] Seller, shall be responsible for the initial and continued retention of, and payment for, such tax service.
11. [ ] TITLE INSURANCE: Title insurance coverage will be provided to both Seller and Buyer, insuring their respective interests in the Property.
12. [ ] HAZARD INSURANCE: A. The parties' escrow holder or insurance carrier will be directed to include a loss payee endorsement... B. Property insurance does not include earthquake or flood insurance coverage, unless checked: [ ] Earthquake insurance will be obtained; [ ] Flood insurance will be obtained.
13. [ ] PROCEEDS TO BUYER: Buyer will receive cash proceeds at the close of the sale transaction.
14. [ ] NEGATIVE AMORTIZATION; DEFERRED INTEREST: Negative amortization results when Buyer's periodic payments are less than the amount of interest earned on the obligation.
OR [ ] B. All deferred interest shall be due and payable, along with principal, at maturity;
OR [ ] C. Other \_\_\_\_\_

\*(For Paragraphs 8-10) In order to receive timely and continued notification, Seller is advised to record appropriate notices and/or to notify appropriate parties of any change in Seller's address.

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



SFA REVISED 11/13 (PAGE 1 OF 3) Print Date \_\_\_\_\_

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

15.  **ALL-INCLUSIVE DEED OF TRUST; INSTALLMENT LAND SALE CONTRACT:** This transaction involves the use of an all-inclusive (or wraparound) deed of trust or an installment land sale contract. That deed of trust or contract shall provide as follows:  
**A.** In the event of an acceleration of any senior encumbrance, the party responsible for payment, or for legal defense is:  
 Buyer  Seller; OR  **Is not** specified in the credit or security documents.  
**B.** In the event of the prepayment of a senior encumbrance, the responsibilities and rights of Buyer and Seller regarding refinancing, prepayment penalties, and any prepayment discounts are: \_\_\_\_\_;  
 OR  **Are not** specified in the documents evidencing credit.  
**C.** Buyer will make periodic payments to \_\_\_\_\_ (Seller, collection agent, or any neutral third party), who will be responsible for disbursing payments to the payee(s) on the senior encumbrance(s) and to Seller. NOTE: The Parties are advised to designate a neutral third party for these purposes.
16.  **TAX IDENTIFICATION NUMBERS:** Buyer and Seller shall each provide to each other their Social Security Numbers or Taxpayer Identification Numbers.
17.  **OTHER CREDIT TERMS** \_\_\_\_\_
18.  **RECORDING:** The documents evidencing credit (paragraph 3) will be recorded with the county recorder where the Property is located. If not, Buyer and Seller are advised that their respective interests in the Property may be jeopardized by intervening liens, judgments, encumbrances, or subsequent transfers.
19.  **JUNIOR FINANCING:** There will be additional financing, secured by the Property, junior to this Seller financing. Explain: \_\_\_\_\_
20. **SENIOR LOANS AND ENCUMBRANCES:** The following information is provided on loans and/or encumbrances that will be senior to Seller financing. NOTE: The following are estimates, unless otherwise marked with an asterisk (\*). If checked:  A separate sheet with information on additional senior loans/encumbrances is attached

	1st	2nd
<b>A. Original Balance</b>	\$ _____	\$ _____
<b>B. Current Balance</b>	\$ _____	\$ _____
<b>C. Periodic Payment (e.g. \$100/month):</b>	\$ _____	\$ _____ / _____
Including Impounds of:	\$ _____	\$ _____ / _____
<b>D. Interest Rate (per annum)</b>	_____ %	_____ %
<b>E. Fixed or Variable Rate:</b>	_____	_____
If Variable Rate: Lifetime Cap (Ceiling)	_____	_____
Indicator (Underlying Index)	_____	_____
Margins	_____	_____
<b>F. Maturity Date</b>	_____	_____
<b>G. Amount of Balloon Payment</b>	\$ _____	\$ _____
<b>H. Date Balloon Payment Due</b>	_____	_____
<b>I. Potential for Negative Amortization? (Yes, No, or Unknown)</b>	_____	_____
<b>J. Due on Sale? (Yes, No, or Unknown)</b>	_____	_____
<b>K. Pre-payment penalty? (Yes, No, or Unknown)</b>	_____	_____
<b>L. Are payments current? (Yes, No, or Unknown)</b>	_____	_____

21. **BUYER'S CREDITWORTHINESS:** (CHECK EITHER A OR B. Do not check both.) In addition to the loan application, credit report and other information requested under paragraph 2:
- A.**  No other disclosure concerning Buyer's creditworthiness has been made to Seller;
- OR B.**  The following representations concerning Buyer's creditworthiness are made by Buyer(s) to Seller:
- | <b>Borrower</b>               | <b>Co-Borrower</b>            |
|-------------------------------|-------------------------------|
| 1. Occupation _____           | 1. Occupation _____           |
| 2. Employer _____             | 2. Employer _____             |
| 3. Length of Employment _____ | 3. Length of Employment _____ |
| 4. Monthly Gross Income _____ | 4. Monthly Gross Income _____ |
| 5. Other _____                | 5. Other _____                |

22. **ADDED, DELETED OR SUBSTITUTED BUYERS:** The addition, deletion or substitution of any person or entity under this Agreement or to title prior to close of escrow shall require Seller's written consent. Seller may grant or withhold consent in Seller's sole discretion. Any additional or substituted person or entity shall, if requested by Seller, submit to Seller the same documentation as required for the original named Buyer. Seller and/or Brokers may obtain a credit report, at Buyer's expense, on any such person or entity.

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)



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

**23. CAUTION:**

- A.** If the Seller financing requires a balloon payment, Seller shall give Buyer written notice, according to the terms of Civil Code §2966, at least 90 and not more than 150 days before the balloon payment is due if the transaction is for the purchase of a dwelling for not more than four families.
- B.** If **any** obligation secured by the Property calls for a balloon payment, Seller and Buyer are aware that refinancing of the balloon payment at maturity may be difficult or impossible, depending on conditions in the conventional mortgage marketplace at that time. There are no assurances that new financing or a loan extension will be available when the balloon prepayment, or any prepayment, is due.
- C.** If **any** of the existing or proposed loans or extensions of credit would require refinancing as a result of a lack of full amortization, such refinancing might be difficult or impossible in the conventional mortgage marketplace.
- D.** In the event of default by Buyer: (1) Seller may have to reinstate and/or make monthly payments on any and all senior encumbrances (including real property taxes) in order to protect Seller's secured interest; (2) Seller's rights are generally limited to foreclosure on the Property, pursuant to California Code of Civil Procedure §580b; and (3) the Property may lack sufficient equity to protect Seller's interests if the Property decreases in value.

If this three-page Addendum and Disclosure is used in a transaction for the purchase of a dwelling for not more than four families, it shall be prepared by an Arranger of Credit as defined in California Civil Code §2957(a). (The Arranger of Credit is usually the agent who obtained the offer.)

Arranger of Credit - (Print Firm Name) \_\_\_\_\_ By \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_

**BUYER AND SELLER ACKNOWLEDGE AND AGREE THAT BROKERS: (A) WILL NOT PROVIDE LEGAL OR TAX ADVICE; (B) WILL NOT PROVIDE OTHER ADVICE OR INFORMATION THAT EXCEEDS THE KNOWLEDGE, EDUCATION AND EXPERIENCE REQUIRED TO OBTAIN A REAL ESTATE LICENSE; OR (C) HAVE NOT AND WILL NOT VERIFY ANY INFORMATION PROVIDED BY EITHER BUYER OR SELLER. BUYER AND SELLER AGREE THAT THEY WILL SEEK LEGAL, TAX AND OTHER DESIRED ASSISTANCE FROM APPROPRIATE PROFESSIONALS. BUYER AND SELLER ACKNOWLEDGE THAT THE INFORMATION EACH HAS PROVIDED TO THE ARRANGER OF CREDIT FOR INCLUSION IN THIS DISCLOSURE FORM IS ACCURATE. BUYER AND SELLER FURTHER ACKNOWLEDGE THAT EACH HAS RECEIVED A COMPLETED COPY OF THIS DISCLOSURE FORM.**

Buyer \_\_\_\_\_ Date \_\_\_\_\_  
(signature)

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Phone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_  
(signature)

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Phone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_  
(signature)

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Phone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_  
(signature)

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Phone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



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

**IMPORTANT SELLER FINANCING DISCLOSURE - PLEASE READ CAREFULLY**

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) has made significant and important changes affecting seller financing on residential properties. Effective January 10, 2014, sellers who finance the purchase of residential property containing 1-4 units may be considered “loan originators” required to comply with certain Truth In Lending Act (“TILA”) requirements. Even under Dodd-Frank however, the following two exemptions exist:

1. The seller finances only **ONE** property in any 12 month period and:
  - a. The seller is a natural person, a trust or an estate, and
  - b. The seller did not construct the property, and
  - c. The financing has a fixed rate or does not adjust for the first 5 years, and
  - d. The financing does not result in negative amortization.

**OR**

2. The seller finances no more than **THREE** properties in any 12 month period and:
  - a. The seller is a natural person or organization (corporation, LLC, partnership, trust, estate, association, etc.), and
  - b. The seller did not construct the property, and
  - c. The loan is fully amortized, i.e., no balloon payment, and
  - d. The financing has a fixed rate or does not adjust for the first 5 years, and
  - e. The borrower has the reasonable ability to repay the loan.

Sellers who finance the purchase of residential property containing 1-4 units meeting either of the two exemptions are not subject to the TILA requirements above may continue to, and are required by California Law to, use the Seller Financing Addendum.

Sellers who finance the purchase of residential property containing 1-4 units who do not meet either of the two tests above should still complete the Seller Finance Addendum and speak to a lawyer about other TILA disclosures that may be required.

Sellers who finance the purchase of residential property containing 5 or more units, vacant land, or commercial properties are not subject to the TILA disclosures nor are they required to use the Seller Financing Addendum.

A seller who originates a single extension of credit through a mortgage broker and additionally meets the definition of a “high-cost” mortgage under Dodd-Frank may be subject to the Truth in Lending Act’s requirement to verify the borrower’s ability to repay.

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)

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**SFA REVISED 11/13 (PAGE 4 OF 4)**

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



**SELLER FINANCING ADDENDUM AND DISCLOSURE (SFA PAGE 4 OF 4)**

## INCREASED DEPOSIT/ LIQUIDATED DAMAGES ADDENDUM (RID)

When the property being sold is residential with one-to-four units, and a liquidated damage clause has been incorporated into the agreement, and the deposit amount is comprised of separate payments, then, after the initial payment has been made, subsequent payments are only considered as part of the liquidated damage amount if certain requirements are met (Civil Code section 1677 and 1678). First, the total amount of all such payments cannot exceed 3% of the total purchase price or the presumed reasonableness of the liquidated damage amount is questionable. Second, a separately signed or initialed liquidated damage clause must accompany each such subsequent payment for that dollar amount to be counted toward the overall liquidated damage sum. The RID form is used to satisfy this latter legal requirement. In order to ensure the validity of the subsequent payments, the RID form should be completed at the time the subsequent payment is made. The RID accomplishes two purposes. Paragraph 1 is an acknowledgment that the deposit has been increased. Paragraph 2 makes the increase part of the liquidated damage total provided liquidated damage was made part of the agreement in the first place. If for some reason the parties do not want the additional deposit to count towards liquidated damages in that situation, the box should be checked in the middle of the first sentence of paragraph 2. While it has become increasingly rare for buyers to give increased deposit amounts to a broker because the default language in the RPA is for a buyer to make deposits directly to escrow, in those situations where the broker does receive an increased deposit the broker should check the box immediately above the broker's signature line.



CALIFORNIA ASSOCIATION OF REALTORS®

INCREASED DEPOSIT/LIQUIDATED DAMAGES ADDENDUM

(C.A.R. Form RID, 11/13)

The following terms and conditions are hereby incorporated into the California Residential Purchase Agreement, or  \_\_\_\_\_ ("Agreement"), dated \_\_\_\_\_ on property known as \_\_\_\_\_

("Property"),

between \_\_\_\_\_ Buyer and \_\_\_\_\_ Seller.

1. By depositing on \_\_\_\_\_ (date) the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) by  cash,  cashier's check,  personal check,  wired funds or  \_\_\_\_\_, payable to \_\_\_\_\_, Buyer hereby increases the total deposit to \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

2. IF BUYER AND SELLER HAVE AGREED TO LIQUIDATED DAMAGES IN THE AGREEMENT, THE FOLLOWING LIQUIDATED DAMAGES PROVISION IS  IS NOT) HEREBY INCORPORATED IN AND MADE A PART OF THIS ADDENDUM.

If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. If the Property is a dwelling with no more than four units, one of which Buyer intends to occupy, then the amount retained shall be no more than 3% of the purchase price. Any excess shall be returned to Buyer. Release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award.

The undersigned have read and acknowledge receipt of a copy of this Increased Deposit/Liquidated Damages Addendum.

SELLER \_\_\_\_\_ Date \_\_\_\_\_

SELLER \_\_\_\_\_ Date \_\_\_\_\_

BUYER \_\_\_\_\_ Date \_\_\_\_\_

BUYER \_\_\_\_\_ Date \_\_\_\_\_

Buyer has given the additional deposit to Broker who acknowledges receipt of the additional deposit.

Real Estate Broker \_\_\_\_\_

By \_\_\_\_\_ Date \_\_\_\_\_

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RID 11/13 (PAGE 1 OF 1)

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



## ASSUMED FINANCING ADDENDUM (AFA)

If the buyer is going to assume an existing loan as part of the purchase (RPA paragraph 3D 1 or 2), specific terms apply that are not referenced in the body of the RPA. These terms are specified here. The seller has 5 days to request loan documents from the existing lender. Under California law, the lender must provide the seller with complete copies of the note and deed of trust, loan balances, and current interest rate within 21 days of written request. The lender may charge a fee not to exceed \$60. The buyer then has 17 calendar days to disapprove items in the loan documents provided by the seller. The adjustment between the actual loan balance and the estimate, if different, is to be made in cash.

The buyer will be charged with the amount of funds in the impound account unless otherwise specified.

If the assumed loan is a VA loan, the buyer agrees to obtain a release of liability on the assumption from the VA. The buyer must have the lender's approval to take over that loan (the buyer does not have to be a veteran to get a release of liability). For the seller to obtain a substitution of eligibility on the buyer's assumption on a VA loan, the buyer must be a qualified veteran to substitute. Until the loan is paid in full, or another veteran has substituted eligibility, the original veteran borrower will not qualify for another full VA loan.





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**ASSUMED FINANCING ADDENDUM**  
(C.A.R. Form AFA, 11/12)

This is an addendum to the  California Residential Purchase Agreement,  Counter Offer No. \_\_\_\_\_,  Other \_\_\_\_\_  
on property known as \_\_\_\_\_ (“Agreement”), dated \_\_\_\_\_ (“Property”),  
between \_\_\_\_\_ (“Buyer”),  
and \_\_\_\_\_ (“Seller”).

1. Obtaining the assumption below, and Buyer’s approval of such assumed financing, is a contingency of the Agreement. Buyer shall act diligently and in good faith to obtain the designated financing.
2. Seller shall, within **5 (or  \_\_\_\_\_) Days After Acceptance**, request from Lender, and upon receipt provide to Buyer, Copies of all applicable notes and deeds of trust, loan balances and current interest rates. Differences between estimated and actual loan balances shall be adjusted at Close Of Escrow by cash down payment. Impound accounts, if any, shall be assigned and charged to Buyer and credited to Seller. If this is an assumption of a VA Loan, the sale is contingent upon Seller being provided a release of liability and substitution of eligibility, unless otherwise agreed in writing.
3. (i) Within **17 (or  \_\_\_\_\_) Days After Acceptance**, Buyer shall, as specified in the Agreement, remove this contingency or cancel this Agreement. However, if the assumed loan documents are not provided to Buyer within **7 Days After Acceptance**, Buyer has **5 (or  \_\_\_\_\_) Days After** receipt of these documents, or the time specified in the first sentence of this paragraph, whichever occurs last, to remove this contingency or cancel the Agreement;  
**OR (ii)** (If checked)  assumed loan contingency shall remain in effect until the assumption is approved.

By signing below Buyer and Seller acknowledge that each has read, understands, has received a copy of and agrees to the terms of this Assumed Financing Addendum.

Date \_\_\_\_\_ Date \_\_\_\_\_  
Buyer \_\_\_\_\_ Seller \_\_\_\_\_  
Buyer \_\_\_\_\_ Seller \_\_\_\_\_

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**AFA 11/12 (PAGE 1 OF 1)**

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



## FHA OR VA NOTICE AND ADDENDUM (FVA)

Loans obtained under programs administered by the Federal Housing Administration (FHA) or Veteran's Administration (VA) may contain restrictions on the amount of points or fees that a borrower is allowed to pay. Further, lenders under these programs may require the property to be in a particular condition prior to the loan being made and the buyer acquiring title. Consequently, as a condition of loan approval, the lender may require the seller to agree to pay for certain repairs to the property, such as those for wood destroying pests and organisms.

The RPA gives the buyer a set period of time, defaulted to 17 days, to identify those costs the FHA or VA lender will require the seller to pay. Within that time, buyer shall provide notice to the seller of these lender requirements. Once on notice, the seller can decide whether to agree to these additional requirements. The FHA or VA Notice and Addendum (C.A.R. Form FVA) may be used to satisfy this notice requirement and the seller's response to it. The FVA form is like a Request for Repair but specifically targeted to items needed to satisfy a FHA or VA lender.

If the seller agrees to the buyer's FHA or VA requests, the FVA form serves as an addendum to the contract when it is signed by both buyer and seller.

If the seller does not agree, the buyer will not be able to get the FHA or VA loan specified. In this case, if the buyer has already removed, in writing, the loan contingency, then the buyer runs the risk of being in breach of contract if alternative financing cannot be arranged to allow the buyer to close escrow. If the buyer has not yet removed the loan contingency, the buyer may exercise the right to cancel or can use this right as leverage to try to get the seller to agree to some or all of the terms requested (more like required) by the FHA/VA lender.



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**FHA or VA Notice and Addendum**  
**(for FHA or VA Financing or other Required Terms)**  
(C.A.R. Form FVA, 4/10)

This is an addendum to the  California Residential Purchase Agreement or  Other \_\_\_\_\_  
("Agreement"), dated \_\_\_\_\_ ("Property"),  
on property known as \_\_\_\_\_ ("Buyer"),  
between \_\_\_\_\_ ("Seller"),  
and \_\_\_\_\_

**1. BUYER'S REQUEST:**

**A.** Buyer's FHA or VA lender requires, and Buyer requests Seller to pay for the following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**B.** Buyer's FHA or VA lender requires, and Buyer requests that Seller, prior to Close Of Escrow, repair the following, take any other specified action and agree to the following terms:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_  
Buyer \_\_\_\_\_ Date \_\_\_\_\_

**2. SELLER'S RESPONSE TO BUYER'S FHA/VA REQUEST:**

**Note to Seller:** If you do not agree to all of the items specified above, Buyer's FHA or VA lender will not loan Buyer the funds needed to purchase the Property. If the Agreement has a financing contingency and the financing contingency has not been removed, Buyer may cancel this Agreement (C.A.R. Form CC).

**A.**  Seller agrees to all of Buyer's FHA/VA requests in 1 above.

**OR B.**  Seller agrees to all of Buyer's FHA/VA requests in 1 above, **except:**

\_\_\_\_\_

**OR C.**  Seller does not agree to any of Buyer's FHA/VA requests in 1 above.

Seller \_\_\_\_\_ Date \_\_\_\_\_  
Seller \_\_\_\_\_ Date \_\_\_\_\_

**3. BUYER'S REPLY TO SELLER'S RESPONSE:**

**Note to Buyer:** If Seller does not agree to all of the items specified in 1 above, and you have already removed or you do remove the financing contingency, even though you may not be able to get the FHA or VA loan specified, or another loan to purchase the Property, you could be in breach of the Agreement if you are otherwise unable to pay the Seller the purchase price.

**A.**  If Seller agrees to all of Buyer's FHA/VA requests, Buyer accepts Seller's response and consents to modification of the Agreement as specified in this Addendum.

**B.**  If Seller does not agree to all of Buyer's FHA/VA requests, Buyer accepts Seller's response and consents to modification of the Agreement as specified in this Addendum and withdraws all FHA/VA requests for costs or items not agreed to by Seller.

**C.**  If Seller does not agree to all of Buyer's FHA/VA requests, and Buyer has not removed the financing contingency, Buyer elects to cancel this Agreement (C.A.R. Form CC).

Buyer \_\_\_\_\_ Date \_\_\_\_\_  
Buyer \_\_\_\_\_ Date \_\_\_\_\_

**By signing below, the Buyer and Seller acknowledge that each has read, understands and has received a copy of this Addendum.**

Date \_\_\_\_\_ Date \_\_\_\_\_  
Buyer \_\_\_\_\_ Seller \_\_\_\_\_  
Buyer \_\_\_\_\_ Seller \_\_\_\_\_

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FVA REVISED 4/10 (PAGE 1 OF 1) Print Date

## FHA/VA AMENDATORY CLAUSE (FVAC)

When a buyer is financing the purchase of property with a FHA or VA loan, federal law requires lenders to add a clause to the contract that enables the buyer to a refund of any deposit made if the property does not appraise at the purchase price. The clause is referred to as an “amendatory clause.” FHA and VA lenders insist on this clause being added to the parties’ agreement. Buyers are willing to sign this clause, of course, as it benefits them, but sellers are under no contractual obligation to do so once the buyer and seller are already in contract. If the seller refuses, and the buyer removes the appraisal contingency, then the buyer is at risk if the property does not appraise for the purchase price. The FVAC is intended to get the lender-required term into the contract at the point in time when it matters, when the buyer and seller are negotiating the terms of the contract. The FVAC should be attached to the offer when the buyer is making an offer and specifying FHA or VA financing. If so, once the offer is accepted, the FVAC becomes another term, contractually allowing the buyer to have the deposit refunded if the property does not appraise at full value. Even if the buyer subsequently removes an appraisal contingency, at least arguably, this specific clause supersedes any contrary preprinted language in the contract. Even with the FVAC, the buyer has the right to continue with the purchase but in order to do so the buyer may have to seek a loan other than FHA or VA.



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**FHA/VA Amendatory Clause**  
(C.A.R. Form FVAC, Revised 11/12)

This is an addendum to the  California Residential Purchase Agreement or  Other \_\_\_\_\_ (“Agreement”),  
dated \_\_\_\_\_, on property known as \_\_\_\_\_ (“Property”),  
between \_\_\_\_\_ (“Buyer”),  
and \_\_\_\_\_ (“Seller”).

1. "It is expressly agreed that notwithstanding any other provisions of this contract, the purchaser shall not be obligated to complete the purchase of the property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the purchaser has been given in accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement lender setting forth the appraised value of the property of not less than \$\_\_\_\_\_. The purchaser shall have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value or the condition of the property. The purchaser should satisfy himself/herself that the price and condition of the property are acceptable."

**Note:** The actual dollar amount to be inserted in the amendatory clause is the sales price stated in the contract. If the borrower and seller agree to adjust the sales price in response to an appraised value that is less than the sales price, a new amendatory clause is not required. However, the loan application package must include the original sales contract with the same price as shown on the amendatory clause, along with the revised or amended sales contract. The Amendatory Clause is not required on HUD REO sales, sales where the seller is Fannie Mae, Freddie Mac, the Department of Veterans Affairs, Rural Housing Services, other Federal, State and local government agencies, mortgagees disposing of REO assets, or sellers at foreclosure sales and those sales where the borrower will not be an owner-occupant (e.g., sales to nonprofit agencies).

2. **CERTIFICATION:** The undersigned Buyer, Seller, and real estate agent(s) or broker(s) hereby certify that the terms and conditions of the sales contract referenced above are true to the best of their knowledge and belief and that any other agreement entered into by any of the parties in connection with the real estate transaction is part of, or attached to, the sales agreement.

**WARNING:** It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties can include fine, imprisonment, or both. Title 18 U.S. Code Sections 1001 et seq.

**By signing below, the undersigned acknowledge that each has read, understands and has received a copy of this Amendatory Clause.**

Date \_\_\_\_\_ Date \_\_\_\_\_

Buyer \_\_\_\_\_ Seller \_\_\_\_\_

Buyer \_\_\_\_\_ Seller \_\_\_\_\_

Real Estate Broker (Selling Firm) \_\_\_\_\_ DRE Lic. # \_\_\_\_\_

By \_\_\_\_\_ DRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ Email \_\_\_\_\_

Real Estate Broker (Listing Firm) \_\_\_\_\_ DRE Lic. # \_\_\_\_\_

By \_\_\_\_\_ DRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ Email \_\_\_\_\_

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FVAC 11/12 (PAGE 1 OF 1) Print Date \_\_\_\_\_

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



## CONTINGENCY FOR SALE OF BUYER'S PROPERTY (COP)

The Contingency for Sale of Buyer's Property (COP) is an addendum for use when paragraph 4B in the RPA is checked to create a contingency for the sale of buyer's property.

Paragraph 1 defines the contingency as the close of escrow of buyer's property, not merely buyer entering into a contract to sell the buyer's property. The usual intention of having such a contingency is that the buyer needs the funds coming from the sale of the buyer's home to help purchase the seller's home. The contingency will last the entire escrow period but could terminate earlier if buyer's property is already in escrow and has a closing date before the close of the seller's property.

Paragraphs 2 and 3 identify if buyer's property is or is not already in escrow. If already in escrow, or once buyer's property enters escrow, Seller does not have to take the buyer's word for it. Buyer must provide evidence.

Paragraphs 4, 5 and 6 identify situations in which buyer or seller or both may cancel the contract for the sale of seller's property. For example, if buyer's own escrow fails, regardless of who caused it to do so, seller may cancel. But if buyer's buyer cancels, then buyer has the right to cancel the agreement with seller.

Paragraph 7 allows seller to continue to market the property for sale and accept another offer. If another offer is accepted, the seller will notify the buyer to remove the contingency of the sale of the buyer's property, remove the loan contingency, provide verification of funds to close without the sale of buyer's property and comply with specified additional requirements. The seller may cancel if the buyer does not complete those actions within the time specified. This is commonly known as the "72-hour clause" or "contingency release clause." The reason a seller would want the buyer to also remove the loan contingency is because many lenders will not loan a buyer money if a buyer is obligated to make payments on another property. If buyer's property has not sold, even if buyer removes the contingency for sale of that property, the buyer's loan contingency will effectively bring that property sale contingency back into effect. The seller has taken a risk of non-performance by allowing the buyer to have the contingency in the first place; once the buyer removes that contingency the seller wants that risk to shift to the buyer. However, if paragraph 7B is checked, the seller does NOT have the right to require the buyer to remove the contingency, for the sale of the buyer's home for a particular period of time. The seller can continue to offer the property for sale, but only for back-up offers.



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**CONTINGENCY FOR SALE  
OF BUYER'S PROPERTY**  
(C.A.R. Form COP, Revised 11/14)

This is an addendum to the  California Residential Purchase Agreement,  Counter Offer,  Other \_\_\_\_\_  
("Agreement"), dated \_\_\_\_\_,  
on property known as \_\_\_\_\_ ("Seller's Property"),  
between \_\_\_\_\_ ("Buyer")  
and \_\_\_\_\_ ("Seller").

**SALE OF BUYER'S PROPERTY:**

**1. LENGTH OF CONTINGENCY:**

- A. The Agreement is contingent on the close of escrow of Buyer's property, described as: \_\_\_\_\_ ("Buyer's Property").
- B. If Buyer's Property does not close escrow by the earliest of: (i) the scheduled close of escrow of Seller's Property; (ii) the date specified in paragraph 3B; or (iii) Other  \_\_\_\_\_, then either Seller, after first giving Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), or Buyer may cancel the Agreement in writing.

**2.  BUYER'S PROPERTY NOT IN ESCROW:** (If checked) Buyer's Property is **not** now in escrow and (check boxes as applicable):

- A.  is not yet listed for sale.
- B.  is listed for sale with \_\_\_\_\_ company and is offered for sale in the \_\_\_\_\_ MLS, # \_\_\_\_\_.
- C. Buyer has 17 (or  \_\_\_\_\_) Days to enter into escrow for the sale of Buyer's Property.
- D. Buyer shall, within the time specified in 2C, provide Seller with Copies of the contract, escrow instructions and all related documents ("Escrow Evidence") for the sale of Buyer's Property showing that Buyer's Property has entered escrow.

**3.  BUYER'S PROPERTY IN ESCROW:** (If checked) Buyer's Property is **in escrow.**

- A. Escrow holder is \_\_\_\_\_, (escrow # \_\_\_\_\_)
- B. Escrow is scheduled to close escrow on \_\_\_\_\_ (date).
- C. Buyer shall, within **5 Days After Acceptance**, deliver to Seller Escrow Evidence that Buyer's Property is in escrow.

**4. INTENT TO CANCEL ESCROW FOR BUYER'S PROPERTY:** If Buyer's Property is in or enters escrow, Buyer shall give Seller written notice if either party to that escrow gives notice to the other of intent to cancel.

**5. SELLER ADDITIONAL RIGHT TO CANCEL:** Seller, after first giving Buyer a Notice to Buyer to Perform, may cancel the Agreement in writing,

- A. If Buyer fails to provide Seller Escrow Evidence within the time specified in paragraph 2(D) or 3(C), or
- B. If, pursuant to paragraph 4, Buyer gives notice to Seller of either party's intent to cancel the escrow for Buyer's Property.

**6. BUYER ADDITIONAL RIGHT TO CANCEL:** Buyer may cancel the Agreement in writing if, **prior** to Buyer's removal of the contingency for sale of Buyer's Property, the buyer for Buyer's Property gives notice to Buyer of intent to cancel the escrow for Buyer's Property.

**7. BACK UP OFFERS AND SELLER RIGHT TO HAVE BUYER REMOVE CONTINGENCIES OR CANCEL:** After Acceptance, Seller shall have the right to continue to offer Seller's Property for sale for Back-up Offers. If Seller accepts a written back-up offer:

- A. **Immediate Right to Notify Buyer to Remove Sale of Property Contingency:** Seller shall have the right to immediately give written notice to Buyer to, in writing: (i) remove this contingency; (ii) remove the loan contingency, if any; (iii) provide verification of sufficient funds to close escrow without the sale of Buyer's Property; and (iv) comply with the following additional requirement(s): \_\_\_\_\_.

If Buyer fails to complete these actions within **3 (or  \_\_\_\_\_) Days** after receipt of such notice, Seller may then immediately cancel the Agreement in writing.

**OR B.  (If checked) Delayed Right to Notify Buyer:** Seller shall not invoke the notice provisions in paragraph 7A: (i) within the first **17 (or  \_\_\_\_\_) Days After Acceptance**; or (ii) (if checked)  during the term of the Agreement.

**By signing below, Buyer and Seller each acknowledge that they have read, understand, accept and have received a copy of this Addendum.**

Date \_\_\_\_\_ Date \_\_\_\_\_  
Buyer \_\_\_\_\_ Seller \_\_\_\_\_  
Buyer \_\_\_\_\_ Seller \_\_\_\_\_

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**COP Revised 11/14 (PAGE 1 OF 1)**

## SELLER'S PURCHASE OF REPLACEMENT PROPERTY (SPRP)

The polar opposite of the contingency for the buyer's sale of existing property is a contingency in favor of the seller for the seller's purchase of replacement property. Sometimes sellers do not want to sell their own property if they are uncertain about whether they can buy something themselves. The seller's concern could be based upon the difficulty of finding property in a market of rising property values or it could be that the seller just wants the security of knowing the seller has a permanent place to be once the seller's own property has sold.

This addendum provides that the contingency is for the seller entering into a contract for replacement property. A box can be checked making the contingency last until the seller has actually closed escrow on the replacement property. In the latter situation, the buyer is at risk throughout the entire escrow period because either the seller or the seller's seller may take some action that causes that escrow to fail, which would in turn cause the failure of the escrow for the sale of seller's property to buyer.

The seller has 17 days (unless otherwise agreed) to remove the contingency. If the seller does not remove the contingency, the buyer can cancel the agreement. Even after the seller removes the contingency, seller may extend close of escrow for an agreed upon time.

Because the buyer is at risk if the seller cancels, the buyer may not want to spend money on inspections and reports until the seller has removed the contingency for the seller finding, or closing upon, replacement property. The addendum has an optional paragraph that provides that time periods in the purchase agreement for inspections, contingencies, covenants and other obligations will not begin until the day after the seller removes the contingency.





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**SELLER'S PURCHASE  
OF REPLACEMENT PROPERTY**  
(C.A.R. Form SPRP, 11/14)

This is an addendum to the  California Residential Purchase Agreement,  Counter Offer,  Other \_\_\_\_\_  
\_\_\_\_\_, ("Agreement"), dated \_\_\_\_\_, on property known as \_\_\_\_\_  
\_\_\_\_\_, ("Seller's Property"),  
between \_\_\_\_\_ ("Buyer")  
and \_\_\_\_\_ ("Seller").

**SELLER'S PURCHASE OF REPLACEMENT PROPERTY:**

1. **A.** The Agreement is contingent on Seller entering a contract to acquire replacement property. Seller shall, within **17 (or  \_\_\_) Days After Acceptance**, remove this contingency or cancel the Agreement. If Seller does not remove this contingency in writing within that time, Buyer, after first giving Seller a Notice to Seller to Perform (C.A.R. Form NSP), may cancel the Agreement in writing.
- OR B.  CONCURRENT CLOSE:**  
This Agreement is contingent upon Seller closing escrow on replacement property.
2. **A.** Time periods in the Agreement for inspections, contingencies, covenants and other obligations shall begin:  as specified in the Agreement;  the Day After Seller delivers to Buyer a written notice removing this contingency; or  Other \_\_\_\_\_.
- B.** Buyer and Seller agree that Seller may extend the Close Of Escrow date for the sale of Seller's property for a maximum of \_\_\_\_\_ additional Days or until  \_\_\_\_\_ (date), by providing Buyer written notice at the time Seller removes the contingency specified in 1A, if applicable.
3. Even after the expiration of the time specified in paragraph 1, Seller retains, until Buyer cancels pursuant to paragraph 2, the right to remove in writing this contingency or cancel the Agreement. Once Buyer receives Seller's written removal of this contingency, Buyer may not cancel pursuant to paragraph 2.

**By signing below, Buyer and Seller each acknowledge that they have read, understand, accept and have received a copy of this Addendum.**

Date \_\_\_\_\_ Date \_\_\_\_\_  
Buyer \_\_\_\_\_ Seller \_\_\_\_\_  
Buyer \_\_\_\_\_ Seller \_\_\_\_\_

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



**SPRP 11/14 (PAGE 1 OF 1)**

**SELLER'S PURCHASE OF REPLACEMENT PROPERTY (SPRP PAGE 1 OF 1)**

## ADDENDUM (ADM)

When there is not enough room on the RPA, or any separate specialized addenda for that matter, to add in terms applicable to the contract, it is better to use an addendum rather than try to handwrite the term in small print or in the margins. The latter approach may make the term hard to read or have it cut off if the document is sent via fax. In either case the parties may not understand what they are signing and that could lead to disputes. The ADM can be used with a RPA or any other form that is identified in the caption. The ADM has over two dozen blank lines, so space should never be an issue. It is helpful to number the items in the addendum and to specifically reference the clause in the underlying document that is being modified.



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ADDENDUM (C.A.R. Form ADM, Revised 4/12)

No. \_\_\_\_\_

The following terms and conditions are hereby incorporated in and made a part of the: [ ] Residential Purchase Agreement, [ ] Manufactured Home Purchase Agreement, [ ] Business Purchase Agreement, [ ] Residential Lease or Month-to-Month Rental Agreement, [ ] Vacant Land Purchase Agreement, [ ] Residential Income Property Purchase Agreement, [ ] Commercial Property Purchase Agreement, [ ] Other \_\_\_\_\_

dated \_\_\_\_\_, on property known as \_\_\_\_\_, in which \_\_\_\_\_ is referred to as ("Buyer/Tenant") and \_\_\_\_\_ is referred to as ("Seller/Landlord").

Large area with horizontal lines for writing terms and conditions.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date \_\_\_\_\_ Date \_\_\_\_\_ Buyer/Tenant \_\_\_\_\_ Seller/Landlord \_\_\_\_\_ Buyer/Tenant \_\_\_\_\_ Seller/Landlord \_\_\_\_\_

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ADM REVISED 4/12 (PAGE 1 OF 1) Print Date

## BACK-UP OFFER ADDENDUM (BUO)

This addendum makes the offer contingent upon cancellation of prior offers between the seller and other buyers. Cancellation of those prior offers is not automatic, and parties to those prior offers may modify or amend them (e.g., the fact that the escrow time has expired on the prior offer does not mean the offer has been canceled. Both parties may even agree to extend that prior offer!).

The buyer may cancel this agreement at any time until cancellation of the prior sale is signed by all parties. If cancellation of the prior sale has not been signed by the date specified, then either the seller or buyer may cancel this agreement.

The buyer's deposit will not have to be placed into escrow until written cancellation of the prior sale has been signed by the seller and prior buyers. By checking the applicable box, however, the parties can agree that the deposit will be treated as stated in the Purchase Agreement, which typically requires deposit into escrow within three business days after acceptance.

Time periods for other obligations, such as conducting inspections, do not begin until the day the buyer receives written notification of cancellation of the prior sale. If the parenthetical is checked, time periods begin as specified in the agreement. If the close of escrow date is a "date specific," that date will not be extended without further written agreement.



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**BACK-UP OFFER ADDENDUM**  
(C.A.R. Form BUO, Revised 11/14)

This is an addendum to the  California Residential Purchase Agreement,  Counter Offer No. \_\_\_\_\_,  Other \_\_\_\_\_, on property known as \_\_\_\_\_, ("Agreement"), dated \_\_\_\_\_ ("Property"), between \_\_\_\_\_ ("Buyer"), and \_\_\_\_\_ ("Seller").

1. The Agreement is in back-up position number \_\_\_\_\_, and is contingent upon written cancellation of any prior contracts and related escrows ("Prior Contracts") between Seller and other buyers. Seller and other buyers may mutually agree to modify or amend the terms of Prior Contracts. Buyer may cancel the Agreement in writing at any time before Seller provides Buyer Copies of written cancellations of Prior Contracts Signed by all parties to those contracts. If Seller is unable to provide such written Signed cancellations to Buyer by \_\_\_\_\_ (date), then either Buyer or Seller may cancel the Agreement in writing.
2. **BUYER'S DEPOSIT** shall not be delivered to Escrow Holder until 3 business days After Copies of the written cancellations Signed by all parties to the Prior Contracts are provided to Buyer; OR (if checked)  shall immediately be handled as provided in the Agreement.
3. **TIME PERIODS** in the Agreement for Investigations, contingencies, covenants and other obligations (i) shall begin on the Day After Seller provides Buyer Copies of Signed cancellations of Prior Contracts; OR (ii) (if checked)  all time periods shall begin as provided in the Agreement. However, if the date for Close Of Escrow is a specific calendar date, that date shall NOT be extended, unless agreed to in writing by Buyer and Seller.

By signing below Buyer and Seller acknowledge that each has read, understands, has received a copy of and agrees to the terms of the Agreement and this Back-Up Offer Addendum.

Date \_\_\_\_\_ Date \_\_\_\_\_  
Buyer \_\_\_\_\_ Seller \_\_\_\_\_  
Buyer \_\_\_\_\_ Seller \_\_\_\_\_

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**BUO REVISED 11/14 (PAGE 1 OF 1)**

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## COURT CONFIRMATION ADDENDUM (CCA)

Court confirmation may be required in a number of proceedings, such as sales requiring approval or a bankruptcy court, or a sale of divorcing spouses requiring approval or a family court or the sale of property owned by a partnership that is undergoing dissolution subject to permission of a trial judge. If court approval is needed because probate court confirmation is required, the parties should consider using the Probate Purchase Agreement and Joint Escrow Instruction (C.A.R. Form PPA) instead of the RPA. For sales subject to court confirmation, the broker may continue to market the property and represent competing buyers. If the court confirmation is not received by the specified date, the buyer may cancel.



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**COURT CONFIRMATION ADDENDUM**  
(C.A.R. Form CCA, 11/12)

This is an addendum to the  California Residential Purchase Agreement,  Counter Offer No. \_\_\_\_\_,  Other \_\_\_\_\_  
on property known as \_\_\_\_\_, (“Agreement”), dated \_\_\_\_\_ (“Property”),  
between \_\_\_\_\_ (“Buyer”),  
and \_\_\_\_\_ (“Seller”).

The Agreement is contingent upon court confirmation on or before \_\_\_\_\_ (date). If court confirmation is not obtained by that date, Buyer may cancel the Agreement in writing. Court confirmation may be required in probate, conservatorship, guardianship, receivership, bankruptcy, divorce or other proceedings. The court may allow open, competitive bidding, resulting in the Property being sold to the highest bidder. Broker recommends that Buyer appear at the court confirmation hearing. Buyer understands that (i) Broker and others may continue to market the Property; and (ii) Broker may represent other competitive bidders prior to and at the court confirmation.

By signing below Buyer and Seller acknowledge that each has read, understands, has received a copy of and agrees to the terms of this Court Confirmation Addendum.

Date \_\_\_\_\_ Date \_\_\_\_\_  
Buyer \_\_\_\_\_ Seller \_\_\_\_\_  
Buyer \_\_\_\_\_ Seller \_\_\_\_\_

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CCA 11/12 (PAGE 1 OF 1)

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## SHORT SALE ADDENDUM (SSA)

When real estate is sold subject to approval of the seller's lender, the transaction is referred to as a short sale. In such a case, a Short Sale Addendum should be attached to the RPA.

The first paragraph of the C.A.R. Short Sale Addendum form, SSA, makes the contract contingent upon seller obtaining lender approval for the sale without the seller having to put any money into the escrow or having any continuing obligation to the lender. If the lender's approval is not obtained by the date specified in the SSA, then either buyer or seller may cancel the contract. Lenders are not required to approve seller's request for a short sale.

The second and third paragraphs deal with the time that contingencies and contract terms need to be met and when deposit checks need to be placed into escrow. Two options are present, either the time for these terms begins when the offer is accepted or the time gets delayed until the seller's lender approves the short sale.

It is important to remember that once the RPA and SSA have been signed by buyer and seller and properly communicated, a binding contract has been created between those two. The contract has a contingency that may give either party the right to cancel without consequence. Some mistakenly believe that no contract is created until lender approves but they are wrong.

When the SSA is used, the buyer is informed that the seller may continue to receive additional offers from other buyers and present them to the seller's lender. It is possible that even though one buyer's offer has been presented first, the seller's lender may approve another buyer's offer even if presented at a later time. These are some of the risks inherent in selling and purchasing a short sale property.





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## SHORT SALE ADDENDUM

(C.A.R. Form SSA, Revised 4/12)

This is an addendum to the  California Residential Purchase Agreement,  Counter Offer,  Other \_\_\_\_\_  
("Agreement"), dated \_\_\_\_\_,  
on property known as \_\_\_\_\_ ("Property"),  
between \_\_\_\_\_ ("Buyer") and  
\_\_\_\_\_ ("Seller").

### 1. SHORT SALE APPROVAL:

- A.** This Agreement is contingent upon Seller's receipt of and delivery to Buyer of written consent ("Short Sale Lenders' Consent") to the Agreement from all existing secured lenders and lienholders ("Short Sale Lenders"), by 5:00 P.M. no later than **45** (or  \_\_\_\_\_) Days After Acceptance (or  on \_\_\_\_\_ (date) ("Short Sale Contingency Date"). If Buyer or Seller cancels this Agreement prior to the Short Sale Contingency Date, that party may be in breach of the Agreement unless the cancellation is made pursuant to some other paragraph in this addendum or in the Agreement, whether or not time periods in the Agreement have commenced.
- B.** Short Sale Lenders' Consent means that all Short Sale Lenders shall collectively agree to reduce their respective loan balances by an amount sufficient to permit the proceeds from the sale of the Property to pay the existing balances on loans secured by the Property, real property taxes, brokerage commissions, closing costs, and other monetary obligations the Agreement requires Seller to pay at Close Of Escrow (including, but not limited to, escrow charges, title charges, documentary transfer taxes, prorations, retrofit costs, Homeowners Association Fees and Repairs) without requiring Seller to place any funds into escrow or have any continuing obligation to Short Sale Lenders.
- C.** **(i)** Seller shall Deliver to Buyer a copy of Short Sale Lenders' Consent or term sheet(s) within 3 (or  \_\_\_\_\_) Days After receipt by Seller. **(ii)** Seller's presentation to Buyer of Short Sale Lender's Consent satisfying 1B removes the contingency in 1A.
- D.** If by the Short Sale Contingency Date, **(i)** Seller has not received Short Sale Lenders' Consent satisfying 1B, Seller may in writing cancel this Agreement, or **(ii)** Buyer has not received a copy of Short Sale Lenders' Consent satisfying 1B, Buyer may cancel this Agreement in writing. In either case, Buyer shall be entitled to return of any remaining deposit delivered to escrow.
- E.** Seller shall reasonably cooperate with existing Short Sale Lenders in the short sale process, but neither Seller nor Buyer is obligated to change the terms of their Agreement to satisfy Short Sale Lenders' consent or term sheet(s).
- F.** If Short Sale Lenders' written consent or term sheet(s) provided to Seller require changes to the Agreement in order to satisfy the terms of 1B, **(i)** neither Buyer nor Seller shall be obligated to continue negotiations to satisfy any of the requirements of the term sheet(s) **(ii)** either party may in writing cancel this Agreement. And **(iii)** Seller is advised to seek legal, accounting and tax advice before agreeing to any such changes. If the Agreement is cancelled pursuant to this paragraph, Buyer shall be entitled to return of any remaining deposit delivered to escrow.
- 2. TIME PERIODS.** Time periods in the Agreement for inspections, contingencies, covenants, and other obligations: **(i)** shall begin the Day After Seller delivers to Buyer Short Sale Lenders' Consent satisfying 1B. However, time periods for providing pre-approval/pre-qualification letters and verification of down payment and closing costs shall nonetheless begin as otherwise specified in the Agreement; or **(ii)** (if checked)  shall begin as specified in the Agreement.

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



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

- 3. **BUYER'S DEPOSIT CHECK.** Buyer's deposit check shall be delivered to escrow within:
  - (i) 3 business Days After Seller delivers to Buyer Short Sale Lenders' Consent satisfying 1B, or
  - (ii) (if checked)  as specified in the Agreement.
- 4. **NO ASSURANCE OF LENDER APPROVAL.** Buyer and Seller understand that Short Sale Lenders: (i) are not obligated to give consent to a short sale; (ii) may require Seller to forward any other offer received; and (iii) may give consent to other offers. Additionally, Short Sale Lenders may require that, in order to obtain their approval for a short sale, some terms of the Agreement, such as the Close of Escrow, be amended or that Seller sign a personal note or some other obligation for all or a portion of the amount of the secured debt reduction. Buyer and Seller do not have to agree to any of Short Sale Lenders' proposed terms. Buyer, Seller and Brokers do not have control over whether Short Sale Lenders will consent to a short sale, or control over any act, omission, or decision by any Short Sale Lender in the short sale process.
- 5. **BUYER AND SELLER COSTS.** Buyer and Seller acknowledge that each of them may incur costs in connection with rights or obligations under the Agreement. These costs may include, but are not limited to, payments for loan applications, inspections, appraisals, and other reports. Such costs will be the sole responsibility of the party incurring them if Short Sale Lenders do not consent to the transaction or either party cancels the transaction pursuant to the Agreement.
- 6. **OTHER OFFERS.** Unless otherwise agreed in writing, after Buyer's offer has been accepted by Seller, (i) Seller has the right to continue to market the Property for back-up offers; (ii) Seller has the right to accept back-up offers (C.A.R. Form PAA, Paragraph 1), and subject to Short Sale Lender(s) requirements present to Short Sale Lender(s) any accepted back-up offers that are received; and (iii) Seller shall notify buyer when any accepted back-up offers, are presented to Short Sale Lender(s).
- 7. **CREDIT, LEGAL AND TAX ADVICE.** Seller is informed that a short sale may have credit or legal consequences and may result in taxable income to Seller. **Seller is advised to seek advice from an attorney, certified public accountant or other expert regarding such potential consequences of a short sale.**

By signing below, Buyer and Seller each acknowledge that they have read, understand, accept and have received a copy of this Short Sale Addendum.

Date \_\_\_\_\_ Date \_\_\_\_\_  
 Buyer \_\_\_\_\_ Seller \_\_\_\_\_  
 Buyer \_\_\_\_\_ Seller \_\_\_\_\_

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SSA REVISED 4/12 (PAGE 2 OF 2)

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SHORT SALE ADDENDUM (SSA PAGE 2 OF 2)

## **SEPTIC INSPECTION, WELL INSPECTION, PROPERTY MONUMENT AND ALLOCATION OF COST ADDENDUM (SWPI)**

For those properties that are serviced by a septic or well system, there is often more to valuating the system than specifying a generic inspection.

In this addendum, the examination of the septic system is broken into 5 specific sections: an inspection by a licensed septic contractor, locating and accessing, payment for “pump and dump” fees, obtaining a certification and who shall pay for excavation. Certification means different things in different communities. Sometimes certification can be provided by the licensed septic contractor and other times it is necessary to obtain government approval. If there is an alternative septic system, seller will have to make certain disclosures about the alternative system to the buyer.

The well section covers: availability of governmental reports, productivity (gallons per minute), and bacterial, chemical and radiological testing.

The property monument section covers identifying corners and monuments and the hiring of a licensed land surveyor.



CALIFORNIA ASSOCIATION OF REALTORS®

SEPTIC, WELL, AND PROPERTY MONUMENT INSPECTION AND ALLOCATION OF COST ADDENDUM

(C.A.R. Form SWPI, Revised 4/12)

Property \_\_\_\_\_ Date \_\_\_\_\_

The following terms and conditions are hereby incorporated in and made a part of the: [ ] Residential Purchase Agreement, [ ] other \_\_\_\_\_, dated \_\_\_\_\_ ("Agreement"), on property known as: \_\_\_\_\_ ("Property"), in which \_\_\_\_\_ is referred to as Buyer and \_\_\_\_\_ is referred to as Seller.

1. (If checked [ ]) SEPTIC INSPECTION AND ALLOCATION OF COST (CHECK ALL THAT APPLY):

A. INSPECTION AND REPORT

[ ] Buyer [ ] Seller shall pay for septic system to be inspected and a report prepared by a licensed professional septic contractor.

B. LOCATION AND ACCESSING

[ ] Buyer [ ] Seller shall pay for locating, accessing and identifying septic system.

C. PUMPING

[ ] Buyer [ ] Seller shall pay for pump and dump fees.

D. CERTIFICATION

[ ] Buyer [ ] Seller shall pay for certification by a licensed professional septic contractor or [ ] by the City/County of \_\_\_\_\_.

If, in order to obtain the certification, additional costs are needed to repair the septic system or otherwise bring it into compliance with applicable law, further written agreement is required. If agreement is not reached within the time for removing contingencies, then either party may cancel the Agreement.

E. EXCAVATION

[ ] Buyer [ ] Seller shall pay for excavation of \_\_\_\_\_.

F. (If checked [ ]) ALTERNATIVE SEPTIC SYSTEMS: The Property has an alternative septic system (Alternative System). Seller shall provide to Buyer, if available to Seller, the following information: (i) the name of the servicer of the Alternative System, (ii) how often service of the Alternative System is required, and (iii) the annual cost of servicing the Alternative System.

G. OTHER

[ ] Buyer [ ] Seller shall pay for \_\_\_\_\_.

2. (If checked [ ]) WELL INSPECTION AND ALLOCATION OF COST (CHECK ALL THAT APPLY):

A. GOVERNMENT REPORT

[ ] Seller shall provide to Buyer, if in Seller's possession, the State of California Well Completion Report issued by \_\_\_\_\_ (local government agency). Whether or not Seller provides such a report to Buyer, Seller authorizes the local government agency to release any available report to Buyer.

B. WATER PRODUCTIVITY

[ ] Buyer [ ] Seller shall pay for water productivity (Gallons Per Minute) testing provided by \_\_\_\_\_.

C. BACTERIAL TESTING

[ ] Buyer [ ] Seller shall pay for testing of bacterial contaminant's including fecal material and e coli from a chlorine free water sample(s) provided by \_\_\_\_\_.

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)

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SWPI 4/12 (PAGE 1 OF 2) PRINT DATE

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

**D. CHEMICAL/RADIOLOGICAL TESTING**

Buyer  Seller shall pay for testing of organic and inorganic chemical and radiological contaminants ( specifically including, but not limited to, \_\_\_\_\_) provided by \_\_\_\_\_

**E. OTHER**

Buyer  Seller shall pay for \_\_\_\_\_

**3. (If checked ) PROPERTY MONUMENT, CORNERS AND BOUNDARIES (CHECK ALL THAT APPLY):**

**Buyer and Seller acknowledge that only a licensed surveyor can legally mark property corners.**

- A.  Buyer  Seller shall be responsible for identifying the location of Property monuments and corners
- B.  Buyer  Seller shall pay for the services of a licensed land surveyor to locate and identify  Property monuments,  Property corners,  Property boundaries,  \_\_\_\_\_
- C. **OTHER:**  Buyer  Seller shall pay for \_\_\_\_\_

**By signing below, the undersigned acknowledge that each has read, understands, received a copy and agrees to the terms of this Septic, Well Inspection, Property Monument and Allocation of Cost Addendum.**

Buyer \_\_\_\_\_ Date \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_

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**SWPI REVISED 4/12 (PAGE 2 OF 2)**

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## BUYER'S INSPECTION ADVISORY (BIA)

Of all of the addenda and advisories specified in paragraph 5 of the RPA, the only one that is pre-checked is the BIA. The BIA comes attached to the RPA. It is also available separately if the C.A.R. Purchase Agreement is not used. The form does not create any obligations for the seller but rather is intended to inform the buyer of potential areas of concern.

Paragraph 1 of the form informs the buyer of the following: The importance of a property inspection; The duty of the buyer to take action to protect him or herself; and Advice about following the recommendations of professionals.

Paragraph 2 explains the limits on a broker's expertise.

Paragraph 3 lists common items a buyer may wish to investigate

Part four is for the buyer's signature. The seller's signature is not essential since all of the information in this form pertains to the buyer.



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## BUYER'S INSPECTION ADVISORY

(C.A.R. Form BIA, Revised 11/14)

Property Address \_\_\_\_\_ ("Property")

**1. IMPORTANCE OF PROPERTY INVESTIGATION:** The physical condition of the land and improvements being purchased is not guaranteed by either Seller or Brokers. You have an affirmative duty to exercise reasonable care to protect yourself, including discovery of the legal, practical and technical implications of disclosed facts, and the investigation and verification of information and facts that you know or that are within your diligent attention and observation. A general physical inspection typically does not cover all aspects of the Property nor items affecting the Property that are not physically located on the Property. If the professionals recommend further investigations, including a recommendation by a pest control operator to inspect inaccessible areas of the Property, you should contact qualified experts to conduct such additional investigations.

**2. BROKER OBLIGATIONS:** Brokers do not have expertise in all areas and therefore cannot advise you on many items, such as those listed below. If Broker gives you referrals to professionals, Broker does not guarantee their performance.

**3. YOU ARE STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO THE FOLLOWING. IF YOU DO NOT DO SO, YOU ARE ACTING AGAINST THE ADVICE OF BROKERS.**

- A. GENERAL CONDITION OF THE PROPERTY, ITS SYSTEMS AND COMPONENTS:** Foundation, roof (condition, age, leaks, useful life), plumbing, heating, air conditioning, electrical, mechanical, security, pool/spa (cracks, leaks, operation), other structural and non-structural systems and components, fixtures, built-in appliances, any personal property included in the sale, and energy efficiency of the Property.
- B. SQUARE FOOTAGE, AGE, BOUNDARIES:** Square footage, room dimensions, lot size, age of improvements and boundaries. Any numerical statements regarding these items are APPROXIMATIONS ONLY and have not been verified by Seller and cannot be verified by Brokers. Fences, hedges, walls, retaining walls and other barriers or markers do not necessarily identify true Property boundaries.
- C. WOOD DESTROYING PESTS:** Presence of, or conditions likely to lead to the presence of wood destroying pests and organisms.
- D. SOIL STABILITY:** Existence of fill or compacted soil, expansive or contracting soil, susceptibility to slippage, settling or movement, and the adequacy of drainage.
- E. WATER AND UTILITIES; WELL SYSTEMS AND COMPONENTS; WASTE DISPOSAL:** Water and utility availability, use restrictions and costs. Water quality, adequacy, condition, and performance of well systems and components. The type, size, adequacy, capacity and condition of sewer and septic systems and components, connection to sewer, and applicable fees.
- F. ENVIRONMENTAL HAZARDS:** Potential environmental hazards, including, but not limited to, asbestos, lead-based paint and other lead contamination, radon, methane, other gases, fuel oil or chemical storage tanks, contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, nuclear sources, and other substances, materials, products, or conditions (including mold (airborne, toxic or otherwise), fungus or similar contaminants).
- G. EARTHQUAKES AND FLOODING:** Susceptibility of the Property to earthquake/seismic hazards and propensity of the Property to flood.
- H. FIRE, HAZARD AND OTHER INSURANCE:** The availability and cost of necessary or desired insurance may vary. The location of the Property in a seismic, flood or fire hazard zone, and other conditions, such as the age of the Property and the claims history of the Property and Buyer, may affect the availability and need for certain types of insurance. Buyer should explore insurance options early as this information may affect other decisions, including the removal of loan and inspection contingencies.
- I. BUILDING PERMITS, ZONING AND GOVERNMENTAL REQUIREMENTS:** Permits, inspections, certificates, zoning, other governmental limitations, restrictions, and requirements affecting the current or future use of the Property, its development or size.
- J. RENTAL PROPERTY RESTRICTIONS:** Some cities and counties impose restrictions that limit the amount of rent that can be charged, the maximum number of occupants, and the right of a landlord to terminate a tenancy. Deadbolt or other locks and security systems for doors and windows, including window bars, should be examined to determine whether they satisfy legal requirements.
- K. SECURITY AND SAFETY:** State and local Law may require the installation of barriers, access alarms, self-latching mechanisms and/or other measures to decrease the risk to children and other persons of existing swimming pools and hot tubs, as well as various fire safety and other measures concerning other features of the Property.
- L. NEIGHBORHOOD, AREA, SUBDIVISION CONDITIONS; PERSONAL FACTORS:** Neighborhood or area conditions, including schools, law enforcement, crime statistics, registered felons or offenders, fire protection, other government services, availability, adequacy and cost of internet connections or other technology services and installations, commercial, industrial or agricultural activities, existing and proposed transportation, construction and development that may affect noise, view, or traffic, airport noise, noise or odor from any source, wild and domestic animals, other nuisances, hazards, or circumstances, protected species, wetland properties, botanical diseases, historic or other governmentally protected sites or improvements, cemeteries, facilities and condition of common areas of common interest subdivisions, and possible lack of compliance with any governing documents or Homeowners' Association requirements, conditions and influences of significance to certain cultures and/or religions, and personal needs, requirements and preferences of Buyer.

**By signing below, Buyers acknowledge that they have read, understand, accept and have received a Copy of this Advisory. Buyers are encouraged to read it carefully.**

Buyer \_\_\_\_\_ Buyer \_\_\_\_\_

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BIA REVISED 11/14 (PAGE 1 OF 1) Print Date \_\_\_\_\_

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



BUYER'S INSPECTION ADVISORY (BIA PAGE 1 OF 1)

## PROBATE ADVISORY (PAK)

If the property is being sold through a probate, the seller will likely be an individual acting in the capacity of an executor or administrator of a decedent's estate. The seller should attach a Representative Capacity Signature Addendum (C.A.R. form RCSA) to the RPA in that case (see paragraph 19 of the RPA for further information). Other properties are also sold under the jurisdiction of the probate court. These include properties sold by a guardian for a minor or a conservator for an owner who is incompetent. Disclosure obligations that apply to other sellers may not apply to a probate sale. However, exemption from some disclosure obligations does not mean the probate seller is exempt from all disclosure obligations. The PAK form identifies those obligations from which the probate seller is exempt. These include the TDS, the NHD, earthquake guides and the obligation to certify that operable smoke detectors are in place (but not exempt from the requirement to actually have operable smoke detectors). Also identified are those disclosure obligations that still apply. Examples include known material facts, lead paint disclosures, and water heater requirements. Further, the tax withholding laws also apply. The PAK mentions that the brokers are not exempt from their obligation to conduct a visual inspection, as it is an obligation independent of the seller's obligations. Finally, the PAK discusses the options to the probate seller of going to court or selling the property independently. As this may affect the timing of the sale, the buyer would want to inquire about how the sale is going to proceed.





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**PROBATE ADVISORY**  
**FOR PROBATE, CONSERVATORSHIP AND GUARDIANSHIP PROPERTIES**  
**(C.A.R Form PAK, 4/11)**

The sale of the Property described as (address) \_\_\_\_\_, pursuant to the attached Probate Purchase Agreement (C.A.R. form PPA-11), is made under authority of the California Probate Code. The Seller is not the title owner, but instead is a representative of a probate estate, a guardianship or a conservatorship. The sale may require a court order. Many obligations imposed upon sellers, particularly sellers of real property containing one-to-four dwelling units, may not be applicable to the sale of this property. However, even though the seller is exempt from many obligations, the seller must still comply with many others. Further, any real estate licensee representing Buyer or Seller in the transaction may have duties independent of the principals. This Advisory is intended to inform Buyer and Seller of their rights and obligations independent of those established by the attached agreement.

**EXEMPTIONS:**

1. **TDS, NHD, Mello-Roos:** Seller is exempt from providing Buyer with the Real Estate Transfer Disclosure Statement (TDS), Natural Hazard Disclosure Statement (NHD), and a Mello-Roos district lien disclosure, pursuant to California Civil Code either for "transfers pursuant to court order" or for "transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust."
2. **Earthquake Guides:** Seller is exempt from providing either a Homeowner's or Commercial Property Owner's Guide to Earthquake Safety.
3. **Smoke Detectors:** The sale is exempt from the State requirements that, for single family residences, operable smoke detectors be in place and that a written statement of compliance be provided to Buyer.

**REQUIREMENTS:**

1. **Disclosures:** Seller is not exempt from common law and statutory duties concerning fraud and deceit, even though the specific TDS form is not required to be completed. Seller remains obligated to disclose known material facts affecting the value and desirability of the property.
2. **Hazard Zones:** Seller is not exempt from applicable statutory obligations to disclose earthquake fault zones, seismic hazard zones, state fire responsibility areas, very high fire hazard severity zones, special flood hazard areas and flood hazard zones pursuant to the Public Resources Code, Government Code and United States Code, even though, pursuant to the Civil Code, the specific NHD form is not required to be completed.
3. **Water Heaters:** The sale is not exempt from the State requirement that water heaters be properly anchored, braced or strapped.
4. **Lead-based Paint:** The Seller is not exempt from the federal obligation to (i) disclose known lead-based paint and lead-based paint hazards, (ii) provide Buyer copies of reports or studies covering lead-based paint and hazards on the property, (iii) provide Buyer with the pamphlet "Protect Your Family From Lead In Your Home," and (iv) give Buyer a 10-day opportunity to inspect for lead-based paint and hazards, if the Property contains residential dwelling units and was constructed prior to 1978.
5. **Carbon Monoxide Devices:** The sale is not exempt from the State requirements that on or before July 1, 2011, for all existing single family dwelling units, and on or before January 1, 2013, for all other existing dwelling units, the owner must install a carbon monoxide device approved and listed by the State Fire Marshall in the dwelling unit if the dwelling unit has a fossil fuel burning heater or appliance, fireplace, or an attached garage.
6. **Data Base Disclosure:** The sale is not exempt from the requirement that residential sales contracts contain a notice regarding the availability of information about registered sex offenders.
7. **Tax Withholding:** The sale is not exempt from the obligation of the buyer to withhold a portion of the purchase price under federal law if the transferor is a "foreign person" or under state law if the transferor had a last known street address outside of California. **Federal:** For federal purposes, a non-resident alien includes a fiduciary. An administrator or executor of an estate is treated as a non-resident even if all beneficiaries are citizens or residents of the United States. **State:** If the decedent was a California resident at the time of death, the estate is treated as a California resident regardless of the residency of the executor or administrator.

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)

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PAK 4/11 (PAGE 1 OF 2)

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



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

**8. Brokers:**

- A. Inspection: The sale is not exempt from the Broker's obligation to conduct a reasonably competent and diligent visual inspection of the accessible areas of the property and disclose to Buyer material facts revealed by such an inspection in the sale of residential property containing one-to-four dwelling units. Brokers may do so on C.A.R. form AID.
- B. Agency: The sale is not exempt from the obligation to provide agency relationship disclosure and confirmation forms in the sale of residential property containing one-to-four dwelling units.

**OTHER CONSIDERATIONS:**

- 1. **Local Law:** Local law may impose obligations on the transfer of real property (such as the installation of low flow toilets or shower heads, or installation of smoke detectors). Local law should be consulted to determine if sales made under the authority of the California Probate Code are exempt from such requirements.
- 2. **Death:** If the Property is being sold under authority of the Probate Code because of the death of an owner of the Property and if Buyer has concerns about the manner, location or details of the death, then Buyer should direct any specific questions to the executor or administrator of the estate.
- 3. **Stock Cooperatives:** If the Property is part of a stock cooperative (Co-op), Buyer may be required to seek approval of the Board or Owner's Association of the Co-op prior to transfer of title. If this is not a contingency of the sale, failure of Buyer to gain approval of the Co-op board will not provide grounds for cancellation or rescission of the sale.
- 4. **Court Confirmation/Independent Authority:**

The representative of a decedent's estate may receive authority to sell the Property under the Independent Administration of Estates Act (IAEA). In order to do so, the representative must first petition the Probate Court. The Petition may be made at the time the representative is approved or any other time. Notice of the Petition is given to heirs, devisees, executors and other interested persons, any of whom may object.

If IAEA authority is granted it may be full or limited. If only limited authority has been granted, the sale must be confirmed by the court. If full authority has been granted, the representative must first give a notice of the proposed sale to the devisees and heirs of the decedent and other interested parties. If no objection is received, the sale may proceed. If any noticed person objects, the sale may require court confirmation. Note: A representative with full authority has the option of proceeding to court for confirmation even if not required to do so under the Probate Code.

Date \_\_\_\_\_

Date \_\_\_\_\_

Buyer \_\_\_\_\_

Seller \_\_\_\_\_

Buyer \_\_\_\_\_

Seller \_\_\_\_\_

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



## STATEWIDE BUYER AND SELLER ADVISORY (SBSA)

This form is like an extended version of the Buyer Inspection Advisory. It is informational only and in the pre-printed language does not create contractual duties between buyer and seller. As with the BIA, the buyer is instructed here of the importance of having qualified professionals conduct inspections of the property. Over 40 substantive paragraphs discuss various elements of the property that may be a concern to buyer. These include but are not limited to disclosures about: mold, insurance, future repair or replacements, schools, insurance, private transfer fees, and product defects and recalls. Also included is a statutory disclosure related to supplemental property taxes and an explanation of the broker's rights and duties with regard to keeping offers confidential. There are also explanations of some substantive contract paragraphs such as liquidated damages, mediation and arbitration. The last paragraph before the buyer and seller signatures is a reminder of the limits of a real estate broker's duties and responsibilities in the transaction. This form, unlike the BIA, is to be signed by both buyer and seller since some of the paragraphs that explain certain terms in the RPA are just as relevant to the seller as the buyer.



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**STATEWIDE BUYER AND SELLER ADVISORY**  
(This Form Does Not Replace Local Condition Disclosures.  
Additional Addenda May Be Attached to This Advisory. See Paragraph 51)  
(C.A.R. Form SBSA, Revised 11/13)

Property Address \_\_\_\_\_ Date \_\_\_\_\_

**BUYER RIGHTS AND DUTIES:**

- The physical condition of the land and improvements being purchased are not guaranteed by Seller or Brokers.
- You should conduct thorough investigations of the Property both personally and with appropriate professionals.
- If professionals recommend further inspections, you should contact qualified experts to conduct such inspections.
- You should retain your own professional even if Seller or Broker has provided you with existing reports.
- You should read all written reports given to you and discuss those reports with the persons who prepared them.
- You have the right to request that the Seller make repairs or corrections or take other actions based on inspections or disclosures, but the Seller is not obligated to make any such repairs, corrections or other requested actions.
- If the Seller is unwilling or unable to satisfy your requests, and you act within certain time periods, you may have the right to cancel the Agreement (the Purchase Agreement and any Counter Offer and Addenda together are the "Agreement"). If you cancel outside of these periods, you may be in breach of the Agreement and your deposit might be at risk.
- The terms of the purchase agreement and any counter offers and addenda establish your rights and responsibilities.

**YOU ARE STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY. IF YOU DO NOT DO SO, YOU ARE ACTING AGAINST THE ADVICE OF BROKERS.**

**SELLER RIGHTS AND DUTIES:**

- You have a duty to disclose material facts known to you that affect the value or desirability of the Property.
- You are obligated to make the Property available to the Buyer and have utilities on for inspections as allowed by the Agreement.
- This form is not a substitute for completing a Real Estate Transfer Disclosure Statement, if required, and any other property-specific questionnaires or disclosures.
- The terms of the Agreement establish your rights and responsibilities.

**BROKER RIGHTS AND DUTIES:**

- Brokers do not have expertise in all areas and matters affecting the Property or your evaluation of it.
- For most sales of residential properties with no more than four units, Brokers have a duty to make a reasonably competent and diligent visual inspection of the accessible areas of the Property and disclose to you material facts or defects that the inspection reveals.
- Many defects and conditions may not be discoverable by a Broker's visual inspection.
- If Brokers give a referral to another professional, Brokers do not guarantee that person's performance. You may select any professional of your own choosing.
- Any written agreement between a Broker and either Buyer or Seller or both establishes the rights and responsibilities of those parties.

**1. INSPECTIONS:** Buyer and Seller are advised that Buyer has the right to obtain various inspections of the Property under most residential purchase agreements. Buyer is advised to have the Property inspected by a professional property inspection service within Buyer's inspection contingency period. A licensed building contractor or other professional may perform these services. The inspector generally does not look behind walls or under carpets, or take equipment apart. Certain items on the Property, such as chimneys and spark arresters, plumbing, heating, air conditioning, electrical wiring, pool and spa, septic system, well, roof, foundation and structural items may need to be inspected by another professional, such as a chimney sweep, plumber, electrician, pool and spa service, septic or well company or roofer. A general physical inspection typically will not test for mold, wood destroying pests, lead-based paint, radon, asbestos and other environmental hazards, geologic conditions, age, remaining useful life or water-tightness of roof, cracks, leaks or operational problems associated with a pool or spa or connection of the Property to a sewer system. If Buyer wants further information on any aspect of the Property, Broker recommends that Buyer have a discussion with the professional property inspector and that Buyer hire an appropriate professional for the area of concern to Buyer. Brokers do not have expertise in these areas. Brokers do not verify the results of any such inspection or guarantee the performance of any such inspector or service. Any election by Buyer to waive the right to a physical inspection of the Property or to rely on somebody other than an appropriate professional is against the advice of Brokers. Not all inspectors are licensed and licenses are not available for all types of inspection activities.

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)

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**SBSA REVISED 11/13 (PAGE 1 OF 12) Print Date**

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



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

**2. SQUARE FOOTAGE, LOT SIZE, BOUNDARIES AND SURVEYS:** Buyer and Seller are advised that only an appraiser or land surveyor, as applicable, can reliably confirm square footage, lot size, Property corners and exact boundaries of the Property. Representations regarding these items that are made in a Multiple Listing Service, advertisements, and from property tax assessor records are often approximations, or based upon inaccurate or incomplete records. Fences, hedges, walls or other barriers may not represent actual boundary lines. Unless otherwise specified by Broker in writing, Brokers have not verified any such boundary lines or any representations made by Seller or others. Brokers do not have expertise in this area. Standard title insurance does not insure the boundaries of the Property. If Buyer wants information about the exact square footage, lot size or location of Property corners or boundaries, Broker recommends that Buyer hire an appraiser or licensed surveyor to investigate these matters or to prepare a survey of the property during Buyer's inspection contingency period.

**3. SOIL AND GEOLOGIC CONDITIONS:** Buyer and Seller are advised that real estate in California is subject to settling, slippage, contraction, expansion erosion, subsidence, earthquakes and other land movement. The Property may be constructed on fill or improperly compacted soil and may have inadequate drainage capability. Any of these matters can cause structural problems to improvements on the Property. Civil or geo-technical engineers are best suited to evaluate soil stability, grading, drainage and other soil conditions. Additionally, the Property may contain known or unknown mines, mills, caves or wells. Brokers do not have expertise in this area. If Buyer wants further information, Broker recommends that Buyer hire an appropriate professional. Not all inspectors are licensed and licenses are not available for all types of inspections.

**4. GEOLOGIC HAZARDS:** Buyer and Seller are advised that California has experienced earthquakes in the past, and there is always a potential of future earthquakes. Damage caused by an earthquake may not be discoverable by a visual inspection of Buyer(s) or Broker(s). Inspection by a licensed, qualified professional is strongly recommended to determine the structural integrity and safety of all structures and improvements on the Property. If the Property is a condominium, or located in a planned unit development or in a common interest subdivision, Buyer is advised to contact the homeowners association about earthquake repairs and retrofit work and the possibility of an increased or special assessment to defray the costs of earthquake repairs or retrofit work. Buyer is encouraged to obtain and read the booklet entitled, "The Homeowner's Guide to Earthquake Safety." In most cases a questionnaire within the booklet must be completed by Seller and the entire booklet given to the Buyer if the Property was built prior to 1960. If the Property was built before 1975, and contains structures constructed of masonry or precast (tilt up) concrete walls, with wood frame floors or roof, or if the building has unreinforced masonry walls, then Seller must provide Buyer a pamphlet entitled "The Commercial Property Owner's Guide to Earthquake Safety." Many areas have a wide range of geologic problems and numerous studies have been made of these conditions. Some of this information is available for public review at city and county planning departments. Buyer is encouraged to review the public maps and reports and/or obtain a geologist's inspection report. Brokers do not have expertise in this area. Buyer may be able to obtain earthquake insurance to protect their interest in the Property. Sellers who agree to provide financing should also consider requiring Buyers to obtain such insurance naming Seller(s) as insured lien holder(s).

**5. ENVIRONMENTAL HAZARDS:** Buyer and Seller are advised that the presence of certain kinds of organisms, toxins and contaminants, including, but not limited to, mold (airborne, toxic or otherwise), fungi, mildew, lead-based paint and other lead contamination, asbestos, formaldehyde, radon, pcb's, methane, other gases, fuel oil or chemical storage tanks, contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, nuclear sources, urea formaldehyde, or other materials may adversely affect the Property and the health of individuals who live on or work at the property as well as pets. If Buyer wants further information, Buyer is advised, and Broker(s) recommends, that Buyer have the Property inspected for the existence of such conditions and organisms, and conditions that may lead to their formation. Not all inspectors are licensed and licenses are not available for all types of inspection activities. Buyer is also advised to consult with appropriate experts regarding this topic during Buyer's inspection contingency period. Brokers do not have expertise in this area. Broker recommends that Buyer and Seller read the booklets titled, "Residential Environmental Hazards: A Guide for Homeowners, Homebuyers, Landlords and Tenants," and "Protect Your Family From Lead In Your Home."

**6. EPA'S LEAD-BASED PAINT RENOVATION, REPAIR AND PAINTING RULE:** The new rule requires that contractors and maintenance professionals working in pre-1978 housing, child care facilities, and schools with lead-based paint be certified; that their employees be trained; and that they follow protective work practice standards. The rule applies to renovation, repair, or painting activities affecting more than six square feet of lead-based paint in a room or more than 20 square feet of lead-based paint on the exterior. Enforcement of the rule begins October 1, 2010. See the EPA website at [www.epa.gov/lead](http://www.epa.gov/lead) for more information. Buyer and Seller are advised to consult an appropriate professional.

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



STATEWIDE BUYER AND SELLER ADVISORY (SBSA PAGE 2 OF 12)

PropertyAddress: \_\_\_\_\_ Date: \_\_\_\_\_

**7. FORMALDEHYDE:** Formaldehyde is a substance known to the State of California to cause cancer. Exposure to formaldehyde may be caused by materials used in the construction of homes. The United States Environmental Protection Agency, the California Air Resources Board, and other agencies have measured the presence of formaldehyde in the indoor air of select homes in California. Levels of formaldehyde that present a significant cancer risk have been measured in most homes that were tested. Formaldehyde is present in the air because it is emitted by a variety of building materials and home products used in construction. The materials include carpeting, pressed wood products, insulation, plastics, and glues. Most homes that have been tested elsewhere do contain formaldehyde, although the concentrations vary from home to home with no obvious explanation for the differences. One of the problems is that many suppliers of building materials and home products do not provide information on chemical ingredients to builders. Buyers may have further questions about these issues. Buyer is advised to consult with appropriate experts regarding this topic during Buyer's investigation period. Brokers do not have expertise in this area. Broker(s) recommend that Buyer and Seller read the booklet titled "Residential Environmental Hazards: A Guide for Homeowners, Homebuyers, Landlords and Tenants."

**8. MOLD:** Buyer and Seller are advised that the presence of certain kinds of mold, fungi, mildew and other organisms, sometimes referred to as "toxic mold" (collectively "Mold"), may adversely affect the Property and the health of individuals who live on or work at the Property as well as pets. Mold does not affect all people the same way, and may not affect some people at all. Mold may be caused by water leaks or other sources of moisture such as, but not limited to, flooding, and leaks in windows, pipes and roof. Seller is advised to disclose the existence of any such conditions of which he or she is aware. Buyer should carefully review all of Seller's disclosures for any indication that any of these conditions exist. It is, however, possible that Mold may be hidden and that Seller is completely unaware of its existence. In addition, Mold is often undetectable from a visual inspection, a professional general property inspection and even a structural pest control inspection. Brokers do not have expertise in this area. If Buyer wants further information, Broker recommends that Buyer have the Property tested for Mold by an environmental hygienist or other appropriate professional during Buyer's inspection contingency period. Not all inspectors are licensed and licenses are not available for all types of inspection activities.

**9. WATER INTRUSION:** Buyer and Seller are advised that many homes suffer from water intrusion or leakage. The causes of water intrusion are varied, and can include defective construction, faulty grading, deterioration of building materials and absence of waterproof barriers. Water intrusion can cause serious damage to the Property. This damage can consist of wood rot, mold, mildew and even damage to the structural integrity of the Property. The cost of repairing and remediating water intrusion damage and its causes can be very significant. The existence and cause of water intrusion is often difficult to detect. Because you, your Broker or a general home inspector cannot visually observe any effects of water intrusion, Buyer and Seller should not assume that such intrusion does not exist. Broker recommends that Buyer have the Property inspected for water intrusion by an appropriate professional. Brokers do not have expertise in this area.

**10. SEPTIC SYSTEMS:** Buyer and Seller are advised that a property may be served by one or more septic systems even though adjoining properties are connected to a sewer line. Buyer and Seller are also advised that some septic tanks and systems may have been abandoned or have leaked into ground water sources. Buyer is advised to contact the appropriate government agency to verify that the Property is connected to a sewer or served by a septic system. If the Property is served by a septic system, it may consist of a septic tank, cesspool, pits, leach lines or a combination of such mechanisms ("collectively, System"). No representation or warranty is made by Seller or Broker concerning the condition, operability, size, capacity or future expansion of a System, nor whether a System is adequate for use by the intended occupants of the Property. A change in the number of occupants or the quantity, composition or methods of depositing waste may affect the efficiency of the System. In addition, the amount of rainfall and ground water table may also affect the efficiency of the System. Many factors including, but not limited to, natural forces, age, deterioration of materials and the load imposed on a System can cause the System to fail at any time. Broker recommends that Buyer obtain an independent evaluation of any System by a qualified sanitation professional during Buyer's inspection contingency period. Brokers do not have expertise in this area. Buyer should consult with their sanitation professional to determine if their report includes the tank only, or other additional components of the System such as pits and leach fields. Not all inspectors are licensed and licenses are not available for all types of inspection activities. In some cases, Buyer's lender as well as local government agencies may require System inspection. System-related maintenance costs may include, but not be limited to, locating, pumping or providing outlets to ground level. Brokers are unable to advise Buyer or Seller regarding System-related issues or associated costs, which may be significant. If Buyer and Seller agree to obtain a System inspection, Buyer and Seller are cautioned that the inspection cost may include, but not be limited to, the costs of locating, pumping or providing outlets to ground level.

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



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**16. FLOOD HAZARDS:** Buyer and Seller are advised that if the Property is located within a Special Flood Hazard Area, as designated by the Federal Emergency Management Agency (FEMA), or an area of Potential Flooding pursuant to California Government Code Section 8589.3, generally Seller must disclose this fact to Buyer and may use a research company to aid in the process. The National Flood Insurance Program was established to identify all flood plain areas and establish flood-risk zones within those areas. The program mandates flood insurance for properties within high-risk zones if loans are obtained from a federally-regulated financial institution or are insured by any agency of the United States Government. The extent of coverage and costs may vary. If Buyer wants further information, Broker(s) recommend that Buyer consult his or her lender and/or insurance agent during Buyer's inspection contingency period. Brokers do not have expertise in this area. Buyer is advised that there is a potential for flooding even outside designated zones.

**17. ZONE MAPS MAY CHANGE:** Maps that designate, among other things, Earthquake Fault Zones, Seismic Hazard Zones, State Fire Responsibility Areas, Very High Fire Hazard Zones, Special Flood Hazard Areas, and Potential Flooding Areas are occasionally redrawn by the applicable Government Agency. Properties that are currently designated in a specified zone or area could be removed and properties that are not now designated in a specified zone or area could be placed in one or more such zones or areas in the future. A property owner may dispute a FEMA flood hazard location by submitting an application to FEMA.

**18. BUILDING PERMITS, ZONING AND CODE COMPLIANCE:** Buyer and Seller are advised that any structure on the Property, including the original structure and any addition, modification, remodel or improvement may have been built without permits, not according to building codes, or in violation of zoning laws. Further, even if such structure was built according to the then-existing code or zoning requirement, it may not be in compliance with current building standards or local zoning. It is also possible that local law may not permit structures that now exist to be rebuilt in the event of damage or destruction. Buyer is advised to check with appropriate government agencies or third party professionals to verify permits and legal requirements and the effect of such requirements on current and future use of the Property, its development and size. If Buyer wants further information, Broker(s) recommend that Buyer discuss the issue with an appropriate professional during Buyer's inspection contingency period. Brokers do not have expertise in this area.

**19. VIEWS:** Buyer and Seller are advised that present views from the Property may be affected by future development or growth of trees and vegetation on adjacent properties and any other property within the line of sight of the Property. Brokers make no representation regarding the preservation of existing views. If Buyer wants further information, Broker(s) recommend that Buyer review covenants, conditions and restrictions, if any, and contact neighboring property owners, government agencies and homeowner associations, if any, during Buyer's inspection contingency period. Brokers do not have expertise in this area.

**20. FUTURE REPAIRS, REPLACEMENTS AND REMODELS:** Buyer and Seller are advised that replacement or repairs of certain systems or rebuilding or remodeling of all or a portion of the Property may trigger requirements that homeowners comply with laws and regulations that either come into effect after Close of Escrow or are not required to be complied with until the replacement, repair, rebuild or remodel has occurred. Permit or code requirements or building standards may change after Close of Escrow, resulting in increasing costs to repair existing features. In particular, changes to state and federal energy efficiency regulations impact the installation, replacement and some repairs of heating and air conditioning units (HVAC). Federal regulations now require manufacturers of HVAC units to produce only units meeting a new higher Seasonal Energy Efficiency Rating (SEER). This will likely impact repairs and replacements of existing HVAC units. State regulations now require that when installing or replacing HVAC units, with some exceptions, duct work must be tested for leaks. Duct work leaking more than 15 percent must be repaired to reduce leaks. The average existing duct work typically leaks 30 percent. More information is available at the California Energy Commission's website <http://www.energy.ca.gov/title24/changeout>. Home warranty policies may not cover such inspections or repairs. If Buyer wants further information, Broker recommends that Buyer discuss the issue with an appropriate professional during Buyer's inspection contingency period. Brokers do not have expertise in this area.

**21. GOLF COURSE DISCLOSURES:** Buyer and Seller are advised that if the Property is located adjacent to or near a golf course the following may apply: (i) Stray golf balls – Any residence near a golf course may be affected by errant golf balls, resulting in personal injury or destruction to property. Golfers may attempt to trespass on adjacent property to retrieve golf balls even though the project restrictions may expressly prohibit such retrieval. (ii) Noise and lighting – The noise of lawn mowers irrigation systems and utility vehicles may create disturbances to homeowners. Maintenance operations may occur in the early morning hours. Residents living near the clubhouse may be affected by extra lighting, noise, and traffic. (iii) Pesticides and fertilizer use – A golf course may be heavily fertilized, as well as subjected to other chemicals during certain periods of the year. (iv) Irrigation system – Golf course sprinkler systems may cause water overspray upon adjacent property and structures. Also the irrigation system of a golf course may use reclaimed and retreated wastewater. (v) Golf carts – Certain lots may be affected more than others by the use of golf carts. Lots adjacent to a tee or putting green may be subject to noise disturbances and loss of privacy. (vi) Access to golf course from residences – It is likely that most

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residences will not have direct access from their lots to the golf course. The project restrictions may disclaim any right of access or other easements from a resident's lot onto the golf course. (vii) View obstruction – Residents living near a golf course may have their views over the golf course impacted by maturing trees and landscaping or by changes to the course's configuration. (viii) Water restrictions – As some municipalities face water shortages, the continued availability of water to the golf course may be restricted or otherwise reduced by the local water agency. If Buyer wants further information, Broker(s) recommend that Buyer contact the local water agency regarding this matter.

**22. SCHOOLS:** Buyer and Seller are advised that children living in the Property may not, for numerous reasons, be permitted to attend the school nearest the Property. Various factors including, but not limited to, open enrollment policies, busing, overcrowding and class size reductions may affect which public school serves the Property. School district boundaries are subject to change. Buyer is advised to verify whether the Property is now, and at the Close of Escrow will be, in the school district Buyer understands it to be in and whether residing in the Property entitles a person to attend any specific school in which that Buyer is interested. Broker(s) recommend that Buyer contact the local school or school district for additional information during Buyer's inspection contingency period. Brokers do not have expertise in this area.

**23. NEIGHBORHOOD NOISE SOURCES:** Buyer and Seller are advised that even if the Property is not in an identified airport noise influence area, the Property may still be subject to noise and air disturbances resulting from airplanes and other aircraft, commercial or military or both, flying overhead. Other common sources of noise include nearby commercial districts, schools, traffic on streets, highways and freeways, trains and general neighborhood noise from people, dogs and other animals. Noise levels and types of noise that bother one person may be acceptable to others. Buyer is advised to satisfy him/herself with regard to any sources of and amounts of noise at different times of day and night. Brokers do not have expertise in this area.

**24. PETS AND ANIMALS:** Buyer and Seller are advised that the current or previous owner(s) may have had domesticated or other pets and animals at the Property. Odors from animal urine or other contamination may be dormant for long periods of time and then become active because of heat, humidity or other factors and might not be eliminated by cleaning or replacing carpets or other cleaning methods. Pet urine and feces can also damage hardwood floors and other floor coverings. Additionally, an animal may have had fleas, ticks and other pests that remain on the Property after the animal has been removed. If Buyer wants further information, Broker(s) recommend that Buyer discuss the issue with an appropriate professional during Buyer's inspection contingency period. Brokers do not have expertise in this area.

**25. SWIMMING POOL, SECURITY AND SAFETY:** Buyer and Seller are advised that state and local Law may require the installation of barriers, anti-entrapment grates, access alarms, self-latching mechanisms and/or other measures to decrease the risk to children and other persons of existing swimming pools and hot tubs, as well as various fire safety and other measures concerning other features of the Property. Compliance requirements differ from city to city and county to county. Unless specifically agreed, the Property may not be in compliance with these requirements. Brokers do not have expertise in this area. If Buyer wants further information, Broker(s) recommend that Buyer contact local government agencies about these restrictions and other requirements.

**26. RETROFIT, BUILDING REQUIREMENTS, AND POINT OF SALE REQUIREMENTS:** Buyer and Seller are advised that state and local Law may require (i) the installation of operable smoke detectors, (ii) bracing or strapping of water heaters, and (iii) upon sale completion of a corresponding written statement of compliance that is delivered to Buyer. Although not a point of sale or retrofit obligation, state law may require the property to have operable carbon monoxide detection devices. Additionally, some city and county governments may impose additional retrofit standards at time of sale including, but not limited to, installing low-flow toilets and showerheads, gas shut-off valves, and tempered glass. Brokers do not have expertise in this area. Broker(s) recommend that Buyer and Seller consult with the appropriate government agencies, inspectors, and other professionals to determine the retrofit standards for the Property, the extent to which the Property complies with such standards, and the costs, if any, of compliance.

**27. WATER SHORTAGES AND CONSERVATION:** Buyer and Seller are advised that the Property may be located in an area that could experience water shortages. The policies of local water districts and the city or county in which the Property is located can result in the occurrence of any or all of the following: (i) limitations on the amount of water available to the Property, (ii) restrictions on the use of water, and (iii) an increasingly graduated cost per unit of water use, including, but not limited to, penalties for excess usage. For further information, Broker recommends that Buyer contact the supplier of water to the Property regarding the supplier's current or anticipated policies on water usage and to determine the extent to which those policies may affect Buyer's intended use of the Property. If the Property is serviced by a private well, Buyer is advised that drought conditions and/or a low water table may make it necessary to arrange, through a private supplier, for delivery of water to the Property. Buyers should contact water truck companies for the costs involved. Brokers do not have expertise in this area.

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**28. NEIGHBORHOOD, AREA, PERSONAL FACTORS, HIGH SPEED RAILS, AND SMOKING RESTRICTIONS:** Buyer and Seller are advised that the following may affect the Property or Buyer's intended use of it: neighborhood or area conditions, including schools, proximity and adequacy of law enforcement, crime, fire protection, other government services, availability, adequacy and cost of any speed-wired, wireless internet connections or other telecommunications or other technology services and installations, proximity to medical marijuana growing or distribution locations, cell phone towers, manufacturing, commercial, industrial, airport or agricultural activities or military ordnance locations, existing and proposed transportation, construction, and development, any other source that may affect noise, view, traffic, or odor, wild and domestic animals, susceptibility to tsunami and adequacy of tsunami warnings, other nuisances, hazards, or circumstances, protected species, wetland properties, botanical diseases, historic or other governmentally-protected sites or improvements, cemeteries, conditions and influences of significance to certain cultures and/or religions, and personal needs, requirements and preferences of Buyer. California is potentially moving toward high speed rail service between Northern and Southern California. This rail line could have an impact on the Property if it is located nearby. More information on the timing of the project and routes is available from the California High-Speed Rail Authority at <http://cahighspeedrail.ca.gov>. The State of California has long-standing no smoking laws in place restricting smoking in most business and some public spaces. Local jurisdictions may enact laws that are more restrictive than state law. Many California cities have enacted restrictions on smoking in parks, public sidewalks, beaches and shopping areas. Some jurisdictions have restrictions entirely banning smoking inside privately owned apartments and condominiums as well as in the common areas of such structures, or limiting smoking to certain designated areas. If Buyer wants further information, Broker(s) recommend that Buyer contact local government agencies about these restrictions.

**29. UNDERGROUND PIPELINES AND UTILITIES:** Throughout California underground pipelines transport natural gas, liquid fuel and other potentially hazardous materials. These pipelines may or may not provide utility services to the Property. Information about the location of some of the pipelines may be available from a company that also provides disclosures of natural and other hazards or from other sources of public maps or records. Proximity to underground pipelines, in and of itself, does not affirmatively establish the risk or safety of the property. If Buyer wants further information about these underground pipelines and utilities, Buyer is advised to consult with appropriate experts during Buyer's investigation contingency period. Brokers do not have expertise in this area.

**30. MARIJUANA AND METHAMPHETAMINE LABS:** Buyer and Seller are advised that California law permits individual patients to cultivate, possess and use marijuana for medical purposes. Furthermore, California law permits primary caregivers, lawfully organized cooperatives, and collectives to cultivate, distribute and possess marijuana for medicinal purposes. California's medical marijuana law is in direct conflict with federal law which recognizes no lawful use for marijuana and has no exemptions for medical use. Federal criminal penalties, some of which mandate prison time, remain in effect for the possession, cultivation and distribution of marijuana. Buyer and Seller are strongly advised to seek legal counsel as to the legal risks and issues surrounding owning or purchasing a property where medical or any other marijuana activity is taking place. Marijuana storage, cultivation and processing carry the risk of causing mold, fungus or moisture damage to a property, additionally, some properties where marijuana has been cultivated have had alterations to the structure or the electrical system which may not have been done to code or with permits and may affect the safety of the structure or the safe operation of the electrical system. Buyer is strongly advised to retain an environmental hygienist contractor and other appropriate professionals to inspect a property where medical or any other marijuana activity has taken place. Broker recommends that Buyer and Seller involved with a property where there is medical marijuana activity or where it may take place review the California Attorney General's Guidelines for the "Security and Non-Diversion of Marijuana Grown for Medical Use" ([http://ag.ca.gov/cms\\_attachments/press/pdfs/n1601\\_medicalmarijuanaguidelines.pdf](http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf)) and the U.S. Department of Justice memo regarding marijuana prosecutions at <http://www.justice.gov/opa/documents/medical-marijuana.pdf>. Brokers do not have expertise in this area. While no state law permits the private production of methamphetamine, some properties have been the site of an illegal methamphetamine laboratory. State law imposes an obligation to notify occupants, a ban on occupying the property and clean up requirements when authorities identify a property as being contaminated by methamphetamine. Buyer is advised that a property where methamphetamine has been produced may pose a very serious health risk to occupants. Buyer is strongly advised to retain an environmental hygienist contractor or other appropriate professionals to inspect the property if methamphetamine production is suspected to have taken place. Brokers do not have expertise in this area.

**31. INSURANCE AND TITLE INSURANCE AFTER FORECLOSURE:** Buyer and Seller are advised that Buyer may have difficulty obtaining insurance regarding the Property if there has been a prior insurance claim affecting the Property or made by Buyer but unrelated to the Property. Seller is required by C.A.R. Form RPA to disclose known insurance claims made during the past five years (C.A.R. Form SPQ or SSD). Sellers may not be aware of claims prior to their ownership. If Buyer wants further information, Broker(s) recommend that, during Buyer's inspection contingency period, Buyer conduct his or her own investigation for past claims. Buyer may need to obtain Seller's consent in order to have access to certain

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investigation reports. If the Property is a condominium, or is located in a planned unit development or other common interest subdivision, Buyer and Seller are advised to determine if the individual unit is covered by the Homeowner Association Insurance. Broker(s) recommend that Buyer consult Buyer's insurance agents during Buyer's inspection contingency period to determine the need, availability and possibility of securing any and all forms of other insurance or coverage or any conditions imposed by insurer as a requirement of issuing insurance. If Buyer does any repairs to the property during the escrow period or Buyer takes possession prior to Close of Escrow or Seller remains in possession after Close of Escrow, whether for a limited or extended period of time, Broker(s) recommend that Buyer and Seller each consult with their own insurance agent regarding insurance or coverage that could protect them in the transaction (including but not limited to: personal property, flood, earthquake, umbrella and renter's). Buyer and Seller are advised that traditional title insurance generally protects Buyer's title acquired through the sale of the property. While all title insurance policies, as do all insurance policies, contain some exclusions, some title insurance policies contain exclusions for any liability arising from a previous foreclosure. This can occur when a short sale has occurred but the lender mistakenly has also proceeded with a foreclosure. Buyer is strongly advised to consult with a title insurer to satisfy themselves that the policy to be provided adequately protects their title to the property against other possible claimants. Brokers do not have expertise in this area.

**32. CALIFORNIA FAIR PLAN:** Buyer and Seller are advised that insurance for certain hillside, oceanfront and brush properties may be available only from the California Fair Plan. This may increase the cost of insurance for such properties and coverage may be limited. Broker(s) recommend that Buyer consult with Buyer's own insurance agent during Buyer's inspection contingency period regarding the availability of coverage under the California Fair Plan and the length of time it may take for processing of a California Fair Plan application. Brokers do not have expertise in this area.

**33. HISTORICAL DESIGNATION, COASTAL COMMISSION, ARCHITECTURAL, LANDSCAPE, AGRICULTURAL OR OPEN SPACE AND OTHER RESTRICTIONS ON BUILDINGS OR IMPROVEMENTS:** Buyer and Seller are advised that the Property may be: (i) designated as a historical landmark, (ii) protected by a historical conservancy, (iii) subject to an architectural or landscaping review process, (iv) within the jurisdiction of the California Coastal Commission or other government agency, or (v) subject to a contract preserving use of all or part of the Property for agriculture or open space. If the Property is so designated or within the jurisdiction of any such, or similar, government agency, then there may be restrictions on Buyer's ability to develop, remove or trim trees or other landscaping, remodel, make improvements to and build on or rebuild the Property. Broker(s) recommend that Buyer satisfy him/herself during Buyer's inspection contingency period if any of these issues are of concern to Buyer. Brokers do not have expertise in this area.

**34. 1915 IMPROVEMENT BOND MELLO-ROOS COMMUNITY DISTRICT, AND OTHER ASSESSMENT DISTRICTS:** Buyer and Seller are advised that the Property may be subject to an improvement bond assessment under the Improvement Bond Act of 1915, a levy of a special tax pursuant to a Mello-Roos Community Facilities district, and/or a contractual assessment as provided in Section 5898.24 of the Streets And Highways Code or other assessment districts. Seller is generally required to make a good faith effort to obtain a disclosure notice from any local agency collecting such taxes and deliver such notice to Buyers. Brokers do not have expertise in this area.

**35. HOMEOWNER ASSOCIATIONS AND COVENANTS, CONDITIONS AND RESTRICTIONS ("CC&Rs"); CHARGING STATIONS:** Buyer and Seller are advised that if the Property is a condominium, or located in a planned unit development, or in a common interest subdivision, there are typically restrictions on use of the Property and rules that must be followed. Restrictions and rules are commonly found in Declarations and other governing documents. Further there is likely to be a homeowner association (HOA) that has the authority to affect the Property and its use. Whether or not there is a HOA, the Property may still be subject to CC&Rs restricting use of the Property. The HOA typically has the authority to enforce the rules of the association, assess monetary payments (both regular monthly dues and special assessments) to provide for the upkeep and maintenance of the common areas, and enforce the rules and assessment obligations. If you fail to abide by the rules or pay monies owed to the HOA, the HOA may put a lien against your Property. Additionally, if an electric vehicle charging station is installed in a common area or an exclusive use common area, each Seller whose parking space is on or near that charging station must disclose its existence and that the Buyer will have the responsibilities set forth in California Civil Code §1353.9. The law requires the Seller to provide the Buyer with the CC&Rs and other governing documents, as well as a copy of the HOA's current financial statement and operating budget, among other documents. Buyer is advised to carefully review all HOA documents provided by Seller and the CC&Rs, if any, and satisfy him/herself regarding the use and restrictions of the Property, the amount of monthly dues and/or assessments, the adequacy of reserves, current and past insurance coverage and claims, and the possibility of any legal action that may be taken by or against the HOA. The HOA may not have insurance or may not cover personal property belonging to the owner of the unit in the condominium, common interest or planned unit development. See paragraph 31 for further information regarding insurance. See C.A.R.'s Common Interest Development Basic Information Guide on Epubs in zipForm 6 for further information. Brokers do not have expertise in this area.

**36. LEGAL ACTION:** Buyer and Seller are advised that if Seller or a previous owner was involved in a legal action (litigation or arbitration) affecting the Property, Buyer should obtain and review public and other available records regarding the legal action to determine: (i) whether the legal action or any resolution of it affects Buyer and the Property, (ii) if any rights against any parties involved in the legal action survive the legal action or have been terminated or waived as a result of the legal action, whether or not involving the same issue as in the legal action, and (iii) if any recommendations or requirements resulting from the legal action have been fulfilled and, if so, that Buyer is satisfied with any such action. Buyer should seek legal advice regarding these matters.

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**37. COMMUNITY ENHANCEMENT AND PRIVATE TRANSFER FEES:** Buyer and Seller are advised that some areas or communities may have enhancement fees or user-type fees, or private transfer taxes and fees, over and above any stated fees. The Federal Housing Finance Agency has issued a rule that prohibits Fannie Mae and Freddie Mac from purchasing loans made on properties with private transfer fees if those fees were established on or after February 8, 2011. See title 12 Code of Federal Regulations Section 1228 for more information and exceptions. Private transfer fees: (i) may last for a fixed period of time or in perpetuity, (ii) are typically calculated as a percentage of the sales price, and (iii) may have private parties, charitable organizations or interest-based groups as their recipients who may use the funds for social issues unrelated to the property. Brokers do not have expertise in this area.

**38. GENERAL RECALL/DEFECTIVE PRODUCT/CLASS ACTION INFORMATION:** Buyer and Seller are advised that government entities and manufacturers may at any time issue recall notices and/or warnings about products that may be present in the Property, and that these notices or warnings can change. The following nonexclusive, non-exhaustive list contains examples of recalled/defective products/class action information: horizontal furnaces, Whirlpool Microwave Hood Combination; RE-ConBuilding products roof tiles; Central Sprinkler Company Fire Sprinklers; Robert Shaw Water Heater Gas Control Valves; Trex Decking; water heaters; aluminum wiring; galvanized, abs, polybutylene and copper pipe; and dry wall manufactured in China. There is no single, all-inclusive source of information on product recalls, defective products or class actions; however, the U.S. Consumer Product Safety Commission (CPSC) maintains a website that contains useful information. If Buyer wants further information regarding the items listed above, Broker(s) recommend that Buyer review the CPSC website at <http://www.cpsc.gov> during Buyer's inspection contingency period. Another source affiliated with the CPSC is [Saferproducts.gov](http://Saferproducts.gov) which allows a Buyer to search by product type or product name. Buyers may also search using the various search engines on the Internet for the specified product or products in question. Brokers recommend that Buyers satisfy themselves regarding recalled or defective products. Brokers do not have expertise in this area and Brokers will not determine if any aspect of the Property is subject to a recall or is affected by a class action lawsuit.

**39. RENTAL PROPERTY RESTRICTIONS:** Buyer and Seller are advised that some cities and counties impose restrictions that limit the rent that can be charged to a tenant, the maximum number of tenants who can occupy the property and the right of a landlord to terminate a tenancy and the costs to do so. If Buyer wants further information, Broker(s) recommend that Buyer investigate the issue with an appropriate government authority during Buyer's inspection contingency period. Brokers do not have expertise in this area.

**40. LAND LEASE:** Buyer and Seller are advised that certain developments are built on leased land. This means that: (i) Buyer does not own the land, (ii) the right to occupy the land will terminate at some point in time, (iii) the cost to lease the land may increase at some point in the future, and (iv) Buyer may not be able to obtain title insurance or may have to obtain a different type of title insurance. If Buyer wants further information, Broker recommends that Buyer discuss the issue with an attorney or other appropriate professional. Brokers do not have expertise in this area.

**41. HOME WARRANTY:** Buyer and Seller are advised that Buyer and Seller can purchase home warranty plans covering certain standard systems of the Property both before and after Close of Escrow. Seller can obtain coverage for the Property during the listing period. For an additional premium, an upgraded policy providing additional coverage for air conditioning, pool and spa and other features can be purchased. Home warranties do not cover every aspect of the Property and may not cover inspections or upgrades for repairs required by state or federal laws or pre-existing conditions. Broker(s) recommend that Buyer review the policy for details. Brokers do not have expertise in this area.

**42. INTERNET ADVERTISING; INTERNET BLOGS; SOCIAL MEDIA:** Buyer and Seller are advised that Broker may employ a service to provide a "virtual tour" or Internet marketing of the Property, permitting potential buyers to view the Property over the Internet. Neither the service provider nor Brokers have control over who will obtain access to such services or what action such persons might take. Additionally, some Internet sites and other social media provide formats for comments or opinions of value of properties that are for sale. Information on the Property, or its owner, neighborhood, or any homeowner association having governance over the Property may be found on the internet on individual or commercial web sites, blogs, Facebook pages, or other social media. Any such information may be accurate, speculative, truthful or lies. Broker will not investigate any such sites, blogs, social media or other internet sites or the representations contained therein. Buyer is advised to make an independent search of electronic media and online sources prior to removing any investigation contingency. Buyer and Seller are advised that Brokers have no control over how long the information concerning the Property will be available on the Internet or through social media. Brokers do not have expertise in this area.

**43. ESCROW FUNDS:** Buyer and Seller are advised that California Insurance Code Section 12413.1 provides that escrow companies cannot disburse funds unless there are sufficient "good funds" to cover the disbursement. "Good funds" are defined as cash, wire transfers and cashiers' or certified checks drawn on California depositories. Escrow companies vary in their own definitions of "good funds." Broker(s) recommend that Buyer and Seller ask the escrow company regarding its treatment of "good funds." All samples and out-of-state checks are subject to waiting periods and do not constitute "good funds" until the money is physically transferred to and received by the escrow holder. Brokers do not have expertise in this area.

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



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

**44. NOTICE OF YOUR “SUPPLEMENTAL” PROPERTY TAX BILL:** Buyer and Seller are advised that pursuant to Civil Code § 1102.6(c), Seller, or his or her agent, is required to provide the following “Notice of Your ‘Supplemental’ Property Tax Bill” to the Buyer:

“California property tax law requires the Assessor to revalue real property at the time the ownership of property changes. Because of this law, you may receive one or two supplemental tax bills, depending on when your loan closes.

The supplemental tax bills are not mailed to your lender. If you have arranged for your property tax responsibility payments to be paid through an impound account, the supplemental tax bills will not be paid by your lender. It is your to pay these supplemental bills directly to the Tax Collector. If you have any questions concerning this matter, please call your Tax Collector’s Office.”

Although the notice refers to loan closing as a trigger, it is actually the change of ownership which triggers this reassessment of property taxes. Therefore, the Property can be reassessed even if there is no loan involved in the purchase of the Property. The Purchase Agreement may allocate supplemental tax bills received after the Close of Escrow to the Buyer. If Buyer wants further information concerning these matters, Broker(s) recommend that Buyer discuss the issue with the County Assessor or Tax Collector or their own tax or legal advisor. Brokers do not have expertise in this area.

**45. NON CONFIDENTIALITY OF OFFERS:** Buyer is advised that Seller or Listing Agent may disclose the existence, terms, or conditions of Buyer’s offer, unless all parties and their agent have signed a written confidentiality agreement (such as C.A.R. Form CND). Whether any such information is actually disclosed depends on many factors, such as current market conditions, the prevailing practice in the real estate community, the Listing Agent’s marketing strategy and the instructions of the Seller.

**46. FIRPTA/CALIFORNIA WITHHOLDING:** Buyer and Seller are advised that: (i) Internal Revenue Code Section 1445 requires a Buyer to withhold and to remit to the Internal Revenue Service 10% of the purchase price of the property if the Seller is a non-resident alien, unless an express exemption applies. Seller may avoid withholding by providing Buyer a statement of non-foreign status. The statement must be signed by Seller under penalty of perjury and must include Seller’s tax identification number. Buyer can also avoid having to withhold Federal taxes from Seller’s Proceeds if the property price is \$300,000 or less, and the Buyer signs an affidavit stating Buyer intends to occupy the property as a principal residence. (ii) California Revenue and Taxation Code Section 18662 requires that a Buyer withhold and remit to the California Franchise Tax Board 3 1/3% of the purchase price of the property unless the Seller signs an affidavit that the property was the Seller’s (or the decedent’s, if a trust or probate sale) principal residence or that the sales price is \$100,000 or less or another express exemption applies. Exemptions from withholding also apply to legal entities such as corporations, LLCs, and partnerships. Brokers cannot give tax or legal advice. Broker recommends that Buyer and Seller seek advice from a CPA, attorney or taxing authority. Brokers do not have expertise in this area.

**47. LIQUIDATED DAMAGES:** Buyer and Seller are advised that a liquidated damages clause is a provision Buyer and Seller can use to agree in advance to the amount of damages that a seller will receive if a buyer breaches the Agreement. The clause usually provides that a seller will retain a buyer’s initial deposit paid if a buyer breaches the agreement, and generally must be separately initialed by both parties and meet other statutory requirements to be enforceable. For any additional deposits to be covered by the liquidated damages clause, there generally must be another separately signed or initialed agreement (see C.A.R. Form RID). However, if the Property contains from 1 to 4 units, one of which a buyer intends to occupy, California Civil Code Section 1675 limits the amount of the deposit subject to liquidated damages to 3% of the purchase price. Even though both parties have agreed to a liquidated damages clause, an escrow company will usually require either a judge’s or arbitrator’s decision or instructions signed by both parties in order to release a buyer’s deposit to a seller. Buyers and Sellers must decide on their own, or with the advice of legal counsel, whether to agree to a liquidated damages clause. Brokers do not have expertise in this area.

Buyer’s Initials (\_\_\_\_)(\_\_\_\_)

Seller’s Initials (\_\_\_\_)(\_\_\_\_)

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



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

**48. MEDIATION:** Buyer and Seller are advised that mediation is a process by which the parties hire a neutral person to facilitate discussion and negotiation between the parties with the goal of helping them reach a settlement of their dispute. The parties generally share in the cost of this confidential, non-binding negotiation. If no agreement is reached, either party can pursue further legal action. Under C.A.R. Form RPA-CA: (i) the parties must mediate any dispute arising out of their agreement (with a few limited exceptions, such as matters within the jurisdiction of a small claims court) before they resort to arbitration or court, and (ii) if a party proceeds to arbitration or court without having first attempted to mediate the dispute, that party risks losing the right to recover attorney fees and costs even if he or she prevails.

**49. ARBITRATION:** Buyer and Seller are advised that arbitration is a process by which the disputing parties hire a neutral person to render a binding decision. Generally, arbitration is faster and less expensive than resolving disputes by litigating in court. The rules are usually less formal than in court, and it is a private process not a matter of public record. By agreeing to arbitration, the parties give up the right to a jury trial and to appeal the arbitrator's decision. Arbitration decisions have been upheld even when arbitrators have made a mistake as to the law or the facts. If the parties agree to arbitration, then after first attempting to settle the dispute through mediation, any dispute arising out of their agreement (with a few limited exceptions) must be submitted to binding arbitration. Buyer and Seller must weigh the benefits of a potentially quicker and less expensive arbitration against giving up the right to a jury trial and the right to appeal. Brokers cannot give legal advice regarding these matters. Buyers and Sellers must decide on their own, or with the advice of legal counsel, whether to agree to arbitration. Brokers do not have expertise in this area.

**50. MEGAN'S LAW DATABASE DISCLOSURE:** Notice: Pursuant to Section 290.46 of the Penal Code, information about specific registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides. (Neither Seller nor Brokers are required to check this website. If Buyer wants further information, Broker recommends that Buyer obtain information from this website during Buyer's inspection contingency period. Brokers do not have expertise in this area.)

**51. DEATH ON THE PROPERTY:** California Civil Code Section 1710.2 protects a seller from: (i) failing to disclose a death on the property that occurred more than 3 years before a buyer has made an offer on a property; and (ii) failing to disclose if an occupant of a property was afflicted with HIV/AIDS, regardless of whether a death occurred or if so, when. Section 1710.2 does not protect a seller from making a misrepresentation in response to a direct inquiry. If the Buyer has any concerns about whether a death occurred on the Property or the manner, location, details or timing of a death, the buyer should direct any specific questions to the Seller in writing.

**52. LOCAL ADDENDA (IF CHECKED):**

The following local disclosures or addenda are attached:

- A.  \_\_\_\_\_
- B.  \_\_\_\_\_
- C.  \_\_\_\_\_
- D.  \_\_\_\_\_

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)

SBSA REVISED 11/13 (PAGE 11 OF 12) Print Date

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

Buyer and Seller acknowledge and agree that Brokers: (i) do not decide what price Buyer should pay or Seller should accept; (ii) do not guarantee the condition of the Property; (iii) do not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) do not have any obligation to conduct an inspection of common areas or areas off the site of the Property (v) shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Brokers; (vi) shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) shall not be responsible for verifying square footage, representations of others or information contained in investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (x) shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.

Buyer and Seller are encouraged to read this Advisory carefully. By signing below, Buyer and Seller acknowledge that each has read, understands and received a copy of this Advisory.

BUYER \_\_\_\_\_ Date \_\_\_\_\_

BUYER \_\_\_\_\_ Date \_\_\_\_\_

(Address) \_\_\_\_\_

SELLER \_\_\_\_\_ Date \_\_\_\_\_

SELLER \_\_\_\_\_ Date \_\_\_\_\_

(Address) \_\_\_\_\_

Real Estate Broker (Selling Firm) \_\_\_\_\_ Cal BRE Lic. # \_\_\_\_\_

By \_\_\_\_\_ Cal BRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ Email \_\_\_\_\_

Real Estate Broker (Listing Firm) \_\_\_\_\_ Cal BRE Lic. # \_\_\_\_\_

By \_\_\_\_\_ Cal BRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ Email \_\_\_\_\_

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



## TRUST ADVISORY (TA)

If the property is held in trust, the seller will likely be an individual acting in the capacity of a trustee. The seller should attach a Representative Capacity Signature Addendum (C.A.R. form RCSA) to the RPA in that case (see paragraph 19 of the RPA for further information). Disclosure obligations that apply to other sellers may not apply to the trustee. However, exemption from some disclosure obligations does not mean the seller/trustee is exempt from all disclosure obligations. The TA form identifies those obligations from which the seller/trustee is exempt. These include the TDS, the NHD, earthquake guides and the requirement to certify that operable smoke detectors are in place (but not exempt from the requirement to actually have operable smoke detectors). Also identified are those disclosure obligations that still apply. Examples include known material facts, lead paint disclosures, and water heater requirements. Further, the tax withholding laws also apply. The TA mentions that the brokers are not exempt from their obligation to conduct a visual inspection, as it is an obligation independent of the seller's obligations.





CALIFORNIA  
ASSOCIATION  
OF REALTORS®

**TRUST ADVISORY**  
**For Properties Being Sold by the Trustee of a Trust**  
(C.A.R. Form TA, Revised 4/11)

Property Address: \_\_\_\_\_ (“Property”).

The Property is being held in a revocable or irrevocable trust for the benefit of those persons or entities named as beneficiaries in the trust. For the purpose of the sale of the Property, the trustee of the trust is treated as the Seller. Many obligations imposed upon sellers, particularly sellers of real property containing one-to-four dwelling units, may not be applicable to the sale of the Property. However, even though Seller is exempt from many obligations, Seller must still comply with many others. Further, even though a Seller may be exempt from certain obligations, a real estate broker’s obligations may still apply. This Advisory is intended to inform Buyer and Seller of their rights and obligations independent of those established by the contract between them.

**EXEMPTIONS:**

- 1. TDS, NHD, Mello-Roos, Improvement Bond Act, Supplemental Property Taxes, Private Transfer Tax:** Seller is exempt from providing Buyer with the Real Estate Transfer Disclosure Statement (TDS), Natural Hazard Disclosure Statement (NHD), a Mello-Roos district lien disclosure, an Improvement Bond Act of 1915 notice, a Supplemental Property Tax notice, and a Notice of Private Transfer Tax pursuant to California Civil Code §§ 1102 et seq. However, this exemption does NOT apply to a seller if the seller is a natural person, who is the sole trustee of a revocable trust, and he or she is either a former owner of the Property or was an occupant in possession of the Property within the preceding year.
- 2. Earthquake Guides:** Seller is exempt from providing either a Homeowner’s or Commercial Property Owner’s Guide to Earthquake Safety.
- 3. Smoke Detectors:** The sale is exempt from the State requirements that, for single family residences, operable smoke detectors be in place and that a written statement of compliance be provided to Buyer.

**REQUIREMENTS:**

- 1. Disclosures:** Seller is not exempt from common law and statutory duties concerning fraud and deceit, even though the specific TDS Form is not required to be completed. Seller remains obligated to disclose known material facts affecting the value and desirability of the Property.
- 2. Hazard Zones:** Seller is not exempt from applicable statutory obligations to disclose earthquake fault zones, seismic hazard zones, state fire responsibility areas, very high fire hazard severity zones, special flood hazard areas and flood hazard zones pursuant to the Public Resources Code, Government Code and United States Code, even though, pursuant to the Civil Code, the specific NHD Form is not required to be completed.
- 3. Water Heaters:** The sale is not exempt from the State requirement that water heaters be properly anchored, braced or strapped and that Seller provide a written statement of compliance to Buyer.
- 4. Lead-based Paint:** The Seller is not exempt from the federal obligation to: **(i)** disclose known lead-based paint and lead-based paint hazards; **(ii)** provide Buyer copies of reports or studies covering lead-based paint and hazards on the Property; **(iii)** provide Buyer with the pamphlet “Protect Your Family From Lead In Your Home;” and **(iv)** give Buyer a 10-day opportunity to inspect for lead-based paint and hazards, if the Property contains residential dwelling units and was constructed prior to 1978.
- 5. Carbon Monoxide Devices:** The sale is not exempt from the State requirement that on or before July 1, 2011, for all existing single family dwelling units, and on or before January 1, 2013, for all other existing dwelling units, the owner must install a carbon monoxide device approved and listed by the State Fire Marshall in the dwelling unit if the dwelling unit has a fossil fuel burning heater or appliance, fireplace, or an attached garage.

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TA 4/11 REVISED (PAGE 1 OF 2) Print Date

Buyer’s Initials (\_\_\_\_)(\_\_\_\_)

Seller’s Initials (\_\_\_\_)(\_\_\_\_)

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



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

**6. Megan’s Law Database Disclosure:** The sale is not exempt from the requirement that residential sales contracts contain the following notice regarding the availability of information about registered sex offenders: “Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender’s criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides.” (Neither Seller nor Brokers are required to check this website. If Buyer wants further information, Broker recommends that Buyer obtain information from this website during Buyer’s inspection contingency period. Brokers do not have expertise in this area.)

**7. Tax Withholding:** The sale is not exempt from providing information pertaining to the withholding obligation under either the federal “FIRPTA” or the California withholding requirements upon the sale of real property. **Federal:** For federal purposes, a non-resident alien includes a fiduciary. A trustee is treated as a non-resident even if all beneficiaries are citizens or residents of the United States. **State:** The trust may be exempt from withholding (but not the completion of the real estate withholding certificate) if: **(i)** the trust was revocable prior to the decedent’s death; **(ii)** the Property was last used as the decedent’s principal residence; and **(iii)** the trustee is electing to treat the trust as part of the decedent’s estate under IRC § 645 (see Instructions for FTB Form 593-C).

**8. Brokers:**

**A. Inspection:** The sale is not exempt from the Broker’s obligation to conduct a reasonably competent and diligent visual inspection of the accessible areas of the Property and disclose to Buyer material facts revealed by such an inspection in the sale of residential property containing one-to-four dwelling units. Brokers may do so on C.A.R. Form AVID.

**B. Agency:** The sale is not exempt from the obligation to provide agency relationship disclosure and confirmation forms in the sale of residential property containing one-to-four dwelling units.

**OTHER CONSIDERATIONS:**

**1. Local Law:** Local law may impose obligations on the transfer of real property (such as the installation of low flow toilets or shower heads, emergency gas shut-off valves or installation of smoke detectors). Local law should be consulted to determine if sales by a trustee of a trust are exempt from such requirements.

**2. Death:** If the Property is being sold because of the death of an occupant of the Property, and if Buyer has concerns about the manner, location or details of the death, then Buyer should direct any specific questions to Seller.

**By signing below, the undersigned acknowledge that each has read, understands and has received a copy of this Trust Advisory.**

Buyer \_\_\_\_\_ Date \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_

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**S**  
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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



## REO ADVISORY (REO)

If the seller of the property is a lender who has acquired the property as a result of a foreclosure (REO), the seller is not likely to have any first-hand knowledge about the property. Disclosure obligations that apply to other sellers may not apply to a REO sale. However, exemption from some disclosure obligations does not mean the REO seller is exempt from all disclosure obligations. The REO form identifies those obligations from which the seller is exempt. These include the TDS, the NHD, and earthquake guides. Also identified are those disclosure obligations that still apply. Examples include known material facts, lead paint disclosures, and smoke detector and water heater requirements. Further, the tax withholding laws also apply. The REO mentions that the brokers are not exempt from their obligation to conduct a visual inspection, as it is an obligation independent of the seller's obligations.

Finally, the REO form discusses specific laws relating to selection of title and escrow companies in the transaction that apply to the sale. If the buyer is going to pay for all or some of the cost of these services, then the REO seller cannot dictate the use of particular service providers. However, if the REO seller informs the buyer of their right to select these service providers, the buyer may elect to go with the recommendation of the seller without violating the law. If the REO seller is paying the cost, then the REO can select the escrow or title company.

It is not uncommon for REO sellers to have their own purchase contract, rather than the RPA, or to have an addendum to the RPA that they require be used in all sales. A real estate broker cannot practice law and evaluate every item on such a seller-produced document, some of which run longer than the entire C.A.R. RPA. However, the broker may want to be familiar with a few common issues that appear in such lender drafted documents. Contingency periods are often sharply reduced or eliminated altogether. Sometimes, the contingency removal process uses the "passive" or "silent" method. This is exactly the opposite of the method specified in the RPA, which requires all contingencies, and other changes to the contract, to be in writing (see paragraph 14 of the RPA for further information). Thus, under some REO seller's documents, contingency rights for the buyer may go away with the passage of time whether the buyer is aware of it or not. Rather than discuss the legal implications of these and other clauses in an REO prepared addendum or document, the broker should be prepared to bring those items the broker notices to the attention of the buyer and to recommend that the buyer get legal advice if the buyer wants a complete explanation.



CALIFORNIA  
ASSOCIATION  
OF REALTORS®

**REO ADVISORY**  
**For Properties Being Sold by a Lender After Foreclosure**  
(C.A.R. Form REO, Revised 4/11)

Property Address: \_\_\_\_\_ (“Property”).

The Seller of the Property is a lender who has acquired title to the Property either by foreclosure or through a deed given in lieu of foreclosure. Many obligations imposed upon sellers, particularly sellers of real property containing one-to-four dwelling units, may not be applicable to the sale of the Property. However, even though Seller is exempt from many obligations, Seller must still comply with many others. Further, even though a Seller may be exempt from certain obligations, a real estate broker’s obligations may still apply. This Advisory is intended to inform Buyer and Seller of their rights and obligations independent of those established by the contract between them.

**EXEMPTIONS:**

- 1. TDS, NHD, Mello-Roos, Improvement Bond Act, Supplemental Property Taxes, Private Transfer Fee:** Seller is exempt from providing Buyer with the Real Estate Transfer Disclosure Statement (TDS), Natural Hazard Disclosure Statement (NHD), a Mello-Roos district lien disclosure, an Improvement Bond Act of 1915 notice, a Supplemental Property Tax notice, and a Notice of Private Transfer Fee pursuant to California Civil Code §§ 1102 et seq.
- 2. Earthquake Guides:** Seller is exempt from providing either a Homeowner’s or Commercial Property Owner’s Guide to Earthquake Safety.

**REQUIREMENTS:**

- 1. Disclosures:** Seller is not exempt from common law and statutory duties concerning fraud and deceit, even though the specific TDS Form is not required to be completed. Seller remains obligated to disclose known material facts affecting the value and desirability of the Property.
- 2. Hazard Zones:** Seller is not exempt from applicable statutory obligations to disclose earthquake fault zones, seismic hazard zones, state fire responsibility areas, very high fire hazard severity zones, special flood hazard areas and flood hazard zones pursuant to the Public Resources Code, Government Code and United States Code, even though, pursuant to the Civil Code, the specific NHD Form is not required to be completed.
- 3. Smoke Detectors:** The sale is not exempt from the State requirements that, for single family residences, operable smoke detectors be in place and that a written statement of compliance be provided to Buyer. It is negotiable between Buyer and Seller who is to pay for the cost of compliance.
- 4. Water Heaters:** The sale is not exempt from the State requirement that water heaters be properly anchored, braced or strapped and that Seller provide a written statement of compliance to Buyer. It is negotiable between Buyer and Seller who is to pay for the cost of compliance.
- 5. Lead-based Paint:** The Seller is not exempt from the federal obligation to: **(i)** disclose known lead-based paint and lead-based paint hazards; **(ii)** provide Buyer with copies of reports or studies covering lead-based paint and hazards on the Property; **(iii)** provide Buyer with the pamphlet “Protect Your Family From Lead In Your Home”; and **(iv)** give Buyer a 10-day opportunity to inspect for lead-based paint and hazards, if the Property contains residential dwelling units and was constructed prior to 1978.
- 6. Carbon Monoxide Devices:** The sale is not exempt from the State requirements that on or before July 1, 2011, for all existing single family dwelling units, and on or before January 1, 2013, for all other existing dwelling units, the owner must install a carbon monoxide device approved and listed by the State Fire Marshall in the dwelling unit if the dwelling unit has a fossil fuel burning heater or appliance, fireplace, or an attached garage.
- 7. Tax Withholding:** The sale is not exempt from providing information pertaining to the withholding obligation under either the federal “FIRPTA” or the California withholding requirements upon the sale of real property. However, an REO Seller which is a corporation or limited liability company, formed within the United States, and qualified either with the Secretary of State to do business in California or with a permanent place of business in California, will be exempt from withholding under both federal and California law.

Buyer’s Initials (\_\_\_\_)(\_\_\_\_)

Seller’s Initials (\_\_\_\_)(\_\_\_\_)

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REO REVISED 4/11 (PAGE 1 OF 2) Print Date

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



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

- 8. Megan’s Law Database Disclosure:** The sale is not exempt from the requirement that residential sales contracts contain the following notice regarding the availability of information about registered sex offenders. “Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender’s criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides.” (Neither Seller nor Brokers are required to check this website. If Buyer wants further information, Broker recommends that Buyer obtain information from this website during Buyer’s inspection contingency period. Brokers do not have expertise in this area.)
- 9. Brokers:**
- A. Inspection:** The sale is not exempt from the Broker’s obligation to conduct a reasonably competent and diligent visual inspection of the accessible areas of the Property and disclose to Buyer material facts revealed by such an inspection in the sale of residential property containing one-to-four dwelling units. Brokers may do so on C.A.R. Form AVID.
  - B. Agency:** The sale is not exempt from the obligation to provide agency relationship disclosure and confirmation forms in the sale of residential property containing one-to-four dwelling units.

**OTHER CONSIDERATIONS:**

- 1. Selection of Title and Escrow:** California Civil Code section 1103.22 prohibits Seller from requiring, directly or indirectly, a Buyer to purchase title insurance or escrow services from a particular title insurer or escrow agent in connection with the sale of residential property improved with four or fewer dwellings. The Buyer may agree to use the title or escrow provider recommended by Seller if the Buyer has been informed of the right to make an independent selection of the applicable service. This law is in effect until January 1, 2015. Federal law, 12 U.S.C. Section 2608, prohibits Seller from requiring, directly or indirectly, that the Buyer purchase title insurance from any particular title company as a condition of selling residential property improved with four or fewer dwellings if the purchase will be made with a federally-related mortgage loan. Seller and Buyer understand that Brokers do not require Buyer to purchase title or escrow services from any particular provider. Any communications from Seller that Broker may deliver to Buyer or Buyer’s agent concerning the selection of title or escrow services should not be construed as Broker’s endorsement or recommendation of, or request for Buyer to use, any particular title or escrow provider.
- 2. Local Law:** Local law may impose obligations on the transfer of real property (such as the installation of low flow toilets or shower heads, emergency gas shut-off valves or installation of smoke detectors). Local law should be consulted to determine if sales of Lender-owned property are exempt from such requirements.
- 3. Amendments to Contract:** Seller-prepared addenda, amendments, or counter-offers or a Seller-prepared contract, may conflict with, contradict or be inconsistent with terms in Buyer’s offer. Brokers cannot advise Buyer or Seller: **(i)** which specific terms in any offer may be affected; **(ii)** whether the terms in any such Seller-prepared documents are permissible under California Law; or **(iii)** in the event of a discrepancy between the Seller-prepared documents and any other Agreement between Buyer and Seller, which document or which terms may supersede the other. Buyer is advised to seek legal counsel to discuss the applicability and interpretation of any Seller-prepared documents prior to signing any such documents.
- 4. Rental Property:** If the Property was occupied by a tenant at the time the lender acquired the Property and the tenant had a bona fide arm’s length rental agreement at a fair market rate, the tenant may be entitled to the balance of their lease term, or at least a 90-day notice for termination of a month-to-month tenancy. In addition, certain rent control jurisdictions have asserted that the tenant has rights under rent control after a foreclosure. Moreover, the tenant may be entitled to the return of their security deposit even if the security deposit was not given to the lender after the foreclosure sale or to the buyer of the REO Property.

**By signing below, the undersigned acknowledge that each has read, understands and has received a copy of this REO Advisory.**

Buyer \_\_\_\_\_ Date \_\_\_\_\_  
 Buyer \_\_\_\_\_ Date \_\_\_\_\_  
 Seller \_\_\_\_\_ Date \_\_\_\_\_  
 Seller \_\_\_\_\_ Date \_\_\_\_\_

THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



## SHORT SALE INFORMATION AND ADVISORY (SSIA)

When the property is being sold as part of a short sale, not only should the Short Sale Addendum (C.A.R. form SSA) be attached to the RPA (see paragraph 5A of the RPA for further information) but the SSIA (referred to in paragraph 5B of the RPA) should also be attached. The SSA creates a contractual relationship between the buyer and seller. The SSIA gives both parties valuable information about the nature of a short sale, alternatives to a short sale, the lender's role in the short sale, whether the seller must pay back the lender the difference between the amount owed and the amount paid on the sale, and potential negative consequences.



CALIFORNIA  
ASSOCIATION  
OF REALTORS®

## SHORT SALE INFORMATION AND ADVISORY

(C.A.R. Form SSIA, Revised 11/12)

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

This Short Sale Information and Advisory is intended to give general information regarding short sales, their potential impact, and the rights and responsibilities of the parties involved. It is not intended as legal advice for any particular property owner or buyer. Seller and Buyer should consult with their own professional advisors for legal, tax, credit and personal advice. Real estate brokers cannot and will not provide such advice.

1. **WHAT IS A SHORT SALE:** A short sale is the name used to describe a real estate transaction where the seller's lender(s) agree to allow the property owner to sell the property for less than the amount of the loan(s) secured by the property. The consent of a seller's lender(s) is necessary because without it there would not be enough money from the sale to pay off the lender(s) in full and to pay other costs of the sale. As a result, the lender's lien(s) would remain on title, and a seller would be unable to transfer title to a buyer free of monetary liens. (Properties that are worth less than the amount owed to the secured lender(s) are often referred to as being "underwater" or distressed properties).
2. **ALTERNATIVES TO A SHORT SALE:** Owners of distressed or underwater properties are faced with difficult choices that could have financial and emotional consequences. Any of the following or other alternatives potentially have negative tax or credit consequences, or both, for the owner:
  - A. **A loan modification** is an arrangement between a borrower and a lender. It can involve a reduction in the interest rate on the loan, a deferment in payments on the loan, an extension of time to pay back the loan, a reduction in principal of the loan, a combination of these possibilities, or other changes to the repayment plan. A loan modification requires the consent of both lender and borrower.
  - B. **A foreclosure** is a legal process through which the lender acquires title to the property from a borrower who has stopped making payments on a loan. The lender can foreclose whether or not the borrower consents.
  - C. **A deed in lieu of foreclosure** occurs when the borrower offers to transfer the property to the lender, in lieu of the lender having to go through the foreclosure process, and the lender agrees to accept title to the property from the borrower and forgives the debt. A deed in lieu of foreclosure requires the consent of both lender and borrower.
  - D. **Bankruptcy** is a legal action typically filed by a borrower to have debt(s) discharged. An automatic stay occurs as soon as a borrower files bankruptcy, staying all actions against the borrower. While a petition for bankruptcy can have the effect of delaying a foreclosure, it does not necessarily prevent a foreclosure from eventually occurring. No lender consent is required for a borrower to file bankruptcy.
3. **LENDER AGREEMENT TO SHORT SALE:** In order for a short sale to be completed, the lender(s), at a minimum, must agree to release the property from the lender(s) lien(s) to allow the sale. The lender(s) may or may not agree to reduce the amount owed to satisfy the debt. If not, the lender(s) may continue to pursue the borrower for payment of the balance of the debt. Prior to granting approval of the sale, the lender(s) may require the borrower to disclose all of the borrower's assets. They may require that the borrower liquidate other assets. They may require that the borrower sign an agreement to repay some or all of the debt at some later time. They may require that the borrower secure the unpaid debt with other assets owned by the borrower. Additionally, they will generally require that the transaction be arm's length, and that all terms of any benefit conferred on the seller be fully disclosed and that a seller cannot stay in the property following the sale. Finally, many first lien holders will limit the amount they will allow to be paid to a second lienholder, further complicating negotiations for the short sale. The lender will usually submit a "term sheet" to the borrower indicating the terms to which lender(s) will agree. If a seller and a buyer do not modify their contract to comply with the lender(s) terms, the lender(s) may not permit the short sale to proceed. Seller's are strongly advised to seek legal and tax advice regarding review of the term sheet. Brokers cannot and will not give legal or tax advice on the lender's term sheet or its effect on the Buyer and Seller's agreement or on the consequences to sellers and buyers should they proceed to close. There is no assurance that once the lender(s) have begun short sale negotiations, they will discontinue the foreclosure process.
4. **SELLER'S CONTINUING LIABILITY ON THE DEBT:** Many borrowers who attempt a short sale are concerned about whether the borrower is released from any further liability to the lender(s) or whether the lender can pursue the borrower for any unpaid balance of the debt. Some refer to continuing liability as a deficiency judgement. Generally speaking, a deficiency judgement is the right of a lender to pursue the borrower for the difference between the amount the lender receives and the amount the borrower owes on the debt. Deficiency judgements in California are prohibited in certain circumstances.

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)

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SSIA REVISED 11/12 (PAGE 1 OF 4)

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



SHORT SALE INFORMATION AND ADVISORY (SSIA PAGE 1 OF 4)

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

**A. Short Sale:**

1. Beginning July 15, 2011, Code of Civil Procedure 580e provides that any lender who approves a short sale in writing is not permitted to seek or collect a deficiency against the borrower if the loan is secured by a Trust Deed on residential property containing 1-4 units. This law may not be waived. The July 15, 2011 law does not apply to: (i) lienholders on other types of property; or (ii) a borrower who has committed fraud or waste; or (iii) borrowers who are corporations, limited liability companies, or limited partnerships. Prior to this law coming into effect, from January 1, 2011 the restriction on lenders seeking deficiencies for approved short sales only applied to lenders holding a first trust deed on residential 1-4 units.
2. For properties or borrowers to which CCP 580e does not apply, some lenders in negotiating a short sale will want the owner to sign a note for the balance of the unpaid principal. Other lenders will release the lien only, but not forgive the underlying debt. Some lenders will "reserve their rights." Thus, in these situations whether or not a lender retains the right to pursue a deficiency following a short sale becomes a negotiable term for each sale.
3. Seller is encouraged to (i) obtain a written agreement from lender(s) or other applicable lien holders addressing whether and to what extent Seller will be released from any monetary or other claim, obligation, or liability upon approval of the short sale, and (ii) have that written agreement reviewed by an attorney, CPA or other appropriate professional of seller's choosing.

**B. Foreclosure:**

1. **Purchase Money Loans:** Loans given by lenders to purchase 1-4 unit properties, one of which will be occupied by the borrower, and seller-financed purchases are subject to "purchase money" anti-deficiency protection rules. Generally, this means that the lender cannot pursue the borrower for any deficiency after the property is **foreclosed** upon by the seller or lender, whether the seller or lender uses a non-judicial trustee sale or a judicial foreclosure. Refinancing a purchase money loan causes it to lose any purchase money protection it might have.
2. **Trustee Sales:** If a lender **forecloses** by non-judicial trustee sale instead of by judicial foreclosure, that lender is barred from seeking any deficiency from the borrower after the trustee sale, even if the loan was not purchase money.
3. **Refinanced Liens:** The anti-deficiency protections become much less clear for loans that are refinanced. Generally, loans that are refinanced lose their "purchase money" protection. Lenders extending refinances may be able to pursue a deficiency judgment against the borrower directly following a judicial foreclosure. However, beginning January 1, 2013 Borrowers who refinance a purchase money loan on owner-occupied residential property with 1-4 units, and do not take any cash out from the refinance receive the same anti-deficiency protection as if the refinance loan was a purchase money loan.
4. **Junior Liens:** The anti-deficiency protections for Junior Lien holders are also somewhat unclear. Junior debt used to purchase the residence (such as 90/10 first and second) would have "purchase money" protection generally. However, junior liens that are refinanced or junior liens that are used to take out equity do not have "purchase money" protection. Such "non purchase money" junior lienholders may be able to pursue a deficiency judgement against the borrower directly after a Trustee's sale by a senior lienholder or after a judicial foreclosure by the junior lienholder. Although the law is not entirely clear, home equity loans (HELOCs) may fall into this category.
5. **Other Liens:** Many other types of liens may be recorded on title including, without limitation, homeowners association liens, judgement liens, tax liens, and child support liens. Generally foreclosures by any lienholders senior to such liens do not protect the owner of the property from later legal action by the lienholder to collect on the obligation.

**5. CREDIT AND TAX CONSEQUENCES:**

- A. CREDIT:** All of the owner's options discussed above will most likely have a negative impact on the owner's credit and on the owner's ability to finance or purchase property for some time. The credit impact and length of time the owner would have difficulty in obtaining a loan to purchase property again, or to be approved for any other credit transactions such as obtaining a credit card, leasing an apartment, or even to gain employment, varies. Lenders may view short sales and alternatives differently depending on their own underwriting guidelines and those established by governmental or quasi-governmental bodies. To find out more information about the impact to your credit score, go to [www.myfico.com](http://www.myfico.com).
- B. TAX:** With some exceptions, a reduction or discharge of a debt obligation by a lender results in income to the borrower. The income might not be taxable if the debt was being used to acquire, construct or substantially improve a borrower's principal residence. Another exception exists if the forgiveness of debt results from a situation where the lender is barred by law from collecting the debt, as in a foreclosure of purchase money debt. Insolvency and bankruptcy rules can also shield a borrower from forgiveness of debt income. Generally, when any debt is forgiven by a lender, they are required to provide the borrower a 1099 and it will be up to the borrower to make the proper claim on their tax return to avoid debt forgiveness income. Some of these rules are temporary, and state laws and federal laws differ. Broker has advised Seller that if Lender agrees to accept less than full payment, the difference may result in taxable income to Seller even though Seller does not receive any cash proceeds from the sale. Seller may also be taxed on the gain in value of the Property from the date of Seller's purchase to the date of sale, regardless of the amount of any existing loans/liens.
- C. PROFESSIONAL ADVICE:** Seller is advised to discuss with an attorney, CPA or other professional of Seller's choosing before (i) accepting any offer to present to lender or (ii) agreeing to any changes requested by lender to an already accepted contract.

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



**SHORT SALE INFORMATION AND ADVISORY (SSIA PAGE 2 OF 4)**



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

- 6. POTENTIAL IMPROPRIETIES:** It is an unfortunate reality that many persons, including real estate licensees, mortgage lenders, and attorneys, among others, have taken advantage of owners of underwater or distressed properties. Some of the schemes present themselves as “rescues” of the homeowner, promising to let them stay in the property, to protect their credit, or to provide payments to them after closing, and usually outside of the escrow. Both the California Department of Real Estate (DRE) (<http://www.dre.ca.gov>) and the California Attorney General (<http://www.ag.ca.gov>) have issued written warnings of potential red flags in short sales and other rescue schemes. Some of these red flags are:
- A. No license:** The DRE believes that a real estate license is generally required to negotiate any short sale;
  - B. MARS:** Short sale negotiators who do not represent a seller or buyer in a short sale are generally required to comply with the Mortgage Assistance Relief Services rules and provide required disclosures and notices to a seller.
  - C. Up-front fees:** No real estate licensee can collect any up-front or advance fee without having first obtained a “no objection” letter from the DRE and no up-front fees may be taken for arranging a loan modification;
  - D. Surcharges:** Charges by third parties that are not disclosed to the short sale lender and usually paid outside of escrow;
  - E. 3rd Party negotiations:** The licensing and fee requirements above apply whether the negotiation occurs through a Broker, representing a seller or a buyer in the transaction, or a 3rd party short sale negotiator. As with other real estate activity, short sale negotiator fees are negotiable and not set by law. The existence, fee and licensed status of any 3rd party short sale negotiator shall be disclosed to the lender and must be approved by the lender as part of the overall compensation to be paid in the short sale transaction.
  - F. Straw buyers and house flipping:** Buyers misrepresent the value of the property to the short sale lender and flip the property to another buyer already in place;
  - G. Other:** Other potential red flags include: guarantees to stop the foreclosure; instructions not to contact the lender; transfer of title prior to close (often to a trust) as a condition of negotiating with the lender; the buyer is an LLC; the buyer wants a power of attorney from the seller; and the buyer hires the third party negotiator or wants to negotiate directly with the lender.
- While most of the activities on the above list on their face are not fraudulent, they serve as warning signs that the owner and the real estate agents involved should proceed with caution.
- 7. BUYER CONSIDERATIONS:** Short sales are often difficult transactions taking considerably longer than a typical real estate transaction to complete. There is no guarantee that the lender or lenders will agree to the terms of the purchase offer or that they will respond in any timely fashion or even respond at all. There is no guarantee that a seller or a buyer will agree to any terms proposed by the lender as a condition of releasing the lien or the debt on the property. Buyers may expend money on inspections, loan applications, escrow fees and other costs that they will not be able to recover from anyone if the lender does not approve the transaction. Buyers may also have difficulty obtaining the return of their deposit in escrow, if a seller becomes noncommunicative during the short sale process. Generally, sellers also have the right to continue to give offers to their lender(s) even if they have a contract with an existing buyer. Brokers cannot give any assurances as to what will happen. Buyers are strongly cautioned that any undisclosed and unapproved payments to junior lienholders or to seller or to outside third party negotiators may be a form of lender fraud. Buyers are also strongly cautioned that writing offers on more than one short sale property with the intent to purchase only one such property could be a misrepresentation giving rise to legal claims by a seller including a claim for the buyer's deposit.
- 8. NATIONAL MORTGAGE SETTLEMENT (SETTLEMENT) AND CALIFORNIA HOMEOWNER BILL OF RIGHTS:** In early 2012 California joined a national settlement agreement between five of the nation's largest lenders (Bank of America, JPMorgan Chase, Wells Fargo, Citigroup and All Financial) and most states (“the Settlement”). The Settlement obligates the lenders to, among other things, write down or refinance some loans, extinguish certain unpaid balances and provide transition assistance to some homeowners. Loans owned by Fannie Mae or Freddie Mac are not covered by the Settlement. In Fall of 2012, California enacted a series of laws, effective January 1, 2013, commonly and collectively referred to as the California Homeowner Bill of Rights (“Homeowners BOR”). These laws prohibit foreclosures while an approved short sale is pending or while a loan modification is in process or on appeal, as well as other requirements. Whether a borrower qualifies for any of the advantages of the Settlement or the Homeowner BOR requires an analysis of the borrower's loan and its applicability to either of those items. Such an analysis is beyond the scope of Brokers expertise. If a buyer or seller has questions about whether the borrower's loan is covered by either the Settlement or the Homeowner BOR, or how either of those items can affect a short sale transaction, that party should discuss the matter with a lawyer or accountant of their own choosing.
- 9. BROKER ROLE:** A real estate broker cannot give legal or tax advice in connection with any of the options available to the borrower nor can the broker suggest what is the best course of action for the owner. Unfortunately, the owner is faced with extremely difficult choices having a lasting impact on the owner. Owners are strongly cautioned that they must seek legal and tax advice in what is not only a choice impacting taxes and credit, but also personal issues affecting the owner and often the owner's family. The broker's role is to assist the owner with the actual sale of the property in a short sale transaction, not to provide legal or tax advice or to guarantee the best possible outcome for the parties, or to assure a buyer that any particular transaction will be completed. Brokers do not, and cannot, assure that either a seller or a buyer will perform on their agreement or that the lender(s) will agree to any of the terms presented. Brokers are not a party to the contract between Buyer and Seller.

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

**10. BROKER AUTHORITY:** Seller authorizes Broker to: (1) market the Property for sale, (2) contact lenders concerning lender's approval of a short sale (C.A.R. Form ARC) and Seller agrees to give Broker any necessary information to negotiate with lenders, and (3) advertise in the MLS and other advertising medium that the property transfer, sales price and payment of commissions are subject to lender's approval. If lenders will not cooperate, Broker may cancel the listing agreement.

- Seller  Buyer \_\_\_\_\_ Date \_\_\_\_\_
- Seller  Buyer \_\_\_\_\_ Date \_\_\_\_\_
- Seller  Buyer \_\_\_\_\_ Date \_\_\_\_\_
- Seller  Buyer \_\_\_\_\_ Date \_\_\_\_\_

Real Estate Broker (Selling Firm) \_\_\_\_\_ DRE Lic # \_\_\_\_\_  
 By (Agent) \_\_\_\_\_ DRE Lic # \_\_\_\_\_ Date \_\_\_\_\_  
 Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone \_\_\_\_\_ Fax \_\_\_\_\_ Email \_\_\_\_\_

Real Estate Broker (Listing Firm) \_\_\_\_\_ DRE Lic # \_\_\_\_\_  
 By (Agent) \_\_\_\_\_ DRE Lic # \_\_\_\_\_ Date \_\_\_\_\_  
 Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone \_\_\_\_\_ Fax \_\_\_\_\_ Email \_\_\_\_\_

SAMPLE



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## NOTICE OF PRIVATE TRANSFER FEE (NTF)

Paragraph 7D(5) of the RPA identifies which party is to pay for any private transfer fees that are associated with the transfer of the property. These fees are usually established when a development is first created and before any unit or lot has been sold in the development. While private transfer fees vary widely in their scope and amount, a common instance is where some non-profit entity receives money each time the property is sold. The non-profit often has no continuing relationship to the property being transferred or to the development itself. The NTF form specifies that such a fee exists, how the fee is calculated, who the fee will be paid to, what the fee's purpose is, and when the obligation to pay the fee comes to an end. These items identified in the NTF are similar to and may be obtained from a document that California law required to be recorded if the recipient of the fee wants to have the legal right to collect such fees.



CALIFORNIA ASSOCIATION OF REALTORS®

NOTICE OF PRIVATE TRANSFER FEE

(C.A.R. Form NTF, 11/07)

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, STATE OF CALIFORNIA, DESCRIBED AS \_\_\_\_\_ THIS STATEMENT IS A DISCLOSURE OF TRANSFER FEE IN COMPLIANCE WITH SECTION 1102.6e OF THE CIVIL CODE (EFFECTIVE JANUARY 1, 2008).

- 1. The covenants, conditions and restrictions (CC&Rs), contract, security instrument or other document affecting the transfer of the Property imposes a fee to be paid upon the transfer of the Property.
2. The fee is calculated as follows: \_\_\_\_\_ Based upon the listing price of the Property, the fee will be \$ \_\_\_\_\_ The actual amount of the fee required to be paid may be different if the fee is based on a percentage of the final sales price.
3. The fee will be paid to: \_\_\_\_\_
4. The fee is intended to be used for the following purposes: \_\_\_\_\_
5. The transfer fee will no longer be imposed on or after \_\_\_\_/\_\_\_\_/\_\_\_\_ or upon the occurrence of the following circumstances: \_\_\_\_\_

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller \_\_\_\_\_ Date \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_

Buyer acknowledges receipt of a copy of this Notice of Private Transfer Fee.

Buyer \_\_\_\_\_ Date \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_

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NTF 11/07 (PAGE 1 OF 1) Print Date

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



## SELLER IN POSSESSION ADDENDUM (SIP)

This form is intended for use when the seller is to remain in possession after close of escrow for a short period of time (i.e. less than 30 days). The form is not a full blown lease and even though the seller remains in possession after the buyer becomes the title owner, the seller is not referred to as a tenant and the buyer is not referred to as a landlord. If the seller will remain in possession of the property for 30 days or more, the Residential Lease After Sale (C.A.R. Form RLAS) should be used because a court and many local laws are likely to consider the carryover possession as creating a tenancy agreement between buyer and seller. Even if the possession is less than 30 days, and the SIP form is used, the buyer and seller are advised that local rent control or other laws may affect their rights vis-a-vis one another.

The SIP form addresses several issues affecting both buyer and seller rights. Paragraph 1 provides for the length of the term the seller will remain in possession. Paragraph 2 determines the amount of compensation the seller will pay for the right to remain on the property, plus a security deposit. The seller agrees to deposit the compensation in escrow prior to the close of escrow or to have the funds withheld from the seller's proceeds.

Paragraph 3 provides that if any payment is to be made outside of escrow directly between seller and buyer, and such payment is not made on time, the seller agrees to pay a late fee and further a \$25 charge for any non-sufficient funds check. Paragraph 4 states the seller will pay for all utility charges during the possession period.

Paragraph 5 allows the buyer to enter the property, upon 24 hour notice, to make agreed repairs or, at any time, in case of emergency. Paragraph 6 requires the seller to maintain the property so that it remains in the condition promised by the RPA.

The seller also agrees in paragraph 7 not to assign or sublet the property or transfer the right of occupancy without the buyer's written consent. After all, the buyer agreed to delayed possession so the seller could remain, not any other person. Paragraph 8 reiterates seller's obligation to deliver the property in the condition and on the terms agreed to in the Purchase Agreement.

Paragraph 9 advises the seller that the buyer's insurance does not protect the seller's personal property. The seller agrees to carry insurance to protect the seller's personal property. Paragraph 10 states that the waiver of any breach is not to be considered a waiver of any subsequent breach. What this means is that just because, for example, the buyer is lenient in one area of the SIP's requirements, the buyer can be insistent on strict compliance with other terms. Lastly, there are blank lines for the buyer and seller to provide for any other conditions.



CALIFORNIA ASSOCIATION OF REALTORS®

SELLER IN POSSESSION ADDENDUM (C.A.R. Form SIP, 11/12)

This is an addendum to the [ ] California Residential Purchase Agreement, [ ] Counter Offer No. \_\_\_\_\_, [ ] Other \_\_\_\_\_ on property known as \_\_\_\_\_, ("Property"), between \_\_\_\_\_ ("Buyer"), and \_\_\_\_\_ ("Seller").

This Addendum is intended for short-term occupancy (i.e. less than 30 Days). If occupancy is intended to be for 30 Days or longer, use Residential Lease After Sale (C.A.R. Form RLAS). Note: Local rent control or other Law regarding tenant's rights may impact Buyer's and Seller's rights and obligations.

- 1. TERM: Seller to remain in possession of Property for \_\_\_\_\_ Days After Close Of Escrow (or [ ] \_\_\_\_\_). Seller has no right to remain in possession beyond this term and may be responsible for court awarded damages if Seller does remain.
2. COMPENSATION: Seller agrees to pay Buyer (i) for the term specified in 1, \$ \_\_\_\_\_ per Day (or [ ] \_\_\_\_\_), and (ii) a security deposit in the amount of \$ \_\_\_\_\_. Seller shall deposit such funds with escrow holder prior to Close Of Escrow or such funds shall be withheld from Seller's proceeds. At Close Of Escrow, compensation and security deposit will be released to Buyer (or [ ] held in escrow).
3. LATE CHARGE/NSF CHECKS: If any payment from Seller to Buyer is required outside of escrow, and any such payment is not received by Buyer within 5 (or [ ] \_\_\_\_\_) Days After date due, Seller shall pay to Buyer an additional sum of \$ \_\_\_\_\_ as a Late Charge. If a check is returned for non-sufficient funds ("NSF"), Seller shall pay to Buyer \$25.00 as an NSF charge. Seller and Buyer agree that these charges represent a fair and reasonable estimate of the costs Buyer may incur by reason of Seller's late or NSF payment. Buyer's acceptance of any Late Charge or NSF fee shall not constitute a waiver as to any default by Seller.
4. UTILITIES: Seller agrees to pay for all utilities and services, and the following charges: \_\_\_\_\_ except \_\_\_\_\_, which shall be paid for by Buyer.
5. ENTRY: Seller shall make Property available to Buyer for the purpose of entering to make necessary or agreed repairs, or to supply necessary or agreed services, or to show Property to prospective or actual purchasers, tenants, mortgagees, lenders, appraisers or contractors. Buyer and Seller agree that 24 hours notice (oral or written) shall be reasonable and sufficient notice. In an emergency, Buyer may enter Property at any time without prior notice.
6. MAINTENANCE: Seller shall maintain the Property, including pool, spa, landscaping and grounds, and all personal property included in the sale in substantially the same condition as on the date of Acceptance of the Agreement. Except as provided in the Agreement, Seller shall not make alterations to the Property without Buyer's written consent.
7. ASSIGNMENT; SUBLETTING: Seller shall not assign or sublet all or any part of the Property, or assign or transfer the right to occupy the Property. Any assignment, subletting or transfer of the Property by voluntary act of Seller, by operation of Law or otherwise, without Buyer's prior written consent shall give Buyer the right to terminate Seller's right to possession.
8. SELLER'S OBLIGATIONS UPON DELIVERY OF POSSESSION: Upon delivery of possession to Buyer, Seller shall deliver the Property in the condition and on the terms provided in the Agreement and paragraph 6.
9. INSURANCE: Seller's personal property (including vehicles) is not insured by Buyer, and, if applicable, not by the owner's association, against loss or damage due to fire, theft, vandalism, rain, water, criminal or negligent acts of others, or any other cause. Seller is to carry Seller's own insurance to protect Seller from such loss.
10. WAIVER: The waiver of any breach shall not be construed as a continuing waiver of the same or any subsequent breach.
11. OTHER TERMS AND CONDITIONS/SUPPLEMENTS: \_\_\_\_\_

By signing below Buyer and Seller acknowledge that each has read, understands, has received a copy of and agrees to the terms of this Seller In Possession Addendum.

Date \_\_\_\_\_ Date \_\_\_\_\_
Buyer \_\_\_\_\_ Seller \_\_\_\_\_
Buyer \_\_\_\_\_ Seller \_\_\_\_\_

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## **RESIDENTIAL LEASE AFTER SALE (RLAS) SELLER IN POSSESSION AFTER CLOSE OF ESCROW (INTENDED FOR POSSESSION OF 30 DAYS OR MORE)**

This form should be used when a seller remains on the property after close of escrow for an extended period of time. It is more like a Residential Lease or Month-to-Month Rental Agreement (C.A.R. form LR) than the Seller in Possession Addendum (C.A.R. form SIP). One difference between the RLAS and the LR is that under the RLAS rent and security deposit may be made through escrow. One difference between the RLAS and the SIP is that in the RLAS the parties are referred to as landlord and tenant.



CALIFORNIA ASSOCIATION OF REALTORS®

RESIDENTIAL LEASE AFTER SALE Seller in Possession After Close of Escrow (Intended for possession of 30 or more days)

(C.A.R. Form RLAS, Revised 11/13)

Date: \_\_\_\_\_ ("Buyer/Landlord") and \_\_\_\_\_ ("Seller/Tenant") have entered into a purchase agreement for the real property described below. Close of escrow for the purchase agreement is scheduled to occur on (date) \_\_\_\_\_ Buyer, as Landlord, and Seller, as Tenant, agree as follows:

1. PROPERTY:

- A. Landlord rents to Tenant and Tenant rents from Landlord, the real property and improvements described as: \_\_\_\_\_ ("Premises").
B. The Premises are for the sole use as a personal residence by the following named person(s) only: \_\_\_\_\_
C. The personal property listed in the purchase agreement, maintained pursuant to paragraph 11, is included.

2. TERM: The term begins on the day after escrow closes on the purchase and sale agreement ("Commencement Date"), and shall terminate on (date) \_\_\_\_\_ at \_\_\_\_\_ AM/PM. Tenant shall vacate the Premises upon termination of this Agreement, unless (i) Landlord and Tenant have signed a new agreement, (ii) mandated by local rent control law, or (iii) Landlord accepts Rent from Tenant (other than past due Rent), in which case a month-to-month tenancy shall be created which either party may terminate pursuant to California Civil Code §1946.1. Rent shall be at a rate agreed to by Landlord and Tenant, or as allowed by law. All other terms and conditions of this Agreement shall remain in full force and effect.

3. RENT: "Rent" shall mean all monetary obligations of Tenant to Landlord under the terms of this Agreement, except security deposit.

- A. Tenant agrees to pay, per month, Buyer's PITI, or \$ \_\_\_\_\_ for the term of the Agreement.
B. Rent is payable in advance on the 1st (or \_\_\_\_\_) day of each calendar month, and is delinquent on the next day.
C. If Commencement Date falls on any day other than the day Rent is payable under 3B and Tenant has paid one full month's Rent in advance of Commencement Date, Rent for the second calendar month shall be prorated based on a 30-day period.
D. PAYMENT: The Rent shall be paid by personal check, money order, cashier's check, through escrow (per escrow instructions), or other \_\_\_\_\_, to (name) \_\_\_\_\_ (phone) \_\_\_\_\_ at (address) \_\_\_\_\_, (or at any other location subsequently specified by Landlord in writing to Tenant) between the hours of \_\_\_\_\_ and \_\_\_\_\_ on the following days: \_\_\_\_\_. If any payment is returned for non-sufficient funds ("NSF") or because tenant stops payment, then, after that: (i) Landlord may, in writing, require Tenant to pay Rent in cash for three months and (ii) all future Rent shall be paid by money order, or cashier's check.

4. SECURITY DEPOSIT:

- A. Tenant agrees to pay \$ \_\_\_\_\_ as a security deposit. Security deposit will be paid by personal check, money order, cashier check, through escrow (see paragraph 5 below), other \_\_\_\_\_. Security deposit will be transferred to and held by Buyer, or held in Buyer's Broker's trust account. (Note: The maximum amount that Landlord may receive as security deposit cannot exceed two months' Rent for unfurnished Premises, or three months' Rent for furnished Premises.)
B. All or any portion of the security deposit may be used, as reasonably necessary, to: (1) cure Tenant's default in payment of Rent, which includes Late Charges, NSF fees, or other sums due; (2) repair damage, excluding ordinary wear and tear, caused by Tenant or by a guest or licensee of Tenant; (3) clean Premises, if necessary, upon termination of tenancy; and (4) replace or return personal property or appurtenances. SECURITY DEPOSIT SHALL NOT BE USED BY TENANT IN LIEU OF PAYMENT OF LAST MONTH'S RENT. If all or any portion of the security deposit is used during tenancy, Tenant agrees to reinstate the total security deposit within five days after written notice is delivered to Tenant. Within 21 days after Tenant vacates the Premises, Landlord shall: (1) furnish Tenant an itemized statement indicating the amount of any security deposit received and the basis for its disposition; and (2) return any remaining portion of the security deposit to Tenant.
C. Security deposit will not be returned until all Tenants have vacated the Premises. Any security deposit returned by check shall be made out to all Tenants named on the Agreement, or as subsequently modified.
D. No interest will be paid on security deposit unless required by local law.
E. If the security deposit is held by Landlord, Tenant agrees not to hold Broker responsible for its return. If the security deposit is held in Landlord's Broker's trust account, and Broker's authority is terminated before expiration of this Agreement, and security deposits are released to someone other than Tenant, then Broker shall notify Tenant, in writing, where and to whom security deposit has been released. Once Tenant has been provided such notice, Tenant agrees not to hold Broker responsible for the security deposit.

5. ESCROW PAYMENT: (Check all that apply) Security deposit, First month's Rent, Rent for the entire lease term (if lease term is at least 6 months), Other, per escrow instructions, shall be paid out of Seller's proceeds from the escrow for the purchase of the Premises.

6. LATE CHARGE; RETURNED CHECKS:

- A. Tenant acknowledges either late payment of Rent or issuance of a returned check (NSF) may cause Landlord to incur costs and expenses, the exact amounts of which are extremely difficult and impractical to determine. These costs may include, but are not limited to, processing, enforcement and accounting expenses, and late charges imposed on Landlord. If any installment of Rent due from Tenant is not received by Landlord within 5 (or \_\_\_\_\_) calendar days after date due, or if a check is returned, Tenant shall pay to Landlord, respectively, an additional sum of \$ \_\_\_\_\_ or \_\_\_\_\_% of the Rent due as a Late Charge and \$25.00 as a NSF fee for the first returned check and \$35.00 as a NSF fee for each additional returned check, either or both of which shall be deemed additional Rent.

Tenant's Initials (\_\_\_\_\_) (\_\_\_\_\_)

Landlord's Initials (\_\_\_\_\_) (\_\_\_\_\_)

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_





Premises: \_\_\_\_\_ Date: \_\_\_\_\_

- B. Landlord and Tenant agree these charges represent a fair and reasonable estimate of the costs Landlord may incur by reason of Tenant's late or NSF payment. Any Late Charge or NSF fee due shall be paid with the current installment of Rent. Landlord's acceptance of any Late Charge or NSF fee shall not constitute a waiver as to any default of Tenant. Landlord's right to collect a Late Charge or NSF fee shall not be deemed an extension of the date Rent is due under paragraph 3, or prevent Landlord from exercising any other rights and remedies under this Agreement, and as provided by law.
- 7. **PARKING:** The right to parking is (or  is not) included in the Rent charged pursuant to paragraph 3.
- 8. **STORAGE:** The right to storage is (or  is not) included in the Rent charged pursuant to paragraph 3. Tenant shall store only personal property Tenant owns, and shall not store property claimed by another or in which another has any right, title or interest. Tenant shall not store any improperly packaged food or perishable goods, flammable materials, explosives, hazardous waste or other inherently dangerous material, or illegal substances.
- 9. **UTILITIES:** Tenant agrees to pay for all utilities and services, and the following charges: \_\_\_\_\_ except \_\_\_\_\_, which shall be paid for by Landlord. If any utilities are not separately metered, Tenant shall pay Tenant's proportional share, as reasonably determined and directed by Landlord.
- 10. **CONDITION OF PREMISES:** Tenant is the Seller of the Premises, has resided in the Premises and acknowledges that the Premises and all items in it are acceptable to Tenant. The condition of the Premises is as promised by the Seller/Tenant to the Buyer/Landlord pursuant to the purchase agreement and acknowledged in Buyer's final verification of condition, except \_\_\_\_\_.
- 11. **MAINTENANCE:**
  - A. Tenant shall properly use, operate and safeguard Premises, including, if applicable, any landscaping, furniture, furnishings and appliances, and all mechanical, electrical, gas and plumbing fixtures, and keep them and the Premises clean, sanitary and well ventilated. Tenant shall be responsible for checking and maintaining all smoke detectors and any additional phone lines beyond the one line and jack that Landlord shall provide and maintain. Tenant shall immediately notify Landlord, in writing, of any problem, malfunction or damage. Tenant shall be charged for all repairs or replacements caused by Tenant, pets, guests or licensees of Tenant, excluding ordinary wear and tear. Tenant shall be charged for all damage to Premises as a result of failure to report a problem in a timely manner. Tenant shall be charged for repair of drain blockages or stoppages, unless caused by defective plumbing parts or tree roots invading sewer lines.
  - B.  Landlord  Tenant shall water the garden, landscaping, trees and shrubs, except: \_\_\_\_\_.
  - C.  Landlord  Tenant shall maintain the garden, landscaping, trees and shrubs, except: \_\_\_\_\_.
  - D.  Landlord  Tenant shall maintain \_\_\_\_\_.
  - E. Tenant's failure to maintain any item for which Tenant is responsible shall give Landlord the right to hire someone to perform such maintenance and charge Tenant to cover the cost of such maintenance.
  - F. Personal property belonging to Seller at the Close of Escrow of the purchase of the Premises, and the following items, are included in the Premises without warranty and Landlord will not maintain, repair or replace them: \_\_\_\_\_.
- 12. **NEIGHBORHOOD CONDITIONS:** Tenant is the Seller of the Premises, has resided in the Premises and is aware of neighborhood or area conditions, including schools, proximity and adequacy of law enforcement, crime statistics, proximity of registered felons or offenders, fire protection, other governmental services, availability, adequacy and cost of any speed-wired, wireless internet connections or other telecommunications or other technology services and installations, proximity to commercial, industrial or agricultural activities, existing and proposed transportation, construction and development that may affect noise, view or traffic, airport noise, noise or odor from any source, wild and domestic animals, other nuisances, hazards or circumstances, cemeteries, facilities and condition of common areas, conditions and influences of significance to certain cultures and/or religions, and personal needs, requirements and preferences of Tenant.
- 13. **PETS:** Unless otherwise provided in California Civil Code § 54.2, no animal or pet shall be kept on or about the Premises without Landlord's prior written consent, except \_\_\_\_\_.
- 14. **RULES; REGULATIONS:** Tenant agrees to comply with all rules and regulations of Landlord, which are at any time posted on the Premises or delivered to Tenant. Tenant shall not, and shall ensure that guests and licensees of Tenant shall not, disturb, annoy, endanger or interfere with other tenants of the building or neighbors, or use the Premises for any unlawful purposes, including, but not limited to, using, manufacturing, selling, storing, or transporting illicit drugs or other contraband, or violate any law or ordinance, or commit a waste or nuisance on or about the Premises.
- 15.  **CONDOMINIUM; PLANNED UNIT DEVELOPMENT:** The Premises is a unit in a condominium, planned unit development, or other common interest subdivision governed by a homeowners' association ("HOA"). The name of the HOA is \_\_\_\_\_. Tenant agrees to comply with all HOA covenants, conditions, restrictions, bylaws, rules and regulations and decisions. Tenant shall reimburse Landlord for any fines or charges imposed by HOA or other authorities, due to any violation by Tenant, or the guests or licensees of Tenant. Tenant is the Seller of the Premises, has resided in the Premises and is aware of and in possession of a Copy of the HOA rules and regulations.
- 16. **ALTERATIONS; REPAIRS:** Unless otherwise specified by law or paragraph 27C, without Landlord's prior written consent: (i) Tenant shall not make any alterations or repairs in or about the Premises, including: painting, wallpapering, adding or changing locks, installing antenna or satellite dish(es), placing signs, displays or exhibits, or using screws, fastening devices, large nails or adhesive materials; (ii) Landlord shall not be responsible for the costs of alterations or repairs made by Tenant; (iii) Tenant shall not deduct the costs of any alterations or repairs; and (iv) any deduction made by Tenant shall be considered unpaid Rent.

Tenant's Initials (\_\_\_\_)(\_\_\_\_)

Landlord's Initials (\_\_\_\_)(\_\_\_\_)

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



Premises: \_\_\_\_\_ Date: \_\_\_\_\_

17. KEYS; LOCKS:

- A. Tenant acknowledges possession of:
  - \_\_\_\_\_ key(s) to Premises,  \_\_\_\_\_ remote control device(s) for garage door/gate opener(s),
  - \_\_\_\_\_ key(s) to mailbox,  \_\_\_\_\_
  - \_\_\_\_\_ key(s) to common area(s),  \_\_\_\_\_
- B. Tenant acknowledges that locks to the Premises  have,  have not, been re-keyed.
- C. If Tenant re-keys existing locks or opening devices, Tenant shall immediately deliver copies of all keys to Landlord. Tenant shall pay all costs and charges related to loss of any keys or opening devices. Tenant may not remove locks, even if installed by Tenant.

18. ENTRY:

- A. Tenant shall make Premises available to Landlord or Landlord's representative for the purpose of entering to make necessary or agreed repairs, decorations, alterations or improvements, or to supply necessary or agreed services, or to show Premises to prospective or actual purchasers, tenants, mortgagees, lenders, appraisers or contractors.
- B. Landlord and Tenant agree 24-hour written notice shall be reasonable and sufficient notice. However, if the purpose of the entry is to: (i) show the Premises to actual or prospective purchasers, the notice may be given orally provided Tenant has been notified in writing within 120 days preceding the oral notice that the Premises is for sale and oral notice may be given to show the Premises; or (ii) conduct an inspection of the Premises prior to the Tenant moving out, 48-hour written notice is required unless the Tenant waives the right to such notice; or (iii) enter in case of an emergency, Landlord or representative may enter Premises at any time without prior notice.
- C.  (If checked) Tenant authorizes the use of a keysafe/lockbox to allow entry into the Premises and agrees to sign a keysafe/lockbox addendum (C.A.R. Form KLA).

19. SIGNS: Tenant authorizes Landlord to place FOR SALE/LEASE signs on the Premises.

20. ASSIGNMENT; SUBLETTING: Tenant shall not sublet all or any part of Premises, or assign or transfer this Agreement or any interest in it, without prior written consent of Landlord. Unless such consent is obtained, any assignment, transfer or subletting of Premises, or this Agreement or tenancy, by voluntary act of Tenant, operation of law or otherwise, shall at the option of Landlord terminate this Agreement. Any proposed assignee, transferee or sublessee shall submit to Landlord an application and credit information for Landlord's approval and, if approved, sign a separate written agreement with Landlord and Tenant. Landlord's consent to any one assignment, transfer or sublease, shall not be construed as consent to any subsequent assignment, transfer or sublease and does not release Tenant of Tenant's obligations under this Agreement.

21. JOINT AND INDIVIDUAL OBLIGATIONS: If there is more than one Tenant, each one shall be individually and completely responsible for the performance of all obligations of Tenant under this Agreement, jointly with every other Tenant, and individually, whether or not in possession.

22.  LEAD-BASED PAINT: Premises was constructed prior to 1978. In accordance with federal law, Landlord gives and Tenant acknowledges receipt of the disclosures on the attached form (C.A.R. Form FLD) and a federally approved lead pamphlet.

23.  MILITARY ORDNANCE DISCLOSURE: (If applicable and known to Landlord) Premises is located within one mile of an area once used for military training, and may contain potentially explosive munitions.

24.  PERIODIC PEST CONTROL: Landlord has entered into a contract for periodic pest control treatment of the Premises, and shall give Tenant a copy of the notice originally given to Landlord by the pest control company.

25.  METHAMPHETAMINE CONTAMINATION: Prior to signing this Agreement, Landlord has given Tenant a notice that a health official has issued an order prohibiting occupancy of the property because of methamphetamine contamination. A copy of the notice and order are attached.

26. MEGAN'S LAW DATABASE DISCLOSURE: Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides. (Neither Landlord nor Brokers, if any, are required to check this website. If Tenant wants further information, Tenant should obtain information directly from this website.)

27. TENANT'S OBLIGATIONS UPON VACATING PREMISES:

A. Upon termination of the Agreement, Tenant shall: (i) give Landlord all copies of all keys or opening devices to Premises, including any common areas; (ii) vacate and surrender Premises to Landlord, empty of all persons; (iii) vacate any/all parking and/or storage space; (iv) clean and deliver Premises, as specified in paragraph C below, to Landlord in the same condition as referenced in paragraph 10; (v) remove all debris; (vi) give written notice to Landlord of Tenant's forwarding address; and (vii) \_\_\_\_\_

B. All alterations/improvements made by or caused to be made by Tenant, with or without Landlord's consent, become the property of Landlord upon termination. Landlord may charge Tenant for restoration of the Premises to the condition it was in prior to any alterations/improvements.

C. Right to Pre-Move Out Inspection and Repairs as follows: (i) After giving or receiving notice of termination of a tenancy (C.A.R. Form NTT), or before the end of a lease, Tenant has the right to request that an inspection of the Premises take place prior to termination of the lease or rental (C.A.R. Form NRI). If Tenant requests such an inspection, Tenant shall be given an opportunity to remedy identified deficiencies prior to termination, consistent with the terms of this Agreement. (ii) Any repairs or alterations made to the Premises as a result of this inspection (collectively, "Repairs") shall be made at Tenant's expense. Repairs may be performed by Tenant or through others who have adequate insurance, licenses and are approved by Landlord. The work shall comply with applicable law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. It is understood that exact restoration of appearance or cosmetic items following all Repairs may not be possible. (iii) Tenant shall: (a) obtain receipts for Repairs performed by others; (b) prepare a written statement indicating the Repairs performed by Tenant and the date of such Repairs; and (c) provide copies of receipts and statements to Landlord prior to termination.

28. BREACH OF CONTRACT; EARLY TERMINATION: In addition to any obligations established by paragraph 27, in event of termination by Tenant prior to completion of the original term of this Agreement, if applicable, Tenant shall also be responsible for lost Rent, rental commissions, advertising expenses and painting costs necessary to ready Premises for re-rental. Landlord may withhold any such amounts from Tenant's security deposit.

Tenant's Initials (\_\_\_\_)(\_\_\_\_)

Landlord's Initials(\_\_\_\_)(\_\_\_\_)

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



Premises: \_\_\_\_\_ Date: \_\_\_\_\_

- 29. **TEMPORARY RELOCATION:** Subject to local law, Tenant agrees, upon demand of Landlord, to temporarily vacate Premises for a reasonable period to allow for fumigation (or other methods) to control wood destroying pests or organisms, or other repairs to Premises. Tenant agrees to comply with all instructions and requirements necessary to prepare Premises to accommodate pest control, fumigation or other work, including bagging or storage of food and medicine, and removal of perishables and valuables. Tenant shall only be entitled to a credit of Rent equal to the per diem Rent for the period of time Tenant is required to vacate Premises.
- 30. **DAMAGE TO PREMISES:** If, by no fault of Tenant, Premises are totally or partially damaged or destroyed by fire, earthquake, accident or other casualty that render Premises totally or partially uninhabitable, either Landlord or Tenant may terminate this Agreement by giving the other written notice. Rent shall be abated as of the date Premises become totally or partially uninhabitable. The abated amount shall be the current monthly Rent prorated on a 30-day period. If this Agreement is not terminated, Landlord shall promptly repair the damage, and Rent shall be reduced based on the extent to which the damage interferes with Tenant's reasonable use of Premises. If damage occurs as a result of an act of Tenant or Tenant's guests, only Landlord shall have the right of termination, and no reduction in Rent shall be made.
- 31. **INSURANCE:** Tenant's or guest's personal property and vehicles are not insured by Landlord, manager or, if applicable, HOA, against loss or damage due to fire, theft, vandalism, rain, water, criminal or negligent acts of others, or any other cause. **Tenant is advised to carry Tenant's own insurance (renter's insurance) to protect Tenant from any such loss or damage.** Tenant shall comply with any requirement imposed on Tenant by Landlord's insurer to avoid: (i) an increase in Landlord's insurance premium (or Tenant shall pay for the increase in premium); or (ii) loss of insurance.
- 32. **WATERBEDS:** Tenant shall not use or have waterbeds on the Premises unless: (i) Tenant obtains a valid waterbed insurance policy; (ii) Tenant increases the security deposit in an amount equal to one-half of one month's Rent; and (iii) the bed conforms to the floor load capacity of Premises.
- 33. **WAIVER:** The waiver of any breach shall not be construed as a continuing waiver of the same or any subsequent breach.
- 34. **NOTICE:** Notices may be served at the following address, or at any other location subsequently designated:  
 Landlord: \_\_\_\_\_ Tenant: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- 35. **TENANT ESTOPPEL CERTIFICATE:** Tenant shall execute and return a tenant estoppel certificate delivered to Tenant by Landlord or Landlord's agent within 3 days after its receipt. Failure to comply with this requirement shall be deemed Tenant's acknowledgment that the tenant estoppel certificate is true and correct, and may be relied upon by a lender or purchaser.
- 36. **MEDIATION:**
  - A. Consistent with paragraphs B and C below, Landlord and Tenant agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to court action. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action.
  - B. The following matters are excluded from mediation: (i) an unlawful detainer action; (ii) the filing or enforcement of a mechanic's lien; and (iii) any matter within the jurisdiction of a probate, small claims or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the mediation provision.
  - C. Landlord and Tenant agree to mediate disputes or claims involving Listing Agent, Leasing Agent or property manager ("Broker"), provided Broker shall have agreed to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to such Broker. Any election by Broker to participate in mediation shall not result in Broker being deemed a party to the Agreement.
- 37. **ATTORNEY FEES:** In any action or proceeding arising out of this Agreement, the prevailing Landlord and Tenant shall be entitled to reasonable attorney fees and costs from the non-prevailing Landlord or Tenant, except as provided in paragraph 35A agreed by the parties.
- 38. **C.A.R. FORM:** C.A.R. Form means the specific form referenced or another comparable form.
- 39. **OTHER TERMS AND CONDITIONS; SUPPLEMENTS:** \_\_\_\_\_

The following ATTACHED supplements are incorporated in this Agreement:  Keysafe/Lockbox Addendum (C.A.R. Form KLA);  Interpreter/Translator Agreement (C.A.R. Form ITA);  Lead-Based Paint and Lead-Based Paint Hazards Disclosure (C.A.R. Form FLD)

- 40. **TIME OF ESSENCE; ENTIRE AGREEMENT:** Time is of this essence. All understandings between the parties are incorporated in the Agreement. Its terms are intended by the parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed except in writing. This Agreement is subject to California landlord-tenant law and shall incorporate all changes required by amendment or successors to such law. This Agreement and any supplement, addendum or modification, including any copy, may be signed in two or more counterparts, all of which shall constitute one and the same writing.
- 41. **AGENCY:**
  - A. **CONFIRMATION:** The following agency relationship(s) are hereby confirmed for this transaction:  
 Listing Agent: (Agent representing the Seller in the purchase agreement)  
 (Print firm name) \_\_\_\_\_ is the agent of  
 (check one):  the Tenant exclusively; or  both the Landlord and Tenant.  
 Selling Agent: (Agent representing the Buyer in the purchase agreement)  
 (Print firm name) \_\_\_\_\_ (if not same as Listing Agent) is the agent of (check one):  the Landlord exclusively; or  both the Tenant and Landlord.
  - B. **DISCLOSURE:**  The term of this lease exceeds one year. A disclosure regarding real estate agency relationships (C.A.R. Form AD) has been provided to Landlord and Tenant, who each acknowledge its receipt.

Tenant's Initials (\_\_\_\_)(\_\_\_\_) Landlord's Initials (\_\_\_\_)(\_\_\_\_)

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RLAS REVISED 11/13 (PAGE 4 OF 5) Print Date

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



Premises: \_\_\_\_\_ Date: \_\_\_\_\_

42.  **INTERPRETER/TRANSLATOR:** The terms of this Agreement have been interpreted for Tenant into the following language: \_\_\_\_\_ Landlord and Tenant acknowledge receipt of the attached interpreter/translator agreement, (C.A.R. Form ITA).

43. **FOREIGN LANGUAGE NEGOTIATION:** If this Agreement has been negotiated primarily in Spanish, Chinese, Tagalog, Vietnamese or Korean, pursuant to the California Civil Code, tenant shall be provided a translation of this Agreement in the language used for negotiation.

Landlord and Tenant acknowledge and agree Brokers: (a) do not guarantee the condition of the Premises; (b) cannot verify representations made by others; (c) cannot provide legal or tax advice; (d) will not provide other advice or information that exceeds the knowledge, education or experience required to obtain a real estate license. Furthermore, Brokers: (e) do not decide what rental rate a Tenant should pay or Landlord should accept; and (f) do not decide upon the length or other terms of tenancy. Landlord and Tenant agree they will seek legal, tax, insurance and other desired assistance from appropriate professionals.

Tenant/Seller \_\_\_\_\_ Date \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Tenant/Seller \_\_\_\_\_ Date \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Landlord/Buyer \_\_\_\_\_ Date \_\_\_\_\_  
Landlord/Buyer \_\_\_\_\_ Date \_\_\_\_\_  
Landlord Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

**REAL ESTATE BROKERS:**  
A. Brokers are not a party to the Agreement between Landlord and Tenant.  
B. Agency relationships are confirmed as above.

Real Estate Broker \_\_\_\_\_ Cal BRE Lic. # \_\_\_\_\_  
(Agent representing the Buyer in the purchase agreement)

By (Agent) \_\_\_\_\_ Cal BRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Real Estate Broker \_\_\_\_\_ Cal BRE Lic. # \_\_\_\_\_  
(Agent representing the Buyer in the purchase agreement)

By (Agent) \_\_\_\_\_ Cal BRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



## **INTERIM OCCUPANCY AGREEMENT (IOA) BUYER IN POSSESSION PRIOR TO CLOSE OF ESCROW**

This form should be used when a seller allows a buyer to move in to the property before the close of escrow, whether for a few days or an extended period of time. It is similar to a Residential Lease or Month-to-Month Rental Agreement (C.A.R. form LR). One difference between the IOA and the LR is that under the IOA, paragraph 3C, rent and security deposit may be made through escrow. Another difference between the IOA and the LR is that in the IOA, paragraph 2, the term automatically ends when the escrow closes, or if escrow does not close on the sale, the term ends on the earliest of the scheduled close of escrow date or mutual cancellation of the purchase agreement.

Because it is not always easy to remove a tenant occupant from property, and legal action may be necessary, and legal action can be costly and time consuming, the seller in particular should seriously consider whether to allow a buyer to move in to the seller's property prior to close of escrow. If the buyer-tenant does not close escrow and then refuses to leave, the seller's ability to sell the property to someone else will be difficult and any plans the seller made to move into replacement property otherwise will most likely be delayed. Accordingly, sellers considering such an offer should first seek the advice of counsel. C.A.R. Sample Letter, Acting Against the Advice of Broker – Seller (Sample Letter XXXX) may be used for this purpose.



CALIFORNIA  
ASSOCIATION  
OF REALTORS®

**INTERIM OCCUPANCY AGREEMENT**  
**Buyer in Possession Prior to Close of Escrow**

(C.A.R. Form IOA, Revised 1/06)

\_\_\_\_\_ (“Seller/Landlord”) and \_\_\_\_\_ (“Buyer/Tenant”) have entered into a purchase agreement for the real property described below. Close of escrow for the purchase agreement is scheduled to occur on \_\_\_\_\_ (date). Seller, as Landlord, and Buyer, as Tenant, agree as follows:

**1. PROPERTY:**

- A. Landlord rents to Tenant and Tenant rents from Landlord, the real property and improvements described as: \_\_\_\_\_ (“Premises”).
- B. The Premises are for the sole use as a personal residence by the following named persons **only**: \_\_\_\_\_
- C. The personal property listed in the purchase agreement, maintained pursuant to paragraph 11, is included.

**2. TERM:** The term begins on (date) \_\_\_\_\_ (“Commencement Date”) and shall terminate at \_\_\_\_\_ AM/ PM on the earliest of: (a) the date scheduled for close of escrow of the purchase agreement as specified above, or as modified in writing; or (b) mutual cancellation of the purchase agreement. Tenant shall vacate the Premises upon termination of this Agreement, unless: (i) Landlord and Tenant have signed a new agreement, (ii) mandated by local rent control law, or (iii) Landlord accepts Rent from Tenant (other than past due Rent), in which case a month-to-month tenancy shall be created which either party may terminate pursuant to California Civil Code § 1946.1. Rent shall be at a rate agreed to by Landlord and Tenant, or as allowed by law. All other terms and conditions of this Agreement shall remain in full force and effect.

- 3. RENT:** “Rent” shall mean all monetary obligations of Tenant to Landlord under the terms of this Agreement, except security deposit.
  - A. Tenant agrees to pay \$ \_\_\_\_\_ per month for the term of this Agreement.
  - B. Rent is payable in advance on the **1st (or  \_\_\_\_\_ ) day** of each calendar week, and is delinquent on the next day; or  in full at close of escrow; or
  - C. **PAYMENT:** The Rent shall be paid by  personal check,  money order,  cashier’s check,  through escrow (per escrow instructions), or  other \_\_\_\_\_, to (name) \_\_\_\_\_ (phone) \_\_\_\_\_ at (address) \_\_\_\_\_, (or at any other location subsequently specified by Landlord in writing to Tenant) between the hours of \_\_\_\_\_ and \_\_\_\_\_, on the following days: \_\_\_\_\_. If any payment is returned for non-sufficient funds (“NSF”) or because tenant stops payment, then, after that: (i) Landlord may, in writing, require Tenant to pay Rent in cash for three months and (ii) all future Rent shall be paid by  money order, or  cashier’s check.

**4. SECURITY DEPOSIT:**

- A. Tenant agrees to pay \$ \_\_\_\_\_ as a security deposit. Security deposit will be  transferred to and held by Seller;  held in Seller’s Broker’s trust account; or  held in escrow (per escrow instructions).
- B. (1) If the tenancy is terminated due to the close of escrow by Buyer under the purchase agreement, the full amount of the security deposit, less any deductions below, shall be credited to Buyer’s down payment on the purchase (or, if checked  returned to Buyer from Seller’s proceeds in escrow). If required by lender for closing, Seller shall place the security deposit into escrow prior to the signing of loan documents by Buyer.
  - (2) All or any portion of the security deposit may be used, as reasonably necessary, to: (i) cure Tenant’s default in payment of Rent (which includes Late Charges, NSF fees or other sums due); (ii) repair damage, excluding ordinary wear and tear, caused by Tenant or by a guest or licensee of Tenant; (iii) clean Premises, if necessary, upon termination of the tenancy; and (iv) replace or return personal property or appurtenances. **SECURITY DEPOSIT SHALL NOT BE USED BY TENANT IN LIEU OF PAYMENT OF LAST MONTH’S RENT.** If all or any portion of the security deposit is used during the tenancy, Tenant agrees to reinstate the total security deposit within 5 Days after written notice is delivered to Tenant.
  - (3) Within 21 days after Tenant vacates the Premises, Landlord shall: (i) furnish Tenant an itemized statement indicating the amount of any security deposit received and the basis for its disposition; and (ii) return any remaining portion of the security deposit to Tenant.
- C. **Except when escrow closes, security deposit will not be returned until all Tenants have vacated the Premises. Any security deposit returned by check shall be made out to all Tenants named on this Agreement, or as subsequently modified.**
- D. No interest will be paid on security deposit unless required by local Law.
- E. If the security deposit is held by Seller, Tenant agrees not to hold Broker responsible for its return. If the security deposit is held in Seller’s Broker’s trust account, **and** Broker’s authority is terminated before expiration of this Agreement, **and** security deposit is released to someone other than Tenant, **then** Broker shall notify Tenant, in writing, where and to whom security deposit has been released. Once Tenant has been provided such notice, Tenant agrees not to hold Broker responsible for the security deposit.

**5. MOVE-IN COSTS RECEIVED/DUE:** Move-in funds made payable to \_\_\_\_\_ shall be paid by  personal check,  money order,  cashier’s check, or  through escrow (per escrow instructions).

Category	Total Due	Payment Received	Balance Due	Date Due
Rent from _____ to _____ (date)				
*Security Deposit				
Other _____				
Other _____				
<b>Total</b>				

\*The maximum amount Landlord may receive as security deposit, however designated, cannot exceed two months’ Rent for unfurnished premises, or three months’ Rent for furnished premises.

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IOA REVISED 1/06 (PAGE 1 OF 6) Print Date \_\_\_\_\_

Tenant’s Initials (\_\_\_\_)(\_\_\_\_)  
Landlord’s Initials (\_\_\_\_)(\_\_\_\_)

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



Premises: \_\_\_\_\_ Date: \_\_\_\_\_

**6. LATE CHARGE; RETURNED CHECKS:**

- A. Tenant acknowledges either late payment of Rent or issuance of a returned check may cause Landlord to incur costs and expenses, the exact amounts of which are extremely difficult and impractical to determine. These costs may include, but are not limited to, processing, enforcement and accounting expenses, and late charges imposed on Landlord. If any installment of Rent due from Tenant is not received by Landlord within **5 (or  \_\_\_\_\_) calendar days** after the date due, or if a check is returned, Tenant shall pay to Landlord, respectively, an additional sum of \$ \_\_\_\_\_ or \_\_\_\_\_ % of the Rent due as a Late Charge and \$25.00 as a NSF fee for the first returned check and \$35.00 as a NSF fee for each additional returned check, either or both of which shall be deemed additional Rent.
- B. Landlord and Tenant agree these charges represent a fair and reasonable estimate of the costs Landlord may incur by reason of Tenant's late or NSF payment. Any Late Charge or NSF fee due shall be paid with the current installment of Rent. Landlord's acceptance of any Late Charge or NSF fee shall not constitute a waiver as to any default of Tenant. Landlord's right to collect a Late Charge or NSF fee shall not be deemed an extension of the date Rent is due under paragraph 3 or prevent Landlord from exercising any other rights and remedies under this Agreement and as provided by law.

**7. PARKING: (Check A or B)**

- A. Parking is permitted as follows: \_\_\_\_\_

The right to parking  is  is not included in the Rent charged pursuant to paragraph 3. If not included in the Rent, the parking rental fee shall be an additional \$ \_\_\_\_\_ per month. Parking space(s) are to be used for parking properly licensed and operable motor vehicles, except for trailers, boats, campers, buses or trucks (other than pick-up trucks). Tenant shall park in assigned space(s) only. Parking space(s) are to be kept clean. Vehicles leaking oil, gas or other motor vehicle fluids shall not be parked on the Premises. Mechanical work or storage of inoperable vehicles is not permitted in parking space(s) or elsewhere on the Premises.

OR  B. Parking is not permitted on the Premises.

**8. STORAGE: (Check A or B)**

- A. Storage is permitted as follows: \_\_\_\_\_

The right to storage space  is  is not included in the Rent charged pursuant to paragraph 3. If not included in the Rent, storage space fee shall be an additional \$ \_\_\_\_\_ per month. Tenant shall store only personal property Tenant owns, and shall not store property claimed by another or in which another has any right, title or interest. Tenant shall not store any improperly packaged food or perishable goods, flammable materials, explosives, hazardous waste or other inherently dangerous material, or illegal substances.

OR  B. Storage is not permitted on the Premises.

**9. UTILITIES:** Tenant agrees to pay for all utilities and services, and the following charges: \_\_\_\_\_

except \_\_\_\_\_, which shall be paid for by Landlord. If any utilities are not separately metered, Tenant shall pay Tenant's proportional share, as reasonably determined and directed by Landlord. If utilities are separately metered, Tenant shall place utilities in Tenant's name as of the Commencement Date. Landlord is only responsible for installing and maintaining one usable telephone jack and one telephone line to the Premises. Tenant shall pay any cost for conversion from existing utilities service provider.

**10. CONDITION OF PREMISES:** Tenant has examined Premises, all furniture, furnishings, appliances, landscaping, if any, and fixtures, including smoke detector(s).

**(Check all that apply:)**

- A. Tenant acknowledges these items are clean and in operable condition, with the following exceptions: \_\_\_\_\_
- B. Tenant's acknowledgment of the condition of these items is contained in an attached statement of condition (C.A.R. Form MIMO).
- C. Tenant will provide Landlord a list of items that are damaged or not in operable condition within **3 (or  \_\_\_\_\_) Days** after Commencement Date, not as a contingency of the Agreement but rather as an acknowledgment of the condition of the Premises.
- D. Other: \_\_\_\_\_

**11. MAINTENANCE:**

- A. Tenant shall properly use, operate and safeguard Premises, including if applicable, any landscaping, furniture, furnishings and appliances, and all mechanical, electrical, gas and plumbing fixtures, and keep them and the Premises clean, sanitary and well ventilated. Tenant shall be responsible for checking and maintaining all smoke detectors and any additional phone lines beyond the one line and jack that Landlord shall provide and maintain. Tenant shall immediately notify Landlord, in writing, of any problem, malfunction or damage. Tenant shall be charged for all repairs or replacements caused by Tenant, pets, guests or licensees of Tenant, excluding ordinary wear and tear. Tenant shall be charged for all damage to Premises as a result of failure to report a problem in a timely manner. Tenant shall be charged for repair of drain blockages or stoppages, unless caused by defective plumbing parts or tree roots invading sewer lines.
- B.  Landlord  Tenant shall water the garden, landscaping, trees and shrubs, except: \_\_\_\_\_
- C.  Landlord  Tenant shall maintain the garden, landscaping, trees and shrubs, except: \_\_\_\_\_
- D.  Landlord  Tenant shall maintain \_\_\_\_\_

Tenant's Initials (\_\_\_\_)(\_\_\_\_)  
Landlord's Initials (\_\_\_\_)(\_\_\_\_)



Reviewed by \_\_\_\_\_ Date \_\_\_\_\_

Premises: \_\_\_\_\_ Date: \_\_\_\_\_

- E. Tenant's failure to maintain any item for which Tenant is responsible shall give Landlord the right to hire someone to perform such maintenance and charge Tenant to cover the cost of such maintenance.
- F. The following items of personal property are included in the Premises without warranty and Landlord will not maintain, repair or replace them: \_\_\_\_\_
- 12. NEIGHBORHOOD CONDITIONS:** Tenant is advised to satisfy him or herself as to neighborhood or area conditions, including schools, proximity and adequacy of law enforcement, crime statistics, proximity of registered felons or offenders, fire protection, other governmental services, availability, adequacy and cost of any speed-wired, wireless internet connections or other telecommunications or other technology services and installations, proximity to commercial, industrial or agricultural activities, existing and proposed transportation, construction and development that may affect noise, view, or traffic, airport noise, noise or odor from any source, wild and domestic animals, other nuisances, hazards, or circumstances, cemeteries, facilities and condition of common areas, conditions and influences of significance to certain cultures and/or religions, and personal needs, requirements and preferences of Tenant.
- 13. PETS:** Unless otherwise provided in California Civil Code § 54.2, no animal or pet shall be kept on or about the Premises without Landlord's prior written consent, except: \_\_\_\_\_
- 14. RULES; REGULATIONS:**
  - A. Tenant agrees to comply with all Landlord rules and regulations that are at any time posted on the Premises or delivered to Tenant. Tenant shall not, and shall ensure that guests and licensees of Tenant shall not, disturb, annoy, endanger or interfere with other tenants of the building or neighbors, or use the Premises for any unlawful purposes, including, but not limited to, using, manufacturing, selling, storing, or transporting illicit drugs or other contraband, or violate any law or ordinance, or commit a waste or nuisance on or about the Premises.
  - B. (If applicable, check one):
    - (1) Landlord shall provide Tenant with a copy of the rules and regulations within \_\_\_\_\_ Days or \_\_\_\_\_.
    - (2) Tenant has been provided with, and acknowledges receipt of, a copy of the rules and regulations.
- 15. (If checked) CONDOMINIUM; PLANNED UNIT DEVELOPMENT:**
  - A. The Premises is a unit in a condominium, planned unit, development or other common interest subdivision governed by a homeowners' association ("HOA"). The name of the HOA is \_\_\_\_\_  
Tenant agrees to comply with all HOA covenants, conditions and restrictions, bylaws, rules and regulations and decisions. Tenant shall reimburse Landlord for any fines or charges imposed by HOA or other authorities, due to any violation by Tenant, or the guests or licensees of Tenant.
  - B. (Check one):
    - (1) Landlord shall provide Tenant with a copy of the HOA rules and regulations within \_\_\_\_\_ Days or \_\_\_\_\_.
    - (2) Tenant has been provided with, and acknowledges receipt of, a copy of the HOA rules and regulations.
- 16. ALTERATIONS; REPAIRS:** Unless otherwise specified by law or paragraph 28C or pursuant to the purchase agreement, without Landlord's prior written consent: (i) Tenant shall not make any repairs, alterations or improvements in or about the Premises including: painting, wallpapering, adding or changing locks, installing antenna or satellite dish(es), placing signs, displays or exhibits, or using screws, fastening devices, large nails or adhesive materials; (ii) Landlord shall not be responsible for the costs of repairs, alterations or improvements made by Tenant; (iii) Tenant shall not deduct from Rent the costs of any repairs, alterations or improvements; and (iv) any deduction made by Tenant shall be considered unpaid Rent. Tenant shall immediately notify Landlord if Tenant, individually or by or through others, commences any work on the Premises. Tenant shall be charged for any costs Landlord incurs to post and record a Notice of Non-Responsibility for any such work. Upon completion of any such work, Tenant shall notify Landlord. Tenant shall be charged for any costs Landlord incurs to post and record a Notice of Completion relating to any such work. Tenant agrees to indemnify, defend and hold harmless Landlord for any mechanic's lien attaching to the Premises or other claim resulting from any work ordered by Tenant.
- 17. KEYS; LOCKS:**
  - A. Tenant acknowledges receipt of (or Tenant will receive  prior to the Commencement Date, or  \_\_\_\_\_):
 

<input type="checkbox"/> _____ key(s) to Premises,	<input type="checkbox"/> _____ remote control device(s) for garage door/gate opener(s),
<input type="checkbox"/> _____ key(s) to mailbox,	<input type="checkbox"/> _____
<input type="checkbox"/> _____ key(s) to common area(s),	<input type="checkbox"/> _____
  - B. Tenant acknowledges that locks to the Premises  have,  have not, been re-keyed.
  - C. If Tenant re-keys existing locks or opening devices, Tenant shall immediately deliver copies of all keys to Landlord. Tenant shall pay all costs and charges related to loss of any keys or opening devices. Tenant may not remove locks, even if installed by Tenant.
- 18. ENTRY:**
  - A. Tenant shall make Premises available to Landlord or Landlord's representative for the purpose of entering to make necessary or agreed repairs, decorations, alterations, or improvements, or to supply necessary or agreed services, or to show Premises to prospective or actual purchasers, tenants, mortgagees, lenders, appraisers, or contractors.
  - B. Landlord and Tenant agree that 24-hour written notice shall be reasonable and sufficient notice, except as follows. 48-hour written notice is required to conduct an inspection of the Premises prior to the Tenant moving out, unless the Tenant waives the right to such notice. Notice may be given orally to show the Premises to actual or prospective purchasers provided Tenant has been notified in writing within 120 Days preceding the oral notice that the Premises are for sale and that oral notice may be given to show the Premises. No notice is required to (i) enter in case of an emergency; (ii) if the Tenant is present and consents at the time of entry or (iii) the Tenant has abandoned or surrendered the Premises. No written notice is required if Landlord and Tenant orally agree to an entry for agreed services or repairs if the date and time of entry are within one week of the oral agreement.

Tenant's Initials (\_\_\_\_)(\_\_\_\_)  
Landlord's Initials (\_\_\_\_)(\_\_\_\_)



Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



Premises: \_\_\_\_\_ Date: \_\_\_\_\_

- C.  (If checked) Tenant authorizes the use of a keysafe/lockbox to allow entry into the Premises and agrees to sign a keysafe/lockbox addendum (C.A.R. Form KLA).
19. **SIGNS:** Tenant authorizes Landlord to place FOR SALE/LEASE signs on the Premises.
20. **ASSIGNMENT; SUBLETTING:** Tenant shall not sublet all or any part of Premises, or assign or transfer this Agreement or any interest herein, without Landlord's prior written consent. Unless such consent is obtained, any assignment, transfer or subletting of Premises or this Agreement or tenancy, by voluntary act of Tenant, operation of law or otherwise, shall at the option of Landlord, terminate the Agreement. Any proposed assignee, transferee or sublessee shall submit to Landlord an application and credit information for Landlord's approval and, if approved, sign a separate written agreement with Landlord and Tenant. Landlord's consent to any one assignment, transfer or sublease, shall not be construed as consent to any subsequent assignment, transfer or sublease and does not release Tenant of Tenant's obligations under this Agreement.
21. **JOINT AND INDIVIDUAL OBLIGATIONS:** If there is more than one Tenant, each one shall be individually and completely responsible for the performance of all obligations of Tenant under this Agreement, jointly with every other Tenant, and individually, whether or not in possession.
22.  **LEAD-BASED PAINT (if checked):** Premises was constructed prior to 1978. In accordance with federal law, Landlord gives and Tenant acknowledges receipt of the disclosures on the attached form (C.A.R. Form FLD) and a federally approved lead pamphlet.
23.  **MILITARY ORDNANCE DISCLOSURE:** (If applicable and known to Landlord) Premises is located within one mile of an area once used for military training, and may contain potentially explosive munitions.
24.  **PERIODIC PEST CONTROL:** Landlord has entered into a contract for periodic pest control treatment of the Premises and shall give Tenant a copy of the notice originally given to Landlord by the pest control company.
25.  **METHAMPHETAMINE CONTAMINATION:** Prior to signing this Agreement, Landlord has given Tenant a notice that a health official has issued an order prohibiting occupancy of the property because of methamphetamine contamination. A copy of the notice and order are attached.
26. **DATABASE DISCLOSURE:** Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides. (Neither Landlord nor Brokers, if any, are required to check this website. If Tenant wants further information, Tenant should obtain information directly from this website.)
27. **POSSESSION:**
- A. Tenant is not in possession of the premises. If Landlord is unable to deliver possession of Premises on Commencement Date, such Date shall be extended to the date on which possession is made available to Tenant. If Landlord is unable to deliver possession within 5 (or  \_\_\_\_\_) calendar days after agreed Commencement Date, Tenant may terminate this Agreement by giving written notice to Landlord, and shall be refunded all Rent and security deposit paid. Possession is deemed terminated when Tenant has returned all keys to the Premises to Landlord.
- B.  Tenant is already in possession of the Premises.
28. **TENANT'S OBLIGATIONS UPON VACATING PREMISES:** If the tenancy is terminated due to any reason other than close of escrow by Buyer under the purchase agreement, upon termination of this Agreement:
- A. Tenant shall: (i) give Landlord all copies of all keys or opening devices to Premises, including any common areas; (ii) vacate and surrender Premises to Landlord, empty of all persons; (iii) vacate any/all parking and/or storage space; (iv) clean and deliver Premises, as specified in paragraph C below, to Landlord in the same condition as referenced in paragraph 10; (v) remove all debris; (vi) give written notice to Landlord of Tenant's forwarding address; and (vii) \_\_\_\_\_.
- B. All alterations/improvements made by or caused to be made by Tenant, with or without Landlord's consent, become the property of Landlord upon termination. Landlord may charge Tenant for restoration of the Premises to the condition it was in prior to any alterations/improvements.
- C. **Right to Pre-Move-Out Inspection and Repairs as follows:** (i) After giving or receiving notice of termination of a tenancy (C.A.R. Form NTT), or before the end of a lease, Tenant has the right to request that an inspection of the Premises take place prior to termination of the lease or rental (C.A.R. Form NRI). If Tenant requests such an inspection, Tenant shall be given an opportunity to remedy identified deficiencies prior to termination, consistent with the terms of this Agreement. (ii) Any repairs or alterations made to the Premises as a result of this inspection (collectively, "Repairs") shall be made at Tenant's expense. Repairs may be performed by Tenant or through others, who have adequate insurance and licenses and are approved by Landlord. The work shall comply with applicable law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. It is understood that exact restoration of appearance or cosmetic items following all Repairs may not be possible. (iii) Tenant shall: (a) obtain receipts for Repairs performed by others; (b) prepare a written statement indicating the Repairs performed by Tenant and the date of such Repairs; and (c) provide copies of receipts and statements to Landlord prior to termination.
29. **BREACH OF CONTRACT; EARLY TERMINATION:** In addition to any obligations established by paragraph 27, in event of termination by Tenant prior to completion of the original term of the Agreement, Tenant shall also be responsible for lost Rent, rental commissions, advertising expenses and painting costs necessary to ready Premises for re-rental. Landlord may withhold any such amounts from Tenant's security deposit.

Tenant's Initials (\_\_\_\_)(\_\_\_\_)

Landlord's Initials (\_\_\_\_)(\_\_\_\_)

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



Premises: \_\_\_\_\_ Date: \_\_\_\_\_

- 30. **TEMPORARY RELOCATION:** Subject to local law, Tenant agrees, upon demand of Landlord, to temporarily vacate Premises for a reasonable period, to allow for fumigation (or other methods) to control wood destroying pests or organisms, or other repairs to Premises. Tenant agrees to comply with all instructions and requirements necessary to prepare Premises to accommodate pest control, fumigation or other work, including bagging or storage of food and medicine, and removal of perishables and valuables. Tenant shall only be entitled to a credit of Rent equal to the per diem Rent for the period of time Tenant is required to vacate Premises.
- 31. **DAMAGE TO PREMISES:** If, by no fault of Tenant, Premises are totally or partially damaged or destroyed by fire, earthquake, accident or other casualty that render Premises totally or partially uninhabitable, either Landlord or Tenant may terminate this Agreement by giving the other written notice. Rent shall be abated as of the date Premises become totally or partially uninhabitable. The abated amount shall be the current monthly Rent prorated on a 30-day period. If this Agreement is not terminated, Landlord shall promptly repair the damage, and Rent shall be reduced based on the extent to which the damage interferes with Tenant's reasonable use of Premises. If damage occurs as a result of an act of Tenant or Tenant's guests, only Landlord shall have the right of termination, and no reduction in Rent shall be made.
- 32. **INSURANCE:** Tenant's or guest's personal property and vehicles are not insured by Landlord, manager or, if applicable, HOA, against loss or damage due to fire, theft, vandalism, rain, water, criminal or negligent acts of others, or any other cause. **Tenant is advised to carry Tenant's own insurance (renter's insurance) to protect Tenant from any such loss or damage.** Tenant shall comply with any requirement imposed on Tenant by Landlord's insurer to avoid: (i) an increase in Landlord's insurance premium (or Tenant shall pay for the increase in premium); or (ii) loss of insurance.
- 33. **WATERBEDS:** Tenant shall not use or have waterbeds on the Premises unless: (i) Tenant obtains a valid waterbed insurance policy; (ii) Tenant increases the security deposit in an amount equal to one-half of one month's Rent; and (iii) the bed conforms to the floor load capacity of Premises.
- 34. **WAIVER:** The waiver of any breach shall not be construed as a continuing waiver of the same or any subsequent breach.
- 35. **NOTICE:** Notices may be served at the following address, or at any other location subsequently designated:  
Landlord: \_\_\_\_\_ Tenant: \_\_\_\_\_

36. **TENANT ESTOPPEL CERTIFICATE:** Tenant shall execute and return a tenant estoppel certificate delivered to Tenant by Landlord or Landlord's agent within 3 Days after its receipt. Failure to comply with this requirement shall be deemed Tenant's acknowledgment that the tenant estoppel certificate is true and correct, and may be relied upon by a lender or purchaser.

37. **TENANT REPRESENTATIONS; CREDIT:** Tenant warrants that all statements in Tenant's rental application are accurate. Tenant authorizes Landlord and Broker(s) to obtain Tenant's credit report periodically during the tenancy in connection with modification or enforcement of this Agreement. Landlord may cancel this Agreement: (i) before occupancy begins; (ii) upon disapproval of the credit report(s); or (iii) at any time, upon discovering that information in Tenant's application is false. A negative credit report reflecting on Tenant's record may be submitted to a credit reporting agency if Tenant fails to fulfill the terms of payment and other obligations under this Agreement.

- 38. **MEDIATION:**
  - A. Consistent with paragraphs B and C below, Landlord and Tenant agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to court action. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action.
  - B. The following matters are excluded from mediation: (i) an unlawful detainer action; (ii) the filing or enforcement of a mechanic's lien; and (iii) any matter within the jurisdiction of a probate, small claims or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the mediation provision.
  - C. Landlord and Tenant agree to mediate disputes or claims involving Listing Agent, Leasing Agent or property manager ("Broker"), provided Broker shall have agreed to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to such Broker. Any election by Broker to participate in mediation shall not result in Broker being deemed a party to this Agreement.

39. **ATTORNEY FEES:** In any action or proceeding arising out of the Agreement, the prevailing party between Landlord and Tenant shall be entitled to reasonable attorney fees and costs, except as provided in paragraph 38A.

40. **C.A.R. FORM:** C.A.R. Form means the specific form referenced or another comparable from agreed to by the parties.

41. **OTHER TERMS AND CONDITIONS; SUPPLEMENTS:**  Interpreter/Translator Agreement (C.A.R. Form ITA);  Keysafe/Lockbox Addendum (C.A.R. Form KLA);  Lead-Based Paint and Lead-Based Paint Hazards Disclosure (C.A.R. Form FLD)

The following ATTACHED supplements are incorporated into this Agreement: \_\_\_\_\_

42. **TIME OF ESSENCE; ENTIRE AGREEMENT:** Time is of the essence. All understandings between the parties are incorporated in this Agreement. Its terms are intended by the parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed except in writing. This Agreement is subject to California landlord-tenant law and shall incorporate all changes required by amendment or successors to such law. The Agreement and any supplement, addendum or modification, including any copy, may be signed in two or more counterparts, all of which shall constitute one and the same writing.

Tenant's Initials (\_\_\_\_)(\_\_\_\_)

Landlord's Initials (\_\_\_\_)(\_\_\_\_)

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



Premises: \_\_\_\_\_ Date: \_\_\_\_\_

**43. AGENCY:**

**A. CONFIRMATION:** The following agency relationship(s) are hereby confirmed for this transaction:

Listing Agent: (Agent representing the Seller in the purchase agreement)  
(Print firm name) \_\_\_\_\_ is

the agent of (check one):  the Landlord exclusively; or  both the Landlord and Tenant.

Selling Agent: (Agent representing the Buyer in the purchase agreement)  
(Print firm name) \_\_\_\_\_ (if

not same as Listing Agent) is the agent of (check one):  the Tenant exclusively; or  the Landlord exclusively; or  both the Tenant and Landlord.

**B. DISCLOSURE:**  (If checked): The term of this lease exceeds one year. A disclosure regarding real estate agency relationships (C.A.R. Form AD) has been provided to Landlord and Tenant, who each acknowledge its receipt.

**44.  INTERPRETER/TRANSLATOR:** The terms of this Agreement have been interpreted for Tenant into the following language: \_\_\_\_\_ Landlord and Tenant acknowledge receipt of the attached interpreter/translator agreement, (C.A.R. Form ITA).

**45. FOREIGN LANGUAGE NEGOTIATION:** If this Agreement has been negotiated by Landlord and Tenant primarily in Spanish, Chinese, Tagalog, Korean, Vietnamese or pursuant to the California Civil Code, Tenant shall be provided a translation of this Agreement in the language used for the negotiation.

**45. RECEIPT:** If specified in paragraph 5, Landlord or Broker, acknowledges receipt of move-in funds.

Landlord and Tenant acknowledge and agree Brokers: **(a)** do not guarantee the condition of the Premises; **(b)** cannot verify representations made by others; **(c)** cannot provide legal or tax advice; **(d)** will not provide other advice or information that exceeds the knowledge, education or experience required to obtain a real estate license. Furthermore, Brokers: **(e)** do not decide what rental rate a Tenant should pay or Landlord should accept; and **(f)** do not decide upon the length or other terms of tenancy. Landlord and Tenant agree they will seek legal, tax, insurance and other desired assistance from appropriate professionals.

Tenant/Buyer \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Tenant/Buyer \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Landlord /Seller \_\_\_\_\_ Date \_\_\_\_\_

Landlord /Seller \_\_\_\_\_ Date \_\_\_\_\_

Landlord Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

**REAL ESTATE BROKERS:**  
**A.** Brokers are not a party to the Agreement between Landlord and Tenant.  
**B.** Agency relationships are confirmed as above.

Real Estate Broker \_\_\_\_\_ DRE Lic. # \_\_\_\_\_  
(Agent representing the Buyer in the purchase agreement)

By (Agent) \_\_\_\_\_ DRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Real Estate Broker \_\_\_\_\_ DRE Lic. # \_\_\_\_\_  
(Agent representing the Seller in the purchase agreement)

By (Agent) \_\_\_\_\_ DRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_

## TENANT IN POSSESSION ADDENDUM (TIP)

The default language in the RPA, paragraph 9D, provides that the seller shall deliver the property vacant, even if the property is tenant-occupied on the date the contract is entered into. If a tenant has a fixed term lease or the rental is subject to local rent and eviction control restrictions, it may not be legally or practicably possible to deliver the property vacant. In such cases, the seller needs to either provide for an extended escrow period to give the seller time to remove the tenant or sell the property subject to the tenant's right to continued occupancy. Form TIP addresses the latter situation and needs to be added if the optional paragraph in 9D is checked. In such circumstances, the buyer will become a landlord upon close of escrow. The parties may consider using the Residential Income Property Purchase Agreement (C.A.R. form RIPA) instead of the RPA.

Since the tenant will be remaining, the buyer will need information to figure out if the transaction makes sense. Accordingly, under the terms of the TIP, the seller is obligated to give the buyer copies of all rental documents within seven (7) calendar days (or date specified) after the acceptance. The seller must also notify the buyer if, during escrow, the seller changes any terms of the existing agreement with the tenant.

The buyer has the right to review the rental documents provided, and any proposed or actual changes made during escrow as a contingency of the RPA. Within 5 calendar days of receiving the documents or notification of actual or proposed changes, the buyer must remove the contingency associated with the information or cancel the underlying purchase agreement.

If the transaction continues, any unused tenant deposits must be transferred to the buyer. Further, the seller makes no representation regarding rent or occupancy control. The Buyer Investigation Advisory (C.A.R. form BIA) and Statewide Buyer and Seller Advisory (C.A.R. form SBSA) advise the buyer to investigate whether such controls exist and their effect on buyer upon ownership.



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**TENANT IN POSSESSION ADDENDUM**  
(C.A.R. Form TIP, 11/12)

This is an addendum to the  California Residential Purchase Agreement,  Counter Offer No. \_\_\_\_\_,  Other \_\_\_\_\_  
on property known as \_\_\_\_\_, ("Agreement"), dated \_\_\_\_\_ ("Property"),  
between \_\_\_\_\_ ("Buyer"),  
and \_\_\_\_\_ ("Seller").

1. Buyer shall take Property subject to the rights of existing tenants. Seller shall transfer to Buyer, through escrow, (i) all unused tenant deposits, if any, and (ii) all prepaid but unearned rents, if any. No warranty is made concerning compliance with governmental restrictions, if any, limiting the amount of rent that can lawfully be charged, and/or the maximum number of persons who can lawfully occupy the Property, unless otherwise agreed in writing.
2. Seller shall, within **7** (or  \_\_\_\_\_) **Days** After Acceptance, deliver to Buyer Copies of all: estoppel certificates sent to and received back from tenants; leases; rental agreements; and current income and expense statements ("Rental Documents").
3. Seller shall give Buyer written notice of any changes to existing leases or tenancies or new agreements to lease or rent ("Proposed Changes") at least **7** (or  \_\_\_\_\_) **Days** prior to any Proposed Changes.
4. Buyer's approval of the Rental Documents and Proposed Changes is a contingency of the Agreement. Buyer shall, within **5** (or  \_\_\_\_\_) **Days** After receipt of Rental Documents or Proposed Changes remove the applicable contingency or cancel the Agreement.

By signing below Buyer and Seller acknowledge that each has read, understands, has received a copy of and agrees to the terms of this Tenant In Possession Addendum.

Date \_\_\_\_\_ Date \_\_\_\_\_  
Buyer \_\_\_\_\_ Seller \_\_\_\_\_  
Buyer \_\_\_\_\_ Seller \_\_\_\_\_

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TIP 11/12 (PAGE 1 OF 1)

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



## **LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS DISCLOSURE ACKNOWLEDGMENT AND ADDENDUM FOR PRE-1978 HOUSING, SALES, LEASES, OR RENTALS (FLD)**

Under federal law, a seller of residential real property that was built prior to 1978 must disclose to the purchaser the existence of lead-based paint or hazards that the seller is actually aware of, and any known reports or records concerning lead-based paint or hazards. The buyer must be given a 10 day period to inspect for lead-based paint or hazards but that time period may be modified by mutual agreement of the parties. The default period for the seller to provide disclosures to the buyer is 7 days. The default period for the buyer to conduct inspections (which include the right to inspect for lead paint and hazards) pursuant to paragraph 14 of the RPA is 17 days. Thus, per the preprinted terms of the purchase agreement, the 10 day opportunity to inspect for lead-based paint and lead-based paint hazards is contractually satisfied. If that timing is changed, even to an amount less than 10 days, then the statute is still satisfied since there is mutual agreement to a different inspection period. C.A.R. Form FLD, once completed, satisfies the federal requirement.

The form is divided into 5 separate sections. The first, which is not numbered, gives the statutorily required warning statement about the dangers of lead-based paint, the right to conduct inspections and the obligation of the seller to deliver reports and disclose known hazards relating to lead-based paint. The first section contains a similar warning directed to landlords and tenants, the reason being that the federal law applies not just to sales but also leases and rentals. The third paragraph in the first section informs the reader that repair or renovation of lead-based paint hazards can only be done by a person with appropriate training.

The numbered paragraph 1 is for sellers to make disclosures and affirm that the buyer has been provided with booklets identifying the problems with lead-based paint. Numbered paragraph 2 is where the listing agent confirms that the seller has been advised of the federal obligations and acknowledges review of any seller disclosures. Numbered paragraph 3 is where the buyer acknowledges receiving the disclosures and booklets and the right to inspect. Numbered paragraph 4 is for the buyer's agent to affirm that the seller has been informed of the federal obligations and acknowledge review of any disclosures met.



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**LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS  
DISCLOSURE, ACKNOWLEDGMENT AND ADDENDUM  
For Pre-1978 Housing Sales, Leases, or Rentals**

(C.A.R. Form FLD, Revised 11/10)

The following terms and conditions are hereby incorporated in and made a part of the:  California Residential Purchase Agreement,  Residential Lease or Month-to-Month Rental Agreement, or  Other: \_\_\_\_\_

dated \_\_\_\_\_, on property known as: \_\_\_\_\_ ("Property") in which \_\_\_\_\_ is referred to as Buyer or Tenant and \_\_\_\_\_ is referred to as Seller or Landlord.

**LEAD WARNING STATEMENT (SALE OR PURCHASE)** Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligent quotient, behavioral problems and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

**LEAD WARNING STATEMENT (LEASE OR RENTAL)** Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive federally approved pamphlet on lead poisoning prevention.

**EPA'S LEAD-BASED PAINT RENOVATION, REPAIR AND PAINTING RULE:** The new rule requires that contractors and maintenance professionals working in pre-1978 housing, child care facilities, and schools with lead-based paint be certified; that their employees be trained; and that they follow protective work practice standards. The rule applies to renovation, repair, or painting activities affecting more than six square feet of lead-based paint in a room or more than 20 square feet of lead-based paint on the exterior. Enforcement of the rule begins October 1, 2010. See the EPA website at [www.epa.gov/lead](http://www.epa.gov/lead) for more information.

**1. SELLER'S OR LANDLORD'S DISCLOSURE**

I (we) have no knowledge of lead-based paint and/or lead-based paint hazards in the housing other than the following:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I (we) have no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing other than the following, which, previously or as an attachment to this addendum, have been provided to Buyer or Tenant:  
\_\_\_\_\_  
\_\_\_\_\_

I (we), previously or as an attachment to this addendum, have provided Buyer or Tenant with the pamphlet "Protect Your Family From Lead In Your Home" or an equivalent pamphlet approved for use in the State such as "The Homeowner's Guide to Environmental Hazards and Earthquake Safety."

**For Sales Transactions Only:** Buyer has 10 days, unless otherwise agreed in the real estate purchase contract, to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

**I (we) have reviewed the information above and certify, to the best of my (our) knowledge, that the information provided is true and correct.**

\_\_\_\_\_  
Seller or Landlord Date

\_\_\_\_\_  
Seller or Landlord Date

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**FLD REVISED 11/10 (PAGE 1 OF 2) Print Date**

Buyer's/Tenant's Initials (\_\_\_\_)(\_\_\_\_)

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



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

**2. LISTING AGENT'S ACKNOWLEDGMENT**

Agent has informed Seller or Landlord of Seller's or Landlord's obligations under §42 U.S.C. 4852d and is aware of Agent's responsibility to ensure compliance.

**I have reviewed the information above and certify, to the best of my knowledge, that the information provided is true and correct.**

\_\_\_\_\_  
(Please Print) Agent (Broker representing Seller or Landlord ) By \_\_\_\_\_ Associate-Licensee or Broker Signature Date

**3. BUYER'S OR TENANT'S ACKNOWLEDGMENT**

I (we) have received copies of all information listed, if any, in 1 above and the pamphlet "Protect Your Family From Lead In Your Home" or an equivalent pamphlet approved for use in the State such as "The Homeowner's Guide to Environmental Hazards and Earthquake Safety." **If delivery of any of the disclosures or pamphlet referenced in paragraph 1 above occurs after Acceptance of an offer to purchase, Buyer has a right to cancel pursuant to the purchase contract. If you wish to cancel, you must act within the prescribed period.**

For Sales Transactions Only: Buyer acknowledges the right for 10 days, unless otherwise agreed in the real estate purchase contract, to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; OR, (if checked)  Buyer waives the right to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

**I (we) have reviewed the information above and certify, to the best of my (our) knowledge, that the information provided is true and correct.**

\_\_\_\_\_  
Buyer or Tenant Date Buyer or Tenant Date

**4. COOPERATING AGENT'S ACKNOWLEDGMENT**

Agent has informed Seller or Landlord, through the Listing Agent if the property is listed, of Seller's or Landlord's obligations under §42 U.S.C. 4852d and is aware of Agent's responsibility to ensure compliance.

**I have reviewed the information above and certify, to the best of my knowledge, that the information provided is true and correct.**

\_\_\_\_\_  
Agent (Broker obtaining the Offer) By \_\_\_\_\_ Associate-Licensee or Broker Signature Date

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**FLD REVISED 11/10 (PAGE 2 OF 2)**

**LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS DISCLOSURE (FLD PAGE 2 OF 2)**



## REAL ESTATE TRANSFER DISCLOSURE STATEMENT (TDS)

Since 1986, California law (Civil Code section 1102 et seq) has required sellers of residential property containing one-to-four units to complete a document disclosing information about the property. In section IIA of the TDS the seller discloses if the property has certain items such as air conditioning, septic system, window security bars and intercom. In IIB the seller identifies any known deficiencies in the major systems on the property. In IIC the seller identifies known issues affecting 16 different areas, such as lawsuits, neighborhood noise problems and room additions. The TDS asks for the seller's awareness, not an affirmative statement regarding the true condition of the property or its components. If the seller does not know of an identified problem, component or factor identified on the TDS, the seller should respond with a "no" answer. In Section IID the seller certifies that at close of escrow the property will be in compliance with California law by having operable smoke detectors and also having the hot water heater properly anchored, braced or strapped. With few exceptions, the seller must issue this certification regardless of who pays to have the smoke alarms installed or the water heater properly attached.

Sections III and IV of the TDS are for the agents to complete by documenting the results of their visual inspection of the property. Rather than documenting the results of the broker's inspection on the four lines provided in the TDS form, a box can be checked on that form indicating the disclosure obligation will be met by attaching another C.A.R. form, the Agent Visual Inspection Disclosure (C.A.R. form AVID).

In section V, the buyer signs acknowledging receipt of the TDS. Both statutorily and contractually, if the TDS is given after an offer has been made, the buyer has either a 3 or 5 day right of rescission (depending on how the disclosure was delivered). It is unclear under the statute if the rescission right is triggered by the seller disclosures only or if the agent disclosures must also be met. The RPA defines a completed TDS as one that has been completed by both the seller and the listing broker, if any. In the RPA, paragraph 10A requires the buyer to return the signed TDS to the seller at the same time as the contingencies are required to be removed. Since both the law and the RPA give the buyer a right to cancel the contract within a set period of time after receipt, the seller wants to receive back the signed TDS so that the seller will know how much longer the buyer retains the right of cancellation. If the buyer does not do so, the seller may cancel the agreement (see paragraph 14C(2) of the RPA for further information).



CALIFORNIA ASSOCIATION OF REALTORS®

REAL ESTATE TRANSFER DISCLOSURE STATEMENT (CALIFORNIA CIVIL CODE §1102, ET SEQ.) (C.A.R. Form TDS, Revised 4/14)

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF \_\_\_\_\_ DESCRIBED AS \_\_\_\_\_, COUNTY OF \_\_\_\_\_, STATE OF CALIFORNIA,

THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH SECTION 1102 OF THE CIVIL CODE AS OF (date) \_\_\_\_\_. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I. COORDINATION WITH OTHER DISCLOSURE FORMS

This Real Estate Transfer Disclosure Statement is made pursuant to Section 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zone and purchase-money liens on residential property).

Substituted Disclosures: The following disclosures and other disclosures required by law, including the Natural Hazard Disclosure Report/Statement that may include airport annoyances, earthquake, fire, flood, or special assessment information, have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same:

- Inspection reports completed pursuant to the contract of sale or receipt for deposit.
Additional inspection reports or disclosures:

II. SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller is or is not occupying the property.

A. The subject property has the items checked below:\*

- Range, Oven, Microwave, Dishwasher, Trash Compactor, Garbage Disposal, Washer/Dryer Hookups, Rain Gutters, Burglar Alarms, Carbon Monoxide Device(s), Smoke Detector(s), Fire Alarm, TV Antenna, Satellite Dish, Intercom, Central Heating, Central Air Conditioning, Evaporator Cooler(s), Wall/Window Air Conditioning, Sprinklers, Public Sewer System, Septic Tank, Sump Pump, Water Softener, Patio/Decking, Built-in Barbecue, Gazebo, Security Gate(s), Garage: Attached, Not Attached, Carport, Automatic Garage Door Opener(s), Number Remote Controls, Sauna, Hot Tub/Spa, Locking Safety Cover, Pool, Child Resistant Barrier, Pool/Spa Heater: Gas, Solar, Electric, Water Heater: Gas, Solar, Electric, Water Supply: City, Well, Private Utility or Other, Gas Supply: Utility, Bottled (Tank), Window Screens, Window Security Bars, Quick Release Mechanism on Bedroom Windows, Water-Conserving Plumbing Fixtures

Exhaust Fan(s) in \_\_\_\_\_ 220 Volt Wiring in \_\_\_\_\_ Fireplace(s) in \_\_\_\_\_
Gas Starter \_\_\_\_\_ Roof(s): Type: \_\_\_\_\_ Age: \_\_\_\_\_ (approx.)
Other: \_\_\_\_\_

Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? Yes No. If yes, then describe. (Attach additional sheets if necessary):

(\*see note on page 2)

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)

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TDS REVISED 4/14 (PAGE 1 OF 3) Print Date

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



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

B. Are you (Seller) aware of any significant defects/malfunctions in any of the following?  Yes  No. If yes, check appropriate space(s) below.

- Interior Walls  Ceilings  Floors  Exterior Walls  Insulation  Roof(s)  Windows  Doors  Foundation  Slab(s)
- Driveways  Sidewalks  Walls/Fences  Electrical Systems  Plumbing/Sewers/Septics  Other Structural Components

(Describe: \_\_\_\_\_)

If any of the above is checked, explain. (Attach additional sheets if necessary.): \_\_\_\_\_

\*Installation of a listed appliance, device, or amenity is not a precondition of sale or transfer of the dwelling. The carbon monoxide device, garage door opener, or child-resistant pool barrier may not be in compliance with the safety standards relating to, respectively, carbon monoxide device standards of Chapter 8 (commencing with Section 13260) of Part 2 of Division 12 of, automatic reversing device standards of Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of, or the pool safety standards of Article 2.5 (commencing with Section 115920) of Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code. Window security bars may not have quick-release mechanisms in compliance with the 1995 edition of the California Building Standards Code. Section 1101.4 of the Civil Code requires all single-family residences built on or before January 1, 1994, to be equipped with water-conserving plumbing fixtures after January 1, 2017. Additionally, on and after January 1, 2014, a single-family residence built on or before January 1, 1994, that is altered or improved is required to be equipped with water-conserving plumbing fixtures as a condition of final approval. Fixtures in this dwelling may not comply with section 1101.4 of the Civil Code.

C. Are you (Seller) aware of any of the following:

1. Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, mold, fuel or chemical storage tanks, and contaminated soil or water on the subject property .....  Yes  No
2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property .....  Yes  No
3. Any encroachments, easements or similar matters that may affect your interest in the subject property .....  Yes  No
4. Room additions, structural modifications, or other alterations or repairs made without necessary permits .....  Yes  No
5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes .....  Yes  No
6. Fill (compacted or otherwise) on the property or any portion thereof .....  Yes  No
7. Any settling from any cause, or slippage, sliding, or other soil problems .....  Yes  No
8. Flooding, drainage or grading problems .....  Yes  No
9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides .....  Yes  No
10. Any zoning violations, nonconforming uses, violations of "setback" requirements .....  Yes  No
11. Neighborhood noise problems or other nuisances .....  Yes  No
12. CC&R's or other deed restrictions or obligations .....  Yes  No
13. Homeowners' Association which has any authority over the subject property .....  Yes  No
14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others) .....  Yes  No
15. Any notices of abatement or citations against the property .....  Yes  No
16. Any lawsuits by or against the Seller threatening to or affecting this real property, claims for damages by the Seller pursuant to Section 910 or 914 threatening to or affecting this real property, claims for breach of warranty pursuant to Section 900 threatening to or affecting this real property, or claims for breach of an enhanced protection agreement pursuant to Section 903 threatening to or affecting this real property, including any lawsuits or claims for damages pursuant to Section 910 or 914 alleging a defect or deficiency in this real property or "common areas" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others) .....  Yes  No

If the answer to any of these is yes, explain. (Attach additional sheets if necessary.): \_\_\_\_\_

- D. 1. The Seller certifies that the property, as of the close of escrow, will be in compliance with Section 13113.8 of the Health and Safety Code by having operable smoke detector(s) which are approved, listed, and installed in accordance with the State Fire Marshal's regulations and applicable local standards.
2. The Seller certifies that the property, as of the close of escrow, will be in compliance with Section 19211 of the Health and Safety Code by having the water heater tank(s) braced, anchored, or strapped in place in accordance with applicable law.

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)



TDS REVISED 4/14 (PAGE 2 OF 3)

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_

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

**Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.**

Seller \_\_\_\_\_ Date \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_

**III. AGENT'S INSPECTION DISCLOSURE**

(To be completed only if the Seller is represented by an agent in this transaction.)

**THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:**

- See attached Agent Visual Inspection Disclosure (AVID Form)
- Agent notes no items for disclosure.
- Agent notes the following items: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Agent (Broker Representing Seller) \_\_\_\_\_ By \_\_\_\_\_ Date \_\_\_\_\_  
(Please Print) (Associate Licensee or Broker Signature)

**IV. AGENT'S INSPECTION DISCLOSURE**

(To be completed only if the agent who has obtained the offer is other than the agent above.)

**THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:**

- See attached Agent Visual Inspection Disclosure (AVID Form)
- Agent notes no items for disclosure.
- Agent notes the following items: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Agent (Broker Obtaining the Offer) \_\_\_\_\_ By \_\_\_\_\_ Date \_\_\_\_\_  
(Please Print) (Associate Licensee or Broker Signature)

**V. BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.**

**I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.**

Seller \_\_\_\_\_ Date \_\_\_\_\_ Buyer \_\_\_\_\_ Date \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_ Buyer \_\_\_\_\_ Date \_\_\_\_\_

Agent (Broker Representing Seller) \_\_\_\_\_ By \_\_\_\_\_ Date \_\_\_\_\_  
(Please Print) (Associate Licensee or Broker Signature)

Agent (Broker Obtaining the Offer) \_\_\_\_\_ By \_\_\_\_\_ Date \_\_\_\_\_  
(Please Print) (Associate Licensee or Broker Signature)

**SECTION 1102.3 OF THE CIVIL CODE PROVIDES A BUYER WITH THE RIGHT TO RESCIND A PURCHASE CONTRACT FOR AT LEAST THREE DAYS AFTER THE DELIVERY OF THIS DISCLOSURE IF DELIVERY OCCURS AFTER THE SIGNING OF AN OFFER TO PURCHASE. IF YOU WISH TO RESCIND THE CONTRACT, YOU MUST ACT WITHIN THE PRESCRIBED PERIOD.**

**A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.**

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**TDS REVISED 4/14 (PAGE 3 OF 3)**

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



## **WATER HEATER AND SMOKE DETECTOR STATEMENT OF COMPLIANCE (WHSD)**

If the seller is exempt from the obligation to provide a TDS, there may nonetheless be an obligation to have a water heater properly braced, anchored or strapped and to have operable smoke alarms in the property. Further, seller nonetheless has an obligation to provide a statement of compliance with the water heater law. In cases where the TDS will not be issued, the seller must make the compliance statement on another form. The WHSD is intended to satisfy this legal obligation.



CALIFORNIA ASSOCIATION OF REALTORS®

WATER HEATER AND SMOKE DETECTOR STATEMENT OF COMPLIANCE

(C.A.R. Form WHSD, Revised 11/10)

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

NOTE: A seller who is not required to provide one of the following statements of compliance is not necessarily exempt from the obligation to provide the other statement of compliance.

WATER HEATER STATEMENT OF COMPLIANCE

- 1. STATE LAW: California Law requires that all new and replacement water heaters and existing residential water heaters be braced, anchored or strapped to resist falling or horizontal displacement due to earthquake motion.
2. LOCAL REQUIREMENTS: Some local ordinances impose more stringent water heater bracing, anchoring or strapping requirements than does California Law.
3. TRANSFEROR'S WRITTEN STATEMENT: California Health and Safety Code §19211 requires the seller of any real property containing a water heater to certify, in writing, that the seller is in compliance with California State Law.
4. CERTIFICATION: Seller represents that the Property, as of the Close Of Escrow, will be in compliance with Health and Safety Code §19211 by having the water heater(s) braced, anchored or strapped in place, in accordance with those requirements.

Seller (Signature) (Print Name) Date

Seller (Signature) (Print Name) Date

The undersigned hereby acknowledge(s) receipt of a copy of this document.

Buyer (Signature) (Print Name) Date

Buyer (Signature) (Print Name) Date

SMOKE DETECTOR STATEMENT OF COMPLIANCE

- 1. STATE LAW: California Law requires that (i) every single-family dwelling and factory built housing unit sold on or after January 1, 1986, must have an operable smoke detector, approved and listed by the State Fire Marshal, installed in accordance with the State Fire Marshal's regulations (Health and Safety Code §13113.8) and (ii) all used manufactured or mobilehomes have an operable smoke detector in each sleeping room.
2. LOCAL REQUIREMENTS: Some local ordinances impose more stringent smoke detector requirements than does California Law.
3. TRANSFEROR'S WRITTEN STATEMENT: California Health and Safety Code §13113.8(b) requires every transferor of any real property containing a single-family dwelling, whether the transfer is made by sale, exchange, or real property sales contract (installment sales contract), to deliver to the transferee a written statement indicating that the transferor is in compliance with California State Law concerning smoke detectors.
4. EXCEPTIONS: Generally, a written statement of smoke detector compliance is not required for transactions for which the Seller is exempt from providing a transfer disclosure statement.
5. CERTIFICATION: Seller represents that the Property, as of the Close Of Escrow, will be in compliance with the law by having operable smoke detector(s) (i) approved and listed by the State Fire Marshal installed in accordance with the State Fire Marshal's regulations Health and Safety Code §13113.8 or (ii) in compliance with Manufactured Housing Construction and Safety Act (Health and Safety Code §18029.6) located in each sleeping room for used manufactured or mobilehomes as required by HCD and (iii) in accordance with applicable local ordinance(s).

Seller (Signature) (Print Name) Date

Seller (Signature) (Print Name) Date

The undersigned hereby acknowledge(s) receipt of a copy of this Water Heater and Smoke Detector Statement of Compliance.

Buyer (Signature) (Print Name) Date

Buyer (Signature) (Print Name) Date

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



WHSD REVISED 11/10 (PAGE 1 OF 1) Print Date

WATER HEATER AND SMOKE DETECTOR STATEMENT OF COMPLIANCE (WHSD PAGE 1 OF 1)

## NATURAL HAZARD DISCLOSURE STATEMENT (NHD)

California law requires sellers of real property to disclose to buyers if the property is located in certain earthquake related zones, fire zones and flood zones. Where the real property contains one-to-four units, the disclosure must take place on a certain form, the NHD. Often sellers hire an independent company to determine for them if the property is located in any of the aforementioned zones. (See paragraph 7A(1) of the RPA for further information.) For an additional cost, these companies can also determine if property is located in other zones that may be of concern to buyer such as locally designated fire or flood zones. Buyer and seller may negotiate who pays for the cost of any such third party report ordered.



CALIFORNIA ASSOCIATION OF REALTORS®

NATURAL HAZARD DISCLOSURE STATEMENT (C.A.R. Form NHD, Revised 10/04)

This statement applies to the following property: \_\_\_\_\_

The transferor and his or her agent(s) or a third-party consultant disclose the following information with the knowledge that even though this is not a warranty, prospective transferees may rely on this information in deciding whether and on what terms to purchase the subject property.

The following are representations made by the transferor and his or her agent(s) based on their knowledge and maps drawn by the state and federal governments. This information is a disclosure and is not intended to be part of any contract between the transferee and transferor.

THIS REAL PROPERTY LIES WITHIN THE FOLLOWING HAZARDOUS AREA(S):

A SPECIAL FLOOD HAZARD AREA (Any type Zone "A" or "V") designated by the Federal Emergency Management Agency.

Yes \_\_\_\_\_ No \_\_\_\_\_ Do not know and information not available from local jurisdiction \_\_\_\_\_

AN AREA OF POTENTIAL FLOODING shown on a dam failure inundation map pursuant to Section 8589.5 of the Government Code.

Yes \_\_\_\_\_ No \_\_\_\_\_ Do not know and information not available from local jurisdiction \_\_\_\_\_

A VERY HIGH FIRE HAZARD SEVERITY ZONE pursuant to Section 51178 or 51179 of the Government Code. The owner of this property is subject to the maintenance requirements of Section 51182 of the Government Code.

Yes \_\_\_\_\_ No \_\_\_\_\_

A WILDLAND AREA THAT MAY CONTAIN SUBSTANTIAL FOREST FIRE RISKS AND HAZARDS pursuant to Section 4125 of the Public Resources Code. The owner of this property is subject to the maintenance requirements of Section 4291 of the Public Resources Code. Additionally, it is not the state's responsibility to provide fire protection services to any building or structure located within the wildlands unless the Department of Forestry and Fire Protection has entered into a cooperative agreement with a local agency for those purposes pursuant to Section 4142 of the Public Resources Code.

Yes \_\_\_\_\_ No \_\_\_\_\_

AN EARTHQUAKE FAULT ZONE pursuant to Section 2622 of the Public Resources Code.

Yes \_\_\_\_\_ No \_\_\_\_\_

A SEISMIC HAZARD ZONE pursuant to Section 2696 of the Public Resources Code.

Yes (Landslide Zone) \_\_\_\_\_ Yes (Liquefaction Zone) \_\_\_\_\_

No \_\_\_\_\_ Map not yet released by state \_\_\_\_\_

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NHD REVISED 10/04 (PAGE 1 OF 2) Print Date

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_





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

THESE HAZARDS MAY LIMIT YOUR ABILITY TO DEVELOP THE REAL PROPERTY, TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER A DISASTER.

THE MAPS ON WHICH THESE DISCLOSURES ARE BASED ESTIMATE WHERE NATURAL HAZARDS EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A PROPERTY WILL BE AFFECTED BY A NATURAL DISASTER. TRANSFEREE(S) AND TRANSFEROR(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING THOSE HAZARDS AND OTHER HAZARDS THAT MAY AFFECT THE PROPERTY

Signature of Transferor(s) \_\_\_\_\_ Date \_\_\_\_\_

Signature of Transferor(s) \_\_\_\_\_ Date \_\_\_\_\_

Agent(s) \_\_\_\_\_ Date \_\_\_\_\_

Agent(s) \_\_\_\_\_ Date \_\_\_\_\_

**Check only one of the following:**

Transferor(s) and their agent(s) represent that the information herein is true and correct to the best of their knowledge as of the date signed by the transferor(s) and agent(s).

Transferor(s) and their agent(s) acknowledge that they have exercised good faith in the selection of a third-party report provider as required in Civil Code Section 1103.7, and that the representations made in this Natural Hazard Disclosure Statement are based upon information provided by the independent third-party disclosure provider as a substituted disclosure pursuant to Civil Code Section 1103.4. Neither transferor(s) nor their agent(s) (1) has independently verified the information contained in this statement and report or (2) is personally aware of any errors or inaccuracies in the information contained on the statement. This statement was prepared by the provider below:

Third-Party Disclosure Provider(s) \_\_\_\_\_ Date \_\_\_\_\_

Transferee represents that he or she has read and understands this document. Pursuant to Civil Code Section 1103.8, the representations made in this Natural Hazard Disclosure Statement do not constitute all of the transferor's or agent's disclosure obligations in this transaction.

Signature of Transferee(s) \_\_\_\_\_ Date \_\_\_\_\_

Signature of Transferee(s) \_\_\_\_\_ Date \_\_\_\_\_

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



## SELLER PROPERTY QUESTIONNAIRE (SPQ)

Although not required by law to be used in real estate transactions, the SPQ is recommended because many buyers and real estate agents alike had come to believe that the disclosures mandated by the TDS were not adequate. In November 2014 the RPA makes delivery of the SPQ a contractual requirement unless the seller is exempt from delivering the TDS. (See paragraphs 10A(1) and 10A(4) of the RPA for further information.)

The SPQ contains over 50 questions in over a dozen categories. These include Statutory and Contractual; Repairs and Alterations; Structural, Systems and Appliances; Disaster Relief, Insurance or Civil Settlement; Water-Related and Mold; Pets, Animals and Pests; Boundaries and Access; Landscape Pool and Spa; Condominiums and Common Interest Developments; Title, Ownership and Legal Claims; Neighborhood; Governmental; and Other.

The advantage to the buyer of getting a SPQ is that more information is learned about the property early in the transaction which helps the buyer make an educated decision on whether to purchase the property and, if so, for how much. The advantage to the seller of providing a SPQ is that it becomes more difficult for the buyer to later complain that the seller withheld material information about the property. Minimizing disputes is generally beneficial for all parties. Like the TDS, the SPQ asks for the seller's knowledge, not affirmative statements regarding the itemized questions. If the seller does not know, the seller responds with a "no" meaning the seller is not aware.

If the seller is not contractually obligated to give the buyer a SPQ, the alternate form Supplemental Statutory and Contractual Disclosures (C.A.R. form SSD) will likely be appropriate and can be identified as a contractual obligation in paragraph 10A(4) of the RPA



CALIFORNIA ASSOCIATION OF REALTORS®

SELLER PROPERTY QUESTIONNAIRE (C.A.R. Form SPQ, Revised 11/13)

This form is not a substitute for the Real Estate Transfer Disclosure Statement (TDS). It is used by the Seller to provide additional information when a TDS is completed or when no TDS is required.

I. Seller makes the following disclosures with regard to the real property or manufactured home described as \_\_\_\_\_, Assessor's Parcel No. \_\_\_\_\_, situated in \_\_\_\_\_, County of \_\_\_\_\_ California ("Property").

II. The following are representations made by the Seller. Unless otherwise specified in writing, Broker and any real estate licensee or other person working with or through Broker has not verified information provided by Seller. A real estate broker is qualified to advise on real estate transactions. If Seller or Buyer desires legal advice, they should consult an attorney.

III. Note to Seller: PURPOSE: To tell the Buyer about known material or significant items affecting the value or desirability of the Property and help to eliminate misunderstandings about the condition of the Property. Answer based on actual knowledge and recollection at this time. Something that you do not consider material or significant may be perceived differently by a Buyer. Think about what you would want to know if you were buying the Property today. Read the questions carefully and take your time. If you do not understand how to answer a question, or what to disclose or how to make a disclosure in response to a question, whether on this form or a TDS, you should consult a real estate attorney in California of your choosing. A broker cannot answer the questions for you or advise you on the legal sufficiency of any answers or disclosures you provide.

IV. Note to Buyer: PURPOSE: To give you more information about known material or significant items affecting the value or desirability of the Property and help to eliminate misunderstandings about the condition of the Property. Something that may be material or significant to you may not be perceived the same way by the Seller. If something is important to you, be sure to put your concerns and questions in writing (C.A.R. form BMI). Sellers can only disclose what they actually know. Seller may not know about all material or significant items. Seller's disclosures are not a substitute for your own investigations, personal judgments or common sense.

V. SELLER AWARENESS: For each statement below, answer the question "Are you (Seller) aware of..." by checking either "Yes" or "No." Provide explanations to answers in the space provided or attach additional comments and check section VI.

A. STATUTORILY OR CONTRACTUALLY REQUIRED OR RELATED: ARE YOU (SELLER) AWARE OF...

- 1. Within the last 3 years, the death of an occupant of the Property upon the Property .....  Yes  No
2. An Order from a government health official identifying the Property as being contaminated by methamphetamine. (If yes, attach a copy of the Order.) .....  Yes  No
3. The release of an illegal controlled substance on or beneath the Property .....  Yes  No
4. Whether the Property is located in or adjacent to an "industrial use" zone .....  Yes  No (In general, a zone or district allowing manufacturing, commercial or airport uses.)
5. Whether the Property is affected by a nuisance created by an "industrial use" zone .....  Yes  No
6. Whether the Property is located within 1 mile of a former federal or state ordnance location .....  Yes  No (In general, an area once used for military training purposes that may contain potentially explosive munitions.)
7. Whether the Property is a condominium or located in a planned unit development or other common interest subdivision .....  Yes  No
8. Insurance claims affecting the Property within the past 5 years .....  Yes  No
9. Matters affecting title of the Property .....  Yes  No
10. Material facts or defects affecting the Property not otherwise disclosed to Buyer .....  Yes  No

Explanation, or  (if checked) see attached; \_\_\_\_\_

B. REPAIRS AND ALTERATIONS: ARE YOU (SELLER) AWARE OF...

- 1. Any alterations, modifications, remodeling, replacements or material repairs on the Property (including those resulting from Home Warranty claims) .....  Yes  No
2. Ongoing or recurring maintenance on the Property (for example, drain or sewer clean-out, tree or pest control service) .....  Yes  No

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



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

- 3. Any part of the Property being painted within the past 12 months .....  Yes  No
- 4. If this is a pre-1978 Property, were any renovations (i.e., sanding, cutting, demolition) of lead-based paint surfaces completed in compliance with the Environmental Protection Agency Lead-Based Paint Renovation Rule.....  Yes  No

Explanation: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**C. STRUCTURAL, SYSTEMS AND APPLIANCES: ARE YOU (SELLER) AWARE OF...**

- 1. Defects in any of the following (including past defects that have been repaired): heating, air conditioning, electrical, plumbing (including the presence of polybutylene pipes), water, sewer, waste disposal or septic system, sump pumps, well, roof, gutters, chimney, fireplace foundation, crawl space, attic, soil, grading, drainage, retaining walls, interior or exterior doors, windows, walls, ceilings, floors or appliances .....  Yes  No
- 2. The leasing of any of the following on or serving the Property: solar system, water softener system, water purifier system, alarm system, or propane tank(s) .....  Yes  No
- 3. An alternative septic system on or serving the Property .....  Yes  No

Explanation: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**D. DISASTER RELIEF, INSURANCE OR CIVIL SETTLEMENT: ARE YOU (SELLER) AWARE OF...**

- 1. Financial relief or assistance, insurance or settlement, sought or received, from any federal, state, local or private agency, insurer or private party, by past or present owners of the Property, due to any actual or alleged damage to the Property arising from a flood, earthquake, fire, other disaster, or occurrence or defect, whether or not any money received was actually used to make repairs .....  Yes  No

Explanation: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**E. WATER-RELATED AND MOLD ISSUES: ARE YOU (SELLER) AWARE OF...**

- 1. Water intrusion into any part of any physical structure on the Property; leaks from or in any appliance, pipe, slab or roof; standing water, drainage, flooding, underground water, moisture, water-related soil settling or slippage, on or affecting the Property.....  Yes  No
- 2. Any problem with or infestation of mold, mildew, fungus or spores, past or present, on or affecting the Property. ....  Yes  No
- 3. Rivers, streams, flood channels, underground springs, high water table, floods, or tides, on or affecting the Property or neighborhood.....  Yes  No

Explanation: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**F. PETS, ANIMALS AND PESTS: ARE YOU (SELLER) AWARE OF...**

- 1. Pets on or in the Property .....  Yes  No
  - 2. Problems with livestock, wildlife, insects or pests on or in the Property.....  Yes  No
  - 3. Past or present odors, urine, feces, discoloration, stains, spots or damage in the Property, due to any of the above. ....  Yes  No
  - 4. Past or present treatment or eradication of pests or odors, or repair of damage due to any of the above. ....  Yes  No
- If so, when and by whom \_\_\_\_\_

Explanation: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**G. BOUNDARIES, ACCESS AND PROPERTY USE BY OTHERS: ARE YOU (SELLER) AWARE OF...**

- 1. Surveys, easements, encroachments or boundary disputes. ....  Yes  No
- 2. Use or access to the Property, or any part of it, by anyone other than you, with or without permission, for any purpose, including but not limited to, using or maintaining roads,

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



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

driveways or other forms of ingress or egress or other travel or drainage .....  Yes  No

3. Use of any neighboring property by you .....  Yes  No

Explanation: \_\_\_\_\_

**H. LANDSCAPING, POOL AND SPA:**

**ARE YOU (SELLER) AWARE OF...**

1. Diseases or infestations affecting trees, plants or vegetation on or near the Property .....  Yes  No

2. Operational sprinklers on the Property .....  Yes  No

(a) If yes, are they  automatic or  manually operated.

(b) If yes, are there any areas with trees, plants or vegetation not covered by the sprinkler system ....  Yes  No

3. An operational pool heater on the Property .....  Yes  No

4. An operational spa heater on the Property .....  Yes  No

5. Past or present defects, leaks, cracks, repairs or other problems with the sprinklers, pool, spa, waterfall, pond, stream, drainage or other water-related decor including any ancillary equipment, including pumps, filters, heaters and cleaning systems, even if repaired .....  Yes  No

Explanation: \_\_\_\_\_

**I. CONDOMINIUMS, COMMON INTEREST DEVELOPMENTS AND OTHER SUBDIVISIONS:**

**ARE YOU (SELLER) AWARE OF...**

1. Any pending or proposed dues increases, special assessments, rules changes, insurance availability issues, or litigation by or against or fines or violations issued by a Homeowner Association or Architectural Committee affecting the Property. ....  Yes  No

2. Any declaration of restrictions or Architectural Committee that has authority over improvements made on or to the property .....  Yes  No

3. Any improvements made on or to the property without the required approval of an Architectural Committee or inconsistent with any declaration of restrictions or Architectural Committee requirement. ....  Yes  No

Explanation: \_\_\_\_\_

**J. TITLE, OWNERSHIP AND LEGAL CLAIMS:**

**ARE YOU (SELLER) AWARE OF...**

1. Any other person or entity on title other than Seller(s) signing this form. ....  Yes  No

2. Leases, options or claims affecting or relating to title or use of the Property .....  Yes  No

3. Past, present, pending or threatened lawsuits, settlements, mediations, arbitrations, tax liens, mechanics' liens, notice of default, bankruptcy or other court filings, or government hearings affecting or relating to the Property, Homeowner Association or neighborhood .....  Yes  No

4. Any private transfer fees, triggered by a sale of the Property, in favor of private parties, charitable organizations, interest based groups or any other person or entity. ....  Yes  No

Explanation: \_\_\_\_\_

**K. NEIGHBORHOOD:**

**ARE YOU (SELLER) AWARE OF...**

1. Neighborhood noise, nuisance or other problems from sources such as, but not limited to, the following: neighbors, traffic, parking congestion, airplanes, trains, light rail, subway, trucks, freeways, buses, schools, parks, refuse storage or landfill processing, agricultural operations, business, odor, recreational facilities, restaurants, entertainment complexes or facilities, parades, sporting events, fairs, neighborhood parties, litter, construction, air conditioning equipment, air compressors, generators, pool equipment or appliances, underground gas pipelines, cell phone towers, high voltage transmission lines, or wildlife .....  Yes  No

Explanation: \_\_\_\_\_

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



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

**L. GOVERNMENTAL:**

**ARE YOU (SELLER) AWARE OF...**

- 1. Ongoing or contemplated eminent domain, condemnation, annexation or change in zoning or general plan that applies to or could affect the Property.....  Yes  No
- 2. Existence or pendency of any rent control, occupancy restrictions, improvement restrictions or retrofit requirements that apply to or could affect the Property.....  Yes  No
- 3. Existing or contemplated building or use moratoria that apply to or could affect the Property.....  Yes  No
- 4. Current or proposed bonds, assessments, or fees that do not appear on the Property tax bill that apply to or could affect the Property.....  Yes  No
- 5. Proposed construction, reconfiguration, or closure of nearby Government facilities or amenities such as schools, parks, roadways and traffic signals.....  Yes  No
- 6. Existing or proposed Government requirements affecting the Property (i) that tall grass, brush or other vegetation be cleared; (ii) that restrict tree (or other landscaping) planting, removal or cutting or (iii) that flammable materials be removed.....  Yes  No
- 7. Any protected habitat for plants, trees, animals or insects that apply to or could affect the Property.....  Yes  No
- 8. Whether the Property is historically designated or falls within an existing or proposed Historic District.....  Yes  No

Explanation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**M. OTHER:**

**ARE YOU (SELLER) AWARE OF...**

- 1. Reports, inspections, disclosures, warranties, maintenance recommendations, estimates, studies, surveys or other documents, pertaining to (i) the condition or repair of the Property or any improvement on this Property in the past, now or proposed; or (ii) easements, encroachments or boundary disputes affecting the Property .....  Yes  No  
(If yes, provide any such documents in your possession to Buyer.)
- 2. Any occupant of the Property smoking on or in the Property.....  Yes  No
- 3. Any past or present known material facts or other significant items affecting the value or desirability of the Property not otherwise disclosed to Buyer.....  Yes  No

Explanation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**VI.  (IF CHECKED) ADDITIONAL COMMENTS:** The attached addendum contains an explanation or additional comments in response to specific questions answered "yes" above. Refer to line and question number in explanation.

**Seller represents that Seller has provided the answers and, if any, explanations and comments on this form and any attached addenda and that such information is true and correct to the best of Seller's knowledge as of the date signed by Seller. Seller acknowledges (i) Seller's obligation to disclose information requested by this form is independent from any duty of disclosure that a real estate licensee may have in this transaction; and (ii) nothing that any such real estate licensee does or says to Seller relieves Seller from his/her own duty of disclosure.**

Seller \_\_\_\_\_ Date \_\_\_\_\_  
Seller \_\_\_\_\_ Date \_\_\_\_\_

**By signing below, Buyer acknowledges that Buyer has read, understands and has received a copy of this Seller Property Questionnaire form.**

Buyer \_\_\_\_\_ Date \_\_\_\_\_  
Buyer \_\_\_\_\_ Date \_\_\_\_\_

THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.  
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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_

## SUPPLEMENTAL STATUTORY AND CONTRACTUAL DISCLOSURES (SSD)

In additions to questions specified on the TDS, the law requires sellers to make other disclosures. Unfortunately, when the legislature created some of these mandated disclosures, the legislature did not create a statutory format for delivering the required information. In addition to these disclosures required by law, others are required by contract in the RPA. C.A.R. has created the SSD to provide a convenient place for the seller to make these disclosures, whether required by law or contract. There are 10 questions on the SSD. Like the TDS and SPQ, the questions ask if the seller is aware of the specified condition or event. If the seller does not know, the seller responds with a “no” answer. The SSD questions are the first 10 questions in the first category of topics in the SPQ. Thus, if a seller completes a SPQ, it is unnecessary to also complete the SSD form. The first question covers death on the property within the last three years. California Civil Code 1710.2 provides that no legal action may be brought against a seller or real estate agent for failure to disclose a death on the property occurring more than three years before an offer is made for the property. Death occurring during the three year period may be considered a material fact. However, regardless of whether a death occurred during or after the three year period, no claim can be made against a seller or agent who does not disclose that a former occupant was afflicted with HIV/AIDS. Other questions concern the release on the property of illegal substances, including methamphetamine; whether the property is in, adjacent to or affected by a nuisance from a “industrial use” zone; proximity of the property to a military ordnance location (area where explosive munitions may be located); identity of the property as a condominium or planned development; and insurance claims.



CALIFORNIA ASSOCIATION OF REALTORS®

SUPPLEMENTAL STATUTORY AND CONTRACTUAL DISCLOSURES

(C.A.R. Form SSD, Revised 11/09)

1. Seller makes the following disclosures with regard to the real property or manufactured home described as \_\_\_\_\_, Assessor's Parcel No. \_\_\_\_\_, situated in \_\_\_\_\_, County of \_\_\_\_\_, California ("Property").

2. THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS DISCLOSURE STATEMENT IS NOT A WARRANTY OF ANY KIND BY THE SELLER OR ANY AGENT(S) AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN. A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF SELLER OR BUYER DESIRE LEGAL ADVICE, CONSULT AN ATTORNEY.

- 3. Are you (Seller) aware of any of the following? (Explain any "yes" answers below.)
A. Within the last 3 years, the death of an occupant of the Property upon the Property . . . . .  Yes  No
B. An Order from a government health official identifying the Property as being contaminated by methamphetamine. (If yes, attach a copy of the Order.) . . . . .  Yes  No
C. The release of an illegal controlled substance on or beneath the Property . . . . .  Yes  No
D. Whether the Property is located in or adjacent to an "industrial use" zone . . . . .  Yes  No
(In general, a zone or district allowing manufacturing, commercial or airport uses.)
E. Whether the Property is affected by a nuisance created by an "industrial use" zone. . . . .  Yes  No
F. Whether the Property is located within 1 mile of a former federal or state ordnance location. . .  Yes  No
(In general, an area once used for military training purposes that may contain potentially explosive munitions.)
G. Whether the Property is a condominium or located in a planned unit development or other common interest subdivision. . . . .  Yes  No
H. Insurance claims affecting the Property within the past 5 years . . . . .  Yes  No
I. Matters affecting title of the Property . . . . .  Yes  No
J. Material facts or defects affecting the Property not otherwise disclosed to Buyer . . . . .  Yes  No
Explanation, or  (if checked) see attached; \_\_\_\_\_

4. Seller represents that the information herein is true and correct to the best of Seller's knowledge as of the date signed by Seller. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a Copy of this statement to any person or entity in connection with any actual or anticipated sale of the Property.

Seller \_\_\_\_\_ Date \_\_\_\_\_
Seller \_\_\_\_\_ Date \_\_\_\_\_

5. By signing below, Buyer acknowledges Buyer has received, read, and understands this Supplemental Statutory and Contractual Disclosures form.

Buyer \_\_\_\_\_ Date \_\_\_\_\_
Buyer \_\_\_\_\_ Date \_\_\_\_\_

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SSD REVISED 11/09 (PAGE 1 OF 1) PRINT DATE

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



## AGENT VISUAL INSPECTION DISCLOSURE (AVID)

California law (Civil Code §§ 2079 et seq.) requires real estate brokers involved in the sale of residential property with one to four units to conduct a reasonably competent and diligent visual inspection of the property for sale and to disclose to buyers material facts and defects that such an inspection should reveal. The statute that imposes this inspection and disclosure duty does not itself provide a form upon which to make the disclosure. However, Civil Code §§ 1102 et seq., the statute that imposes the obligation on the seller of residential one to four properties to complete a disclosure (C.A.R. form TDS), provides a section on the TDS form for the brokers to document the results of their inspections. Only four lines are provided for each broker to make the disclosure.

Many brokers find that amount of space on the TDS inadequate. As a result, C.A.R. developed a form for brokers to use to satisfy their statutory obligations and that form is the Agent Visual Inspection Disclosure (C.A.R. form AVID). The first page of the AVID is informational only. It specifies what the law requires, what the law does not require, and the limits on what the broker or agent will do. This page also informs the buyer that the agent inspection should not be viewed as a substitute for the buyer conducting their own inspection or hiring a professional home inspector to do so. The next two pages of the AVID provide space to document the broker's findings on a room by room and area by area basis. Separate sections are included for bathrooms, bedrooms, living room, dining room, kitchen, garage, and exterior. A separate AVID should be used by each broker in the transaction. If the property contains more than one unit, a separate AVID should be used for each unit.



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AGENT VISUAL INSPECTION DISCLOSURE (CALIFORNIA CIVIL CODE § 2079 ET SEQ.) For use by an agent when a transfer disclosure statement is required or when a seller is exempt from completing a TDS (C.A.R. Form AVID, Revised 11/13)

This inspection disclosure concerns the residential property situated in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of California, described as \_\_\_\_\_ ("Property").

[ ] This Property is a duplex, triplex, or fourplex. This AVID form is for unit # \_\_\_\_\_. Additional AVID forms required for other units.

Inspection Performed By (Real Estate Broker Firm Name) \_\_\_\_\_

California law requires, with limited exceptions, that a real estate broker or salesperson (collectively, "Agent") conduct a reasonably competent and diligent visual inspection of reasonably and normally accessible areas of certain properties offered for sale and then disclose to the prospective purchaser material facts affecting the value or desirability of that property that the inspection reveals. The duty applies regardless of whom that Agent represents. The duty applies to residential real properties containing one-to-four dwelling units, and manufactured homes (mobilehomes). The duty applies to a stand-alone detached dwelling (whether or not located in a subdivision or a planned development) or to an attached dwelling such as a condominium. The duty also applies to a lease with an option to purchase, a ground lease or a real property sales contract of one of those properties.

California law does not require the Agent to inspect the following:

- Areas that are not reasonably and normally accessible
• Areas off site of the property
• Public records or permits
• Common areas of planned developments, condominiums, stock cooperatives and the like.

Agent Inspection Limitations: Because the Agent's duty is limited to conducting a reasonably competent and diligent visual inspection of reasonably and normally accessible areas of only the Property being offered for sale, there are several things that the Agent will not do. What follows is a non-exclusive list of examples of limitations on the scope of the Agent's duty.

Roof and Attic: Agent will not climb onto a roof or into an attic.

Interior: Agent will not move or look under or behind furniture, pictures, wall hangings or floor coverings. Agent will not look up chimneys or into cabinets, or open locked doors.

Exterior: Agent will not inspect beneath a house or other structure on the Property, climb up or down a hillside, move or look behind plants, bushes, shrubbery and other vegetation or fences, walls or other barriers.

Appliances and Systems: Agent will not operate appliances or systems (such as, but not limited to, electrical, plumbing, pool or spa, heating, cooling, septic, sprinkler, communication, entertainment, well or water) to determine their functionality.

Size of Property or Improvements: Agent will not measure square footage of lot or improvements, or identify or locate boundary lines, easements or encroachments.

Environmental Hazards: Agent will not determine if the Property has mold, asbestos, lead or lead-based paint, radon, formaldehyde or any other hazardous substance or analyze soil or geologic condition.

Off-Property Conditions: By statute, Agent is not obligated to pull permits or inspect public records. Agent will not guarantee views or zoning, identify proposed construction or development or changes or proximity to transportation, schools, or law enforcement.

Analysis of Agent Disclosures: For any items disclosed as a result of Agent's visual inspection, or by others, Agent will not provide an analysis of or determine the cause or source of the disclosed matter, nor determine the cost of any possible repair.

What this means to you: An Agent's inspection is not intended to take the place of any other type of inspection, nor is it a substitute for a full and complete disclosure by a seller. Regardless of what the Agent's inspection reveals, or what disclosures are made by sellers, California Law specifies that a buyer has a duty to exercise reasonable care to protect himself or herself. This duty encompasses facts which are known to or within the diligent attention and observation of the buyer. Therefore, in order to determine for themselves whether or not the Property meets their needs and intended uses, as well as the cost to remedy any disclosed or discovered defect, BUYER SHOULD: (1) REVIEW ANY DISCLOSURES OBTAINED FROM SELLER; (2) OBTAIN ADVICE ABOUT, AND INSPECTIONS OF, THE PROPERTY FROM OTHER APPROPRIATE PROFESSIONALS; AND (3) REVIEW ANY FINDINGS OF THOSE PROFESSIONALS WITH THE PERSONS WHO PREPARED THEM. IF BUYER FAILS TO DO SO, BUYER IS ACTING AGAINST THE ADVICE OF BROKER.

Buyer's Initials (\_\_\_\_)(\_\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_\_)

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AVID REVISED 11/13 (PAGE 1 OF 3) Print Date

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



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

If this Property is a duplex, triplex, or fourplex, this AVID is for unit # \_\_\_\_\_.

Inspection Performed By (Real Estate Broker Firm Name) \_\_\_\_\_

Inspection Date/Time: \_\_\_\_\_ Weather conditions: \_\_\_\_\_

Other persons present: \_\_\_\_\_

**THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE REASONABLY AND NORMALLY ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:**

**Entry** (excluding common areas): \_\_\_\_\_

**Living Room:** \_\_\_\_\_

**Dining Room:** \_\_\_\_\_

**Kitchen:** \_\_\_\_\_

**Other Room:** \_\_\_\_\_

**Hall/Stairs** (excluding common areas): \_\_\_\_\_

**Bedroom #** \_\_\_\_:

**Bedroom #** \_\_\_\_:

**Bedroom #** \_\_\_\_:

**Bath #** \_\_\_\_:

**Bath #** \_\_\_\_:

**Bath #** \_\_\_\_:

**Other Room:** \_\_\_\_\_

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



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

If this Property is a duplex, triplex, or fourplex, this AVID is for unit # \_\_\_\_\_.

Other Room: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Garage/Parking (excluding common areas): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Exterior Building and Yard - Front/Sides/Back: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Other Observed or Known Conditions Not Specified Above: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**This disclosure is based on a reasonably competent and diligent visual inspection of reasonably and normally accessible areas of the Property on the date specified above.**

Real Estate Broker (Firm who performed the Inspection) \_\_\_\_\_  
By \_\_\_\_\_ Date \_\_\_\_\_  
(Signature of Associate Licensee or Broker)

**Reminder: Not all defects are observable by a real estate licensee conducting an inspection. The inspection does not include testing of any system or component. Real Estate Licensees are not home inspectors or contractors. BUYER SHOULD OBTAIN ADVICE ABOUT AND INSPECTIONS OF THE PROPERTY FROM OTHER APPROPRIATE PROFESSIONALS. IF BUYER FAILS TO DO SO, BUYER IS ACTING AGAINST THE ADVICE OF BROKER.**

**I/we acknowledge that I/we have read, understand and received a copy of this disclosure.**

SELLER \_\_\_\_\_ Date \_\_\_\_\_

SELLER \_\_\_\_\_ Date \_\_\_\_\_

BUYER \_\_\_\_\_ Date \_\_\_\_\_

BUYER \_\_\_\_\_ Date \_\_\_\_\_

Real Estate Broker(FirmRepresentingSeller) \_\_\_\_\_

By \_\_\_\_\_ Date \_\_\_\_\_  
(Associate Licensee or Broker Signature)

Real Estate Broker (Firm Representing Buyer) \_\_\_\_\_

By \_\_\_\_\_ Date \_\_\_\_\_

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**SELLER'S AFFIDAVIT OF NON-  
FOREIGN STATUS AND/OR CALIFORNIA  
WITHHOLDING EXEMPTION (AS)  
BUYER'S AFFIDAVIT (AB)  
QUALIFIED SUBSTITUTE DECLARATION  
OF POSSESSION OF TRANSFEROR'S  
AFFIDAVIT OF NONFOREIGN STATUS (QS)**

When real estate is sold, a potential taxable event takes place. In order to insure that sellers pay taxes that are due on the sale, both federal and state law require the buyer to withhold a portion of the purchase price and forward that sum to the applicable taxing agency (Internal Revenue Service or Franchise Tax Board) unless an exemption applies.

Under federal law, the Foreign Investment in Real Property Tax Act, FIRPTA, the buyer must withhold 10% of the purchase price unless the seller is not a non-resident alien. In other words, no withholding is required if the seller is a U.S. citizen (or entity), or a green card holder, or meets something called the substantial presence test. No withholding under federal law is required if the property sells for \$300,000 or less to someone who will use the property as a principal residence. (C.A.R. Form AB, Buyer's Affidavit may be used to document this exemption.) The seller who does not want the money withheld must sign an affidavit stating the exemption and including the seller's social security or tax payer identification number. The affidavit must be presented to the buyer. Because many sellers were uncomfortable giving out their social security numbers, the law was amended to permit sellers to give the affidavit to a neutral third party (a qualified substitute). The qualified substitute must then provide to a buyer the substitute's own declaration that the qualified substitute is in receipt of the seller's completed affidavit indicating that an exemption from withholding applies. The qualified substitute does not have an obligation to verify the information provided by the seller. C.A.R. form QS satisfies this requirement. The substitute may be a title company, an escrow company, or an attorney or the buyer's real estate broker, but not the seller's real estate broker.

California law requires a 3 1/3% withholding from all individual sellers and from non-California entities. Many exemptions apply to this law. For example, individual sellers can avoid the buyer withholding if the property was last used as a principal residence, if the property qualifies as a principal residence for capital gain taxes under federal law, if there was a loss or no gain on the sale, or if the property is being used as part of a tax deferred exchange, to name a few.

C.A.R. form AS can be used to satisfy the seller's federal and state withholding documentation.



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SELLER'S AFFIDAVIT OF NONFOREIGN STATUS AND/OR CALIFORNIA WITHHOLDING EXEMPTION FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA) AND CALIFORNIA WITHHOLDING LAW (Use a separate form for each Transferor) (C.A.R. Form AS, Revised 4/12)

Internal Revenue Code ("IRC") Section 1445 provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a "foreign person." California Revenue and Taxation Code Section 18662 provides that a transferee of a California real property interest must withhold tax unless an exemption applies.

I understand that this affidavit may be disclosed to the Internal Revenue Service and to the California Franchise Tax Board by the transferee, and that any false statement I have made herein may result in a fine, imprisonment or both.

1. PROPERTY ADDRESS (property being transferred): \_\_\_\_\_ ("Property")

2. TRANSFEROR'S INFORMATION:

Full Name \_\_\_\_\_ ("Transferor")

Telephone Number \_\_\_\_\_

Address \_\_\_\_\_

(Use HOME address for individual transferors. Use OFFICE address for an "Entity" i.e.: corporations, partnerships, limited liability companies, trusts and estates.)

Social Security No., or Federal Employer Identification No. \_\_\_\_\_

For a corporation qualified to do business in California, California Corporation No. \_\_\_\_\_

Note: In order to avoid withholding, IRC Section 1445 (b) requires that the Seller (a) provides this affidavit to the Buyer with the Seller's taxpayer identification number ("TIN"), or (b) provides this affidavit, including Seller's TIN, to a "qualified substitute" who furnishes a statement to the Buyer under penalty of perjury that the qualified substitute has such affidavit in their possession. A qualified substitute may be (i) an attorney, title company, or escrow company (but not the Seller's agent) responsible for closing the transaction, or (ii) the Buyer's agent.

3. AUTHORITY TO SIGN: If this document is signed on behalf of an Entity Transferor, THE UNDERSIGNED INDIVIDUAL DECLARES THAT HE/SHE HAS AUTHORITY TO SIGN THIS DOCUMENT ON BEHALF OF THE TRANSFEROR.

4. FEDERAL LAW: I, the undersigned, declare under penalty of perjury that, for the reason checked below, if any, I am exempt (or if signed on behalf of an Entity Transferor, the Entity is exempt) from the federal withholding law (FIRPTA):

- For individual Transferors) I am not a nonresident alien for purposes of U.S. income taxation.
For corporation, partnership, limited liability company, trust and estate Transferors) The Transferor is not a foreign corporation, foreign partnership, foreign limited liability company, foreign trust or foreign estate, as those terms are defined in the Internal Revenue Code and Income Tax Regulations.

5. CALIFORNIA LAW: I, the undersigned, declare under penalty of perjury that, for the reason checked below, if any, I am exempt (or if signed on behalf of an Entity Transferor, the Entity is exempt) from the California withholding law.

Certifications which fully exempt the sale from withholding:

- The total sales price for the Property is \$100,000 or less.
The Property qualifies as my principal residence (or the decedent's, if being sold by the decedent's estate) within the meaning of IRC Section 121 (owned and occupied as such for two of the last five years).
The Property was last used as my principal residence (or the decedent's, if being sold by the decedent's estate) within the meaning of IRC Section 121 without regard to the two-year time period.
The transaction will result in a loss or zero gain for California income tax purposes. (Complete FTB Form 593-E.)
The Property has been compulsorily or involuntarily converted (within the meaning of IRC Section 1033) and Transferor intends to acquire property similar or related in service or use to be eligible for non-recognition of gain for California income tax purposes under IRC Section 1033.
Transferor is a corporation (or an LLC classified as a corporation) that is either qualified through the California Secretary of State or has a permanent place of business in California.
Transferor is a partnership (or an LLC that is not a disregarded single member LLC, classified as a partnership) and recorded title to the Property is in the name of the partnership or LLC. If so, the partnership or LLC must withhold from nonresident partners or members as required.
Transferor is exempt from tax under California or federal law.
Transferor is an insurance company, qualified pension/profit sharing plan, IRA or charitable remainder trust.

Certifications which may partially or fully exempt the sale from withholding:

- The Property is being, or will be, exchanged for property of like kind within the meaning of IRC Section 1031.
Payments for the Property are being made in installments, the transferor is a non-resident seller and withholding will be applied to each principal payment.
As a result of the sale of the Property, Seller's tax liability, calculated at the maximum tax rate regardless of Seller's actual rate, will be less than the 3 1/3% withholding otherwise required. Seller will be required to sign a certification, under penalty of perjury, specifying the amount to be withheld. (Not to be used for sales closing prior to January 1, 2007)

By \_\_\_\_\_ Date \_\_\_\_\_
(Transferor's Signature) (Indicate if you are signing as the grantor of a revocable/grantor trust.)

Typed or printed name \_\_\_\_\_ Title (If signed on behalf of Entity Transferor) \_\_\_\_\_

Buyer's unauthorized use or disclosure of Seller's TIN could result in civil or criminal liability.

Buyer \_\_\_\_\_ Date \_\_\_\_\_
(Buyer acknowledges receipt of a Copy of this Seller's Affidavit)

Buyer \_\_\_\_\_ Date \_\_\_\_\_
(Buyer acknowledges receipt of a Copy of this Seller's Affidavit)

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AS 4/12 (PAGE 1 OF 2)

SELLER'S AFFIDAVIT OF NONFOREIGN STATUS AND/OR CALIFORNIA WITHHOLDING EXEMPTION (AS PAGE 1 OF 2)

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



**IMPORTANT NOTICE: An Affidavit should be signed by each individual or entity Transferor to whom or to which it applies. Before you sign, any questions relating to the legal sufficiency of this form, or to whether it applies to you or to a particular transaction, or about the definition of any of the terms used, should be referred to an attorney, certified public accountant, or other professional tax advisor, the Internal Revenue Service, or the California Franchise Tax Board.** For further information on federal guidelines, see C.A.R. Legal Q & A "Federal Withholding: The Foreign Investment in Real Property Tax Act," and/or IRS Publication 515 or 519. For further information on state guidelines, see C.A.R. Legal Q & A "California Nonresident Withholding," and/or California FTB Pub. 1016.

#### FEDERAL GUIDELINES

**FOREIGN PERSONS DEFINED.** The following general information is provided to assist sellers in determining whether they are "foreign persons" for purposes of the Foreign Investment in Real Property Tax Act (FIRPTA), IRC §1445. FIRPTA requires a buyer to withhold and send to the Internal Revenue Service 10% of the gross sales price of a United States (U.S.) real property interest if the seller is a foreign person. No withholding is required for a seller who is a U.S. person (that is, not a foreign person). In order for an individual to be a U.S. person, he/she must be either a U.S. citizen or a U.S. resident alien. The test must be applied separately to each seller in transactions involving more than one seller. Even if the seller is a foreign person, withholding will not be required in every circumstance.

**NONRESIDENT ALIEN INDIVIDUAL.** An individual whose residence is not within the U.S. and who is not a U.S. citizen is a nonresident alien. The term includes a nonresident alien fiduciary. An alien actually present in the U.S. who is not just staying temporarily (i.e., not a mere transient or sojourner), is a U.S. resident for income tax purposes. An alien is considered a U.S. resident and not subject to withholding under FIRPTA if the alien meets either the **green card test** or the **substantial presence test** for the calendar year.

**GREEN CARD TEST.** An alien is a U.S. resident if the individual was a lawful permanent resident of the U.S. at any time during the calendar year. This is known as the "green card test."

**SUBSTANTIAL PRESENCE TEST.** An alien is considered a U.S. resident if the individual meets the substantial presence test for the calendar year. Under this test, the individual must be physically present in the U.S. on at least: (1) 31 days during the current calendar year; and (2) 183 days during the current year and the two preceding years, counting all the days of physical presence in the current year but only 1/3 the number of days present in the first preceding year, and 1/6 the number of days present in the second preceding year.

**DAYS OF PRESENCE IN THE U.S. TEST.** Generally, a person is treated as physically present in the country at any time during the day. However, if a person regularly commutes to work in the U.S. from a residence in Canada or Mexico, or is in transit between two points outside the U.S. and is physically present in the country for less than 24 hours, he/she is not treated as present in the U.S. on any day during the transit or commute. In addition, the individual is not treated as present in the U.S. on any day during which he/she is unable to leave the U.S. because of a medical condition which arose while in the U.S.

**EXEMPT INDIVIDUAL.** For the substantial presence test, do not count days for which a person is an exempt individual. An exempt individual is anyone in the following categories:

- (1) An individual temporarily present in the U.S. because of (a) full-time diplomatic or consular status, (b) full-time employment with an international organization or (c) an immediate family member of a person described in (a) or (b).
- (2) A teacher or trainee temporarily present in the U.S. under a "J" visa (other than as a student) who substantially complies with the requirements of the visa. An individual will not be exempt under this category for a calendar year if he/she was exempt as a teacher or trainee or as a student for any two calendar years during the preceding six calendar years.
- (3) A student temporarily present in the U.S. under an "F" or "J" visa who substantially complies with the requirements of the visa. Generally, a person will not be exempt as a student for any calendar year after the fifth calendar year for which he/she was exempt as a student, teacher or trainee. However, the individual may continue to be exempt as a student beyond the fifth year if he/she is in compliance with the terms of the student visa and does not intend to permanently reside in the U.S.

**CLOSER CONNECTION TO A FOREIGN COUNTRY.** Even if an individual would otherwise meet the substantial presence test, that person is not treated as meeting the test for the current calendar year if he/she:

- (1) Is present in the U.S. on fewer than 183 days during the current year, and
- (2) Has a tax home in a foreign country and has a closer connection to that country than to the U.S.

**SPECIAL RULES.** It is possible to be both a nonresident alien and a resident alien during the same tax year. Usually this occurs for the year a person arrives in or departs from the U.S. Other special provisions apply to individuals who were U.S. residents for at least three years, cease to be U.S. residents, and then become U.S. residents again.

**NONRESIDENT ALIEN INDIVIDUALS MARRIED TO U.S. CITIZENS OR RESIDENT ALIENS** may choose to be treated as resident aliens for most income tax purposes. However, these individuals are considered **nonresidents** for purposes of withholding taxes.

**A FOREIGN PERSON OR PARTNERSHIP** is one that does not fit the definition of a domestic corporation or partnership. A domestic corporation or partnership is one that was created or organized in the U.S., or under the laws of the U.S., or of any U.S. state or territory.

**GUAM AND U.S. VIRGIN ISLANDS CORPORATIONS.** A corporation created or organized in or under the laws of Guam or the U.S. Virgin Islands is not considered a foreign corporation for the purpose of withholding tax for the tax year if:

- (1) at all times during the tax year, less than 25% in value of the corporation's stock is owned, directly or indirectly, by foreign persons, and
- (2) at least 20% of the corporation's gross income is derived from sources within Guam or at least 65% of the corporation's income is effectively connected with the conduct of a trade or business in the U.S. Virgin Islands or the U.S. for the 3-year period ending with the close of the preceding tax year of the corporation, or the period the corporation has been in existence if less.

**A NONRESIDENT ALIEN TRUSTEE, ADMINISTRATOR OR EXECUTOR** of a trust or an estate is treated as a nonresident alien, even though all the beneficiaries of the trust or estate are citizens or residents of the U.S.

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



**SELLER'S AFFIDAVIT OF NONFOREIGN STATUS AND/OR CALIFORNIA WITHHOLDING EXEMPTION (AS PAGE 2 OF 2)**



CALIFORNIA ASSOCIATION OF REALTORS®

**BUYER'S AFFIDAVIT**

That Buyer is acquiring property for use as a residence and that sales price does not exceed \$300,000. (FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT) (C.A.R. Form AB, 2/91)

1. I am the transferee (buyer) of real property located at \_\_\_\_\_
2. The sales price (total of all consideration in the sale) does not exceed \$300,000.
3. I am acquiring the real property for use as a residence. I have definite plans that I or a member of my family will reside in it for at least 50 percent of the number of days it will be in use during each of the first two 12 month periods following the transfer of the property to me. I understand that the members of my family that are included in the last sentence are my brothers, sisters, ancestors, descendants, or spouse.
4. I am making this affidavit in order to establish an exemption from withholding a portion of the sales price of the property under Internal Revenue Code §1445.
5. I understand that if the information in this affidavit is not correct, I may be liable to the Internal Revenue Service for up to 10 percent of the sales price of the property, plus interest and penalties.

Under penalties of perjury, I declare that the statements above are true, correct and complete.

Date \_\_\_\_\_ Signature \_\_\_\_\_

Typed or Printed Name \_\_\_\_\_

Date \_\_\_\_\_ Signature \_\_\_\_\_

Typed or Printed Name \_\_\_\_\_

**IMPORTANT NOTICE:** An affidavit should be signed by each individual transferee to whom it applies. Before you sign, any questions relating to the legal sufficiency of this form, or to whether it applies to a particular transaction, or to the definition of any of the terms used, should be referred to an attorney, certified public accountant, other professional tax advisor, or the Internal Revenue Service.

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AB REVISED 2/91 (PAGE 1 OF 1) Print Date

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CALIFORNIA  
ASSOCIATION  
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**QUALIFIED SUBSTITUTE DECLARATION OF POSSESSION  
OF TRANSFEROR'S AFFIDAVIT OF NONFOREIGN STATUS**

(Use a separate form for each Transferor)  
(C.A.R. Form QS, 4/09)

Regarding the Real Property identified in:  Residential Purchase Agreement,  Manufactured Home Purchase Agreement,  Vacant Land Purchase Agreement,  Residential Income Property Purchase Agreement,  Commercial Property Purchase Agreement,  other \_\_\_\_\_, dated \_\_\_\_\_, on property known as \_\_\_\_\_,

in which \_\_\_\_\_ is referred to as ("Buyer") and \_\_\_\_\_ is referred to as ("Seller").

In compliance with Internal Revenue Code Section 1445, the undersigned qualified substitute states as follows:

**1. QUALIFIED SUBSTITUTE NAME:** \_\_\_\_\_

is an escrow company, title company, or attorney responsible for closing the above-described transaction or is the Transferee's broker (but not the Transferor's broker) ("Qualified Substitute").

**2. TRANSFEROR'S AFFIDAVIT:**

**A.** The following Transferor(s) has each furnished to the Qualified Substitute an affidavit stating under penalty of perjury the Transferor's United States taxpayer identification number and that the Transferor is not a foreign person ("Transferor's Affidavit"):

These Transferors are ( are not) all Transferors for the above described transaction.

**B. TRANSFEROR(S) FULL NAME(S):** \_\_\_\_\_  
\_\_\_\_\_

**3. DECLARATION UNDER PENALTY OF PERJURY:** The undersigned Qualified Substitute declares under penalty of perjury under the laws of the State of California that he, she or it is in possession of the Transferor's Affidavit, for each Transferor named in paragraph 2 above.

Qualified Substitute \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_

I acknowledge receipt of this Qualified Substitute Declaration of Possession of Transferor's Affidavit of Nonforeign Status.

Buyer \_\_\_\_\_ Date \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_

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**QS 04/09 (PAGE 1 OF 1)**

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



## HOMEOWNER ASSOCIATION INFORMATION REQUEST (HOA)

California Civil Code 4525 and 4530 requires a Homeowners Association to provide certain documents to a seller within 10 days of receiving the seller's request for the information. The documents pertain to the management, operation and financial soundness of the association. The RPA requires the seller whose property is located in a common interest development, be it a condo, townhouse or stand-alone dwelling in a complex, to make the request of the Homeowners Association within 3 days of accepting the buyer's offer. (See paragraph 10F(2) of the RPA for further information). The C.A.R. form HOA can be used for the seller to make the request for documents from the association and for the association to respond. But the HOA form does more. The RPA also requires the seller to give additional information to the buyer even if not covered under the law. For example, the seller must inform the buyer of any pending or anticipated litigation, and the number and location of parking and storage spaces. The C.A.R. form HOA also seeks to get this information from the association. Once the association gives its response to the seller, the seller is obligated to forward the information to the buyer. Some associations have their own forms and methods for distributing the information, and it could even be online, so don't be surprised if a response is given on a document other than the HOA. Also, in some parts of the state, escrow holders take on the responsibility of ordering the necessary information from the Homeowners Association. The escrow may have its own form for this request or may be given the HOA form to accomplish the same thing. The ultimate responsibility for seeking the information and forwarding any responses to the buyer lies with the seller. There are fees associated with getting this information from most Homeowners Association. Paragraph 7D of the RPA will determine who is responsible for payment of those fees. Paragraph 20A of the RPA obligates the responsible buyer or seller to pay escrow holder or the Homeowners Association directly depending on the circumstances.



CALIFORNIA ASSOCIATION OF REALTORS®

HOMEOWNER ASSOCIATION INFORMATION REQUEST AND CHARGES PER DOCUMENTS PROVIDED AS REQUIRED BY SECTION 4525 (C.A.R. Form HOA, Revised 12/13) FOR USE AFTER JANUARY 1, 2014

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

Owner of Property: \_\_\_\_\_ ("Seller")

Owner's Mailing Address: \_\_\_\_\_ (If known or different from property address)

To: Homeowner Association \_\_\_\_\_ ("HOA")

Pursuant to California Civil Code §§ 4525 and 4530 and the request of Seller (1) upon receipt of this request please provide on this form a written or electronic estimate of fees that will be assessed for providing the requested documents, and (2) within 10 calendar Days from the date of this request, please provide to Seller the items or information listed on page 2 at the mailing address indicated above, or (if checked) to \_\_\_\_\_

On page 2, please indicate whether the item is attached. If not attached, indicate if not available or not applicable.

Seller or Seller's Agent \_\_\_\_\_ Date \_\_\_\_\_

The documents and information provided by the HOA referenced above were provided by:

(print name) \_\_\_\_\_ (title or position) \_\_\_\_\_

Association or  Agent \_\_\_\_\_ Date: \_\_\_\_\_

By signing below, the undersigned acknowledge that each has read, understands and has received a copy of this Homeowner Association Information Request.

Seller \_\_\_\_\_ Date \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_

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HOA REVISED 12/13 (PAGE 1 OF 2) Print Date

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



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

**HOMEOWNER ASSOCIATION RESPONSE TO INFORMATION REQUEST FROM SELLER  
FOR COMMON INTEREST DEVELOPMENTS**

	Document	HOA Response		
		Civil Codes	Attached or Not Available or Not Applicable	
<b>REQUIRED BY CIVIL CODE SECTIONS 4525 AND PURCHASE AGREEMENT</b>	Articles of Incorporation or statement that HOA not incorporated	4525(a)(1)	<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	CC&Rs	4525(a)(1)	<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Bylaws	4525(a)(1)	<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	(Operating) Rules and Regulations	4525(a)(1)	<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Age restrictions, if any	4525(a)(2)	<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Pro Forma Operating Budget, or summary including reserve study	5300, 4525(a)(3)	<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Assessment and Reserve Funding Disclosure Summary	5300, 4525(a)(4)	<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Financial Statement Review	5305, 4525(a)(3)	<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Assessment Enforcement Policy	5310, 4525(a)(4)	<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Insurance Summary	5300, 4525(a)(3)	<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Regular Assessment	4525(a)(4)	<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Special Assessment	4525(a)(4)	<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Emergency Assessment	4525(a)(4)	<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Other unpaid obligations of Seller	5675, 4525(a)(4)	<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Approved changes to assessments	5300, 4525(a)(4), (8)	<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Settlement Notice Regarding Common Area Defects	4525(a)(6), (7), 6100	<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Preliminary lists of defects	4525(a)(6), 6000, 6100	<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Notice(s) of Violations	5855, 4525(a)(5)	<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Required statement of fees	4525	<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Restriction or prohibition on renting or leasing	4525(a)(9)	<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
Most recent 12 Months of HOA Minutes For regular meetings of Board of Directors	4525(a)(10)	<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP	
<b>Total fees for these documents</b>	Fee \$	<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP	
<b>REQUIRED BY PURCHASE AGREEMENT ONLY</b>	Name of contact information of other HOAs governing the property		<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Pending or anticipated claims or litigation by or against HOA		<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Number of designated parking spaces		<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Location of parking spaces		<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Number of designated storage spaces		<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Location of storage spaces		<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Private Transfer Fees and/or Taxes		<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Pet Restrictions		<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Smoking Restrictions		<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
	Any other document required by law		<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP
Other		<input type="checkbox"/> Yes or	<input type="checkbox"/> N/AV <input type="checkbox"/> N/APP	

The information provided by this form may not include all fees that may be imposed before the close of escrow. Additional fees that are not related to the requirements of Section 4525 may be charged separately.

HOA \_\_\_\_\_ Date \_\_\_\_\_  
 By \_\_\_\_\_ Title \_\_\_\_\_  
 Seller \_\_\_\_\_ Date \_\_\_\_\_  
 Seller \_\_\_\_\_ Date \_\_\_\_\_

**I acknowledge receipt of a copy of each item checked above. Broker(s) have not and will not review the documents provided. This document may be executed in counterparts.**

Buyer \_\_\_\_\_ Date \_\_\_\_\_  
 Buyer \_\_\_\_\_ Date \_\_\_\_\_

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## NOTICE OF NONRESPONSIBILITY (NNR)

This form puts contractors and other workmen on notice that the seller is not responsible for payment for work done at the property. The form may also be recorded. The top part of the form must be signed by the owner and not the agent.

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FORM NNR

Recording Requested By:

And When Recorded Mail To:

FOR RECORDER'S USE ONLY



CALIFORNIA ASSOCIATION OF REALTORS®

NOTICE OF NONRESPONSIBILITY (C.A.R. Form NNR, Revised 4/14)

TO: Notice is hereby given that: 1. \_\_\_\_\_ is the owner [ ] Other: \_\_\_\_\_ ("Non-Responsible Party" or "NRP") of real property described in paragraph 2 below and has a Fee [ ] Other: \_\_\_\_\_ interest in the Property. 2. The real property at issue is described as follows: \_\_\_\_\_, Assessor's Parcel Number \_\_\_\_\_ "Property". 3. NRP may be contacted at the following address: \_\_\_\_\_ 4. NRP first obtained knowledge of the work of improvement on the Property on \_\_\_\_\_. 5. A. The direct contractor's name and address is unknown at this time (or if known, is specified in 5C). B. The construction lender's name and address is unknown at this time (or if known, is specified in 5C). C. \_\_\_\_\_. D. NRP will not be responsible for any claims arising from the work of improvement.

VERIFICATION: I, NRP, have read the Notice of NonResponsibility and have personal knowledge of all facts stated herein and such facts are true. I certify under penalty of perjury that the foregoing is true and correct.

NRP \_\_\_\_\_ Date \_\_\_\_\_ Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

This Notice shall be posted at a conspicuous place on the Property within ten (10) days after the person claiming the benefits of nonresponsibility has obtained knowledge of the work of improvement. Within this same ten day period, the Notice shall be recorded in the office of the county recorder of the county in which the Property, or some part thereof, is located.

ACKNOWLEDGMENT: \_\_\_\_\_ ("Declarant"), declares as follows: The above Notice of Nonresponsibility is a true copy of a notice posted at \_\_\_\_\_, City of \_\_\_\_\_, County of \_\_\_\_\_, State of California on \_\_\_\_\_, 20\_\_\_\_\_. Declarant is the person who signed the Notice or the agent of the person who signed the Notice and such agent has the authority to post and record the Notice. Declarant has read the Notice and knows the contents thereof. The facts stated in the Notice are true of Declarant's own knowledge. \_\_\_\_\_, 20\_\_\_\_\_. (Declarant's Signature) \_\_\_\_\_ (Date) STATE OF CALIFORNIA, COUNTY OF \_\_\_\_\_, ON \_\_\_\_\_ (Date) before me, \_\_\_\_\_ (Insert name and title of the officer) personally appeared \_\_\_\_\_ (Name of Declarant),

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Notary's Signature) \_\_\_\_\_ (Seal)

FOR NOTARY'S USE ONLY

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NNR REVISED 4/14 (PAGE 1 OF 1) PRINT DATE

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



## CONTINGENCY REMOVAL (CR)

Pursuant to the RPA, the buyer's obligation to purchase the property is contingent upon certain conditions being met, such as the buyer's approval of the physical condition of the property, of the buyer obtaining a loan or the property appraising at the purchase price. As long as the contingency is in effect, the buyer has the potential to cancel the contract without penalty. Accordingly, it is important to both buyer and seller to know if any contingency remains in effect or has been removed. Removal of contingencies does not happen automatically but must be in writing in order to be effective. (See paragraph 14 of the RPA for further information.) The CR is used to document the buyer's removal of contingencies in writing. The buyer can remove separate contingencies one at a time from an itemized list, remove all but select contingencies (such as loan and appraisal) or remove all contractual contingencies by checking a single box. There is also language stating that when the buyer removes a contingency, the buyer has completed all investigations and inspections and review of reports relating to that contingency, elected to proceed, and assumes all liability for repairs unless the seller has agreed to make repairs or take other actions.

The CR can also be used to document the seller's removal of any contingencies running in the seller's favor. The most common contingency of this sort is the contingency for the seller finding replacement property. (See Seller Purchase of Replacement Property, C.A.R. form SPRP for further information.) Part B at the bottom of the CR form is for the seller to in writing remove seller contingencies. This part of the form does not need to be completed if the CR form is being used to only remove buyer related contingencies.



CALIFORNIA ASSOCIATION OF REALTORS®

CONTINGENCY REMOVAL No. \_\_\_\_\_ (C.A.R. Form CR Revised, 11/14)

In accordance with the terms and conditions of the: [ ] Residential Purchase Agreement (C.A.R. Form RPA-CA), or [ ] Residential Income Property Purchase Agreement (C.A.R. Form RIPA), or [ ] Commercial Property Purchase Agreement (C.A.R. Form CPA), or [ ] Vacant Land Purchase Agreement (C.A.R. Form VLPA) or [ ] Other \_\_\_\_\_ ("Agreement"), dated \_\_\_\_\_, on property known as \_\_\_\_\_ ("Property"), between \_\_\_\_\_ ("Buyer") and \_\_\_\_\_ ("Seller").

I. BUYER REMOVAL OF BUYER CONTINGENCIES:

1. Buyer removes those contingencies specified below.

A. ONLY the following individually checked Buyer contingencies are removed:

- 1. [ ] Loan (Paragraph 3J)
2. [ ] Appraisal (Paragraph 3I)
3. [ ] Buyer's Investigation, including insurability (Paragraph 12)
4. [ ] Condominium/Planned Development (HOA or OA) Disclosures (Paragraph 10F)
5. [ ] Reports/Disclosures (Paragraphs 7 and 10)
6. [ ] Title: Preliminary Report (Paragraph 13)
7. [ ] Sale of Buyer's Property (Paragraph 4B)
8. [ ] Review of documentation for leased or liened items (Paragraph 9B(4))
9. [ ]
10. [ ]

OR B. [ ] ALL Buyer contingencies are removed, EXCEPT: [ ] Loan Contingency (Paragraph 3J); [ ] Appraisal Contingency (Paragraph 3I); [ ] Contingency for the Sale of Buyer's Property (Paragraph 4B); [ ] Condominium/Planned Development (HOA) Disclosures (Paragraph 10F); [ ] Other \_\_\_\_\_

OR C. [ ] BUYER HEREBY REMOVES ANY AND ALL BUYER CONTINGENCIES.

2. With respect to any contingency and cancellation right that Buyer removes, unless otherwise specified in a separate written agreement between Buyer and Seller, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations and review of reports and other applicable information and disclosures; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and, expense, if any, for Repairs, corrections, or for the inability to obtain financing.

3. Once all contingencies are removed, whether or not Buyer has satisfied him/herself regarding all contingencies or received any information relating to those contingencies, Buyer may not be entitled to a return of Buyer's deposit if Buyer does not close escrow. This could happen even if, for example, Buyer does not approve of some aspect of the Property or lender does not approve Buyer's loan.

NOTE: Paragraph numbers refer to the California Residential Purchase Agreement (C.A.R. Form RPA-CA). Applicable paragraph numbers for each contingency or contractual action in other C.A.R. contracts are found in Contract Paragraph Matrix (C.A.R. Form CPM).

Buyer \_\_\_\_\_ Date \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_

II. SELLER REMOVAL OF SELLER CONTINGENCIES: Seller hereby removes the following Seller contingencies: [ ] Contingency for Seller's purchase of replacement property (C.A.R. Form COP); [ ] Other \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_

(\_\_\_\_\_/\_\_\_\_\_) (Initials) CONFIRMATION OF RECEIPT: A copy of this signed Contingency Removal was personally received by [ ] Buyer [ ] Seller or authorized agent on \_\_\_\_\_ (date), at \_\_\_\_\_ [ ] AM / [ ] PM.

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## CANCELLATION OF CONTRACT, RELEASE OF DEPOSIT AND JOINT ESCROW INSTRUCTIONS (CC)

The RPA gives buyer and seller rights to cancel the contract unilaterally if the other party has not performed some obligation of the contract. (See paragraph 14B and C of the RPA for further information.) Section 1 of this form allows buyer or seller to give notice to the other if that principal wants to cancel based on the other's failure. The form may also be used if buyer and seller mutually agree to cancel, for whatever reason.

Although the right to cancel the contract may be unilateral, the right to have funds released from escrow requires mutual consent or the escrow can continue to hold the deposit until ordered to release it by a court judgment or arbitration award. Section 2 of this form addresses the deposit money. Three options are present, buyer releasing the funds to seller; seller releasing the funds to buyer; or buyer and seller mutually agreeing that the contract should be cancelled but authorizing the escrow holder to continue to hold the funds until receiving mutual instructions or some legal authority to release.

Effective with the November 2014 release of the RPA, another option is present after a buyer or seller has given a valid notice of cancellation. If the other does not sign a mutual instruction to release the deposit money per the agreement, then one party can make a written demand on escrow to release the funds to the party making the demand. If the other party does not object within 10 days, escrow holder is obligated to release the funds. (See paragraph 14G of the RPA for further information.) The CC form is a cancellation and is also an attempt to get mutual instructions to release deposit; it is not a demand on escrow to release the deposit.

If the contract is validly, unilaterally cancelled but escrow is not mutually cancelled, the seller is legally allowed to sell the property to another buyer. However, the escrow company holding the funds between the seller and the first, cancelled buyer will not usually agree to act as the escrow holder on a subsequent transaction between seller and a different buyer. This is a business decision based on the escrow's evaluation of its continuing duties between buyer and seller to the failed transaction. If another buyer is found, it is prudent for the seller to at least disclose that the first transaction resulted in a cancellation without a mutual release of escrow. The seller should also consider making the second buyer contract contingent upon successful cancellation of the first. If the first buyer will not sign mutual cancellation by the time the second contract is supposed to close escrow, the second buyer, after consulting with a lawyer, may waive that contingency.



CALIFORNIA ASSOCIATION OF REALTORS®

CANCELLATION OF CONTRACT, RELEASE OF DEPOSIT AND CANCELLATION OF ESCROW

(C.A.R. Form CC, Revised 11/14)

In accordance with the terms and conditions of the: [ ] California Residential Purchase Agreement; or [ ] Other \_\_\_\_\_ ("Agreement"), dated \_\_\_\_\_, including all amendments and related documents, on property known as \_\_\_\_\_ ("Property"), between \_\_\_\_\_ ("Buyer") and \_\_\_\_\_ ("Seller").

Paragraphs 1 and 2 below constitute escrow instructions to Escrow Holder. Release of funds (pursuant to paragraph 2) requires mutually Signed release instructions from Buyer and Seller, judicial decision or arbitration award. A party may be subject to a civil penalty of up to \$1,000 for refusal to sign such instructions if no good faith dispute exists as to who is entitled to the deposited funds (Civil Code §1057.3).

- 1. CANCELLATION OF CONTRACT: [ ] Buyer [ ] Seller [ ] both Buyer and Seller cancel(s) the Agreement for the following reason:
A. [ ] As permitted by the good faith exercise of paragraph(s) \_\_\_\_\_ of the Agreement.
OR B. [ ] Buyer has failed to remove the applicable contingency after being given a Notice to Buyer to Perform (C.A.R. Form NBP).
OR C. [ ] Buyer has failed to take the applicable contractual action after being given a Notice to Buyer to Perform (C.A.R. Form NBP).
OR D. [ ] Seller has failed to take the applicable contractual action after being given a Notice to Seller to Perform (C.A.R. Form NSP).
OR E. [ ] Seller has failed to remove the applicable contingency after being given a Notice to Seller to Perform (C.A.R. Form NSP).
OR F. [ ] Per mutual agreement.
OR G. [ ] Other \_\_\_\_\_

Buyer's or Seller's Signature (party cancelling the contract) \_\_\_\_\_ Date \_\_\_\_\_

Buyer's or Seller's Signature (party cancelling the contract) \_\_\_\_\_ Date \_\_\_\_\_

2. RELEASE OF DEPOSIT and CANCELLATION OF ESCROW

Buyer and Seller cancel escrow # \_\_\_\_\_ with \_\_\_\_\_ and

- A. [ ] Seller authorizes release of Buyer's deposit, less Buyer's fees and costs, to Buyer.
OR B. [ ] Buyer authorizes release of Buyer's deposit, less Seller's fees and costs, to Seller. ( [ ] Pursuant to a properly executed liquidated damages clause, Buyer's authorization of release of deposit to Seller is limited to no more than 3% of the purchase price. Any additional deposit shall be returned to Buyer.)
OR C. [ ] Both Buyer and Seller acknowledge mutual cancellation of the Agreement and authorize Escrow Holder to continue to hold the deposit until receiving subsequent mutual instructions, judicial decision or arbitration award.
OR D. [ ] Other: \_\_\_\_\_

Unless otherwise specified, Buyer and Seller (i) mutually release each other from all obligation to buy, sell or exchange the Property under the Agreement, and from all claims, actions and demands that each may have against the other(s) by reason of the Agreement; and (ii) intend that all rights and obligations arising out of the Agreement are null and void.

Date \_\_\_\_\_ Date \_\_\_\_\_
Buyer \_\_\_\_\_ Seller \_\_\_\_\_
Buyer \_\_\_\_\_ Seller \_\_\_\_\_

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## NOTICE TO SELLER TO PERFORM (NSP)

The Notice to Seller to Perform (NSP) is used in conjunction with the RPA-CA to provide a notice to the seller to meet the contractual action indicated. It provides a checklist for the required seller action. If the seller does not perform, the buyer may cancel the agreement or delay removing certain contingencies.

The Notice to Seller to Perform puts the seller on notice that he has not completed required contractual actions, such as provide agreed-to reports and disclosures. This Notice to Seller to Perform can be helpful to document that the seller has failed to provide an agreed-to disclosure or report within the specified time. A buyer may use the NSP as a reminder to the seller. The buyer may not have a desire to cancel but instead may be interested in reviewing relevant documents. The NSP can also be helpful to prove that a seller has not taken a required action or delivered an agreed-to disclosure or report if the seller now wants the buyer to remove a contingency related to that report or disclosure. Before a buyer can cancel for the seller's failure to provide documents, disclosures, reports or other required information, the buyer must first give the seller a two-day opportunity or reminder to comply with the contract by giving the seller a NSP.



CALIFORNIA ASSOCIATION OF REALTORS®

NOTICE TO SELLER TO PERFORM

No. \_\_\_\_\_ (C.A.R. Form NSP, Revised 11/14)

In accordance with the terms and conditions of the [ ] California Residential Purchase Agreement (C.A.R. Form RPA) or [ ] Residential Income Property Purchase Agreement (C.A.R. Form RIPA), or [ ] Commercial Property Purchase Agreement (C.A.R. Form CPA), or [ ] Vacant Land Purchase Agreement (C.A.R. Form VLPA), or [ ] Other \_\_\_\_\_ ("Agreement"), dated \_\_\_\_\_, on property known as \_\_\_\_\_ ("Property"), between \_\_\_\_\_ ("Buyer"), and \_\_\_\_\_ ("Seller").

Buyer hereby gives Seller notice that Buyer has not yet received from Seller the items checked below. If Seller does not provide Buyer with these items, Buyer may be entitled to cancel the Agreement or delay removing an applicable contingency.

CONTRACTUAL ACTION

- A. [ ] Delivery of the following Inspection or Report (Paragraph 7 \_\_\_\_\_): \_\_\_\_\_;
B. [ ] Delivery of a fully completed Lead Disclosures (Paragraph 10A)
C. [ ] Delivery of the following fully completed Statutory Disclosures (Paragraph 10A): \_\_\_\_\_
D. [ ] Delivery of the following booklets/guides(Paragraph 10B): \_\_\_\_\_
E. [ ] Delivery of Condominium/Planned Development (HOA or OA) Disclosures (Paragraph 10F)
F. [ ] Disclosure of Known Property Insurance Claims (Paragraph 11A)
G. [ ] Delivery of Preliminary Title Report (Paragraph 13A)
H. [ ] Approval of verification of down payment and closing costs (Paragraph 14C(2))
I. [ ] Approval of verification of cash (Paragraph 14C(2))
J. [ ] Removal of contingency for Seller's Purchase of Replacement Property (C.A.R. Form SPRP, Paragraph 2)
K. [ ] Delivery of a Representative Capacity Signature Addendum and evidence of authority to act (Paragraphs 19 and 32)
L. [ ] Other Disclosures and Deliveries: \_\_\_\_\_
M. [ ] \_\_\_\_\_
N. [ ] \_\_\_\_\_
O. [ ] \_\_\_\_\_

SELLER: If you do not take the contractual actions specified above within 2 (or [ ] \_\_\_\_\_) Days After Delivery (but no less than the time specified in the Agreement) of this Notice to Seller to Perform, Buyer may cancel the Agreement.

NOTE: Paragraph numbers refer to the California Residential Purchase Agreement (C.A.R. Form RPA-CA). Applicable paragraph numbers for each contingency or contractual action in other C.A.R. contracts are found in Contract Paragraph Matrix (C.A.R. Form CPM).

Buyer \_\_\_\_\_ Date \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_

(\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_) (Initials) CONFIRMATION OF RECEIPT: A Copy of this Signed Notice to Seller to Perform was personally received by Seller or authorized agent on \_\_\_\_\_ (date), at \_\_\_\_\_ [ ]AM [ ]PM.

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NSP REVISED 11/14 (PAGE 1 OF 1)

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



## BUYER'S INSPECTION ELECTIONS (BIE)

The buyer's investigation is so important to the transaction and the buyer's satisfaction with the property at time of purchase and later that many brokers want to emphasize that fact even more so than is already done in the purchase agreement and related addenda. (See RPA paragraphs 12 and 14 and BIA and SBSA for further information.) Those brokers may want to make use of the Buyer's Inspection Elections form (C.A.R. form BIE) in which the buyer is once again reminded of the importance of inspecting all aspects of the property. The BIE goes even further and contains a list of 37 preprinted potential areas for inspection and an affirmative decision by the buyer at a particular point in time to inspect or not inspect each of the areas. Even if the buyer chooses not to inspect something at one point in time, the buyer may choose to do so later as long as the time to conduct inspections has not expired.



CALIFORNIA ASSOCIATION OF REALTORS®

BUYER'S INSPECTION ELECTIONS

(C.A.R. Form BIE, 11/13)

Property Address: \_\_\_\_\_ ("Property").

A. IMPORTANCE OF PROPERTY INVESTIGATION: Unless otherwise specified in the Agreement, the physical condition of the land and improvements being purchased is not guaranteed by either Seller or Brokers. A Broker's inspection is limited visual inspection (see C.A.R. Form AVID); a Broker is not qualified to conduct the inspections listed below nor will Broker conduct these inspections checked by Buyer. For these reasons, you should conduct thorough inspections, investigations, tests, surveys and other studies (Inspections) of the Property personally and with appropriate professionals (see C.A.R. Form BIA and SBSA) who should provide written reports of their Inspections. A general physical inspection typically does not cover all aspects of the Property nor items affecting the Property that are not physically located on the Property. If any professional recommends further Inspections, including a recommendation by a pest control operator to inspect inaccessible areas of the Property, you should contact qualified experts to conduct such additional Inspections.

B. BUYER RIGHTS AND DUTIES: You have an affirmative duty to exercise reasonable care to protect yourself, including discovery of the legal, practical and technical implications of disclosed facts, and to investigate and verify information and facts that you know or that are within your diligent attention and observation. The Agreement gives you the right to investigate the Property. If you exercise this right, and you should, you must do so in accordance with the terms of the Agreement. This is the best way for you to protect yourself. It is extremely important for you to read all written reports provided by professionals and to discuss the results of Inspections with the professional who conducted the Inspection.

C. BROKER ADVICE: YOU ARE STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY. IF YOU DO NOT DO SO, YOU ARE ACTING AGAINST THE ADVICE OF BROKERS.

IF ANY BOX BELOW IS CHECKED "YES", BUYER AGREES TO PAY FOR THE SPECIFIED INSPECTION UNLESS OTHERWISE AGREED IN THE PURCHASE AGREEMENT. BUYER IS RESPONSIBLE FOR CHOOSING THE PROVIDER AND ORDERING THE INSPECTION. IF YOU DO NOT SPECIFICALLY REQUEST A PARTICULAR INSPECTION NOW, YOU MAY DO SO IN THE FUTURE, IN WRITING. HOWEVER, IF YOUR CONTRACTUAL INVESTIGATION PERIOD HAS EXPIRED, SELLER MAY NOT ALLOW THE INSPECTIONS AT THAT TIME.

D. BUYER INSPECTION ELECTION: Buyer represents and agrees that Buyer has independently considered the available inspections and at this time has decided to order only those inspections selected "Yes" below.

- 1. Yes No GENERAL HOME INSPECTION
20. Yes No TREE/ARBORIST
2. Yes No WOOD DESTROYING PESTS
21. Yes No WELL
3. Yes No CHIMNEY
22. Yes No WATER SYSTEMS AND COMPONENTS
4. Yes No ELECTRICAL
23. Yes No RADON GAS
5. Yes No HEATING/AIR CONDITIONING
24. Yes No FORMALDEHYDE
6. Yes No LEAD PAINT
25. Yes No ASBESTOS
7. Yes No PLUMBING
26. Yes No METHANE GAS
8. Yes No SQUARE FOOTAGE
27. Yes No MOLD
9. Yes No STRUCTURAL
28. Yes No PERMITS
10. Yes No EASEMENTS/ENCROACHMENTS
29. Yes No PUBLIC RECORDS
11. Yes No FOUNDATION/SLAB
30. Yes No ZONING
12. Yes No LOT SIZE
31. Yes No GOVERNMENT REQUIREMENTS
13. Yes No BOUNDARIES
32. Yes No VACANT LAND/CONSTRUCTION FINANCING
14. Yes No POOL/SPA
33. Yes No CONSTRUCTION COSTS
15. Yes No ROOF
34. Yes No AVAILABILITY OF UTILITIES
16. Yes No SEWER
35. Yes No ENVIRONMENTAL SURVEY
17. Yes No SEPTIC SYSTEM
36. Yes No NATURAL HAZARDS REPORTS
18. Yes No SOIL STABILITY
37. Yes No SUBDIVISION OF PROPERTY
19. Yes No SURVEY
Yes No OTHER: \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_ Buyer \_\_\_\_\_ Date \_\_\_\_\_

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## **BUYER'S INSPECTION WAIVER (BIW) MARKET CONDITIONS ADVISORY (MCA)**

Because certain inspections are so vital to a buyer's ability to determine the condition of the property and the potential costs that may be incurred upon ownership, some brokers do not want any misunderstanding about the recommendation to obtain those inspections. If the buyer chooses to ignore the recommendation, the broker wants some documentation for the file to demonstrate that the buyer made the decision on his or her own and not at the insistence of the broker. The Buyer's Inspection Waiver (C.A.R. form BIW) can be used to document a buyer's decision not to have a home inspection or an inspection for wood destroying pests and organisms. Even if those inspections are made, sometimes the inspector discovers a condition that may require further investigation that is beyond the scope of that inspector's expertise. In such cases, prudent advice of a real estate broker is for the buyer to obtain the additional inspection. If buyer chooses not to, that decision can be documented using paragraph 4 of the BIW.

Sometimes a buyer makes a decision to forego certain inspections in order to get the property into contract. That strategy is most often used in a "hot" real estate market where multiple buyers are competing for the few properties that are available. The BIE and BIW are most often used once a contract has been agreed to by buyer and seller. However, if the decision is made to waive certain inspections or contingencies giving the buyer the right to cancel if not satisfied with an inspection, then the Market Conditions Advisory (C.A.R. form MCA) should be considered by the broker to be given to the buyer prior to making the offer. Like the BIE and BIW, the MCA in that instance need not be signed by the seller as it is for the purpose of clarifying the buyer's decision relative to the buyer's own broker.



CALIFORNIA ASSOCIATION OF REALTORS®

BUYER'S INSPECTION WAIVER

(C.A.R. Form BIW, 4/08)

Property Address: \_\_\_\_\_ ("Property").

A. IMPORTANCE OF PROPERTY INVESTIGATION: Unless otherwise specified in the purchase agreement used, the physical condition of the land and any improvements being purchased is not guaranteed by either Seller or Brokers. For this reason, (i) you should conduct thorough inspections, investigations, tests, surveys and other studies (Investigations) of the Property personally and with professionals of your own choosing who should provide written reports/disclosures of their findings and recommendations, and (ii) you should not rely solely on reports/disclosures provided by Seller or others. A general physical (home) inspection typically does not cover all aspects of the Property nor items affecting the Property that are not physically located on the Property. If any professional recommends additional Investigations, including a recommendation by a pest control operator to inspect inaccessible areas of the Property, you should contact qualified experts to conduct such additional Investigations.

B. BUYER RIGHTS AND DUTIES: You have an affirmative duty to exercise reasonable care to protect yourself, including discovery of the legal, practical and technical implications of disclosed facts, and to investigate and verify information and facts that you know or that are within your diligent attention and observation. If the purchase agreement gives you the right to investigate the Property the best way to protect yourself is to exercise this right. However, you must do so in accordance with the terms of, and time specified in, that agreement. It is extremely important for you to read all written reports/disclosures provided by professionals and to discuss the results of Investigations with the professionals who conducted the Investigations.

C. WAIVERS:

1. HOME INSPECTION WAIVER: Broker recommends that Buyer obtain a home inspection, even if Seller or Broker has provided Buyer with a copy of a home inspection report/disclosure obtained by Seller or a previous buyer. IF YOU DO NOT DO SO, YOU ARE ACTING AGAINST THE ADVICE OF BROKERS.

(\_\_\_\_)(\_\_\_\_) Buyer has decided not to obtain a general home inspection at this time. Unless Buyer makes a subsequent election in writing during Buyer's investigation period, if any, Buyer waives the right to obtain a general home inspection.

2. WOOD DESTROYING PEST INSPECTION WAIVER: Broker recommends that Buyer obtain an inspection for wood destroying pests and organisms (whether paid for by Buyer or Seller). IF YOU DO NOT DO SO, YOU ARE ACTING AGAINST THE ADVICE OF BROKERS.

(\_\_\_\_)(\_\_\_\_) Buyer has decided not to obtain an inspection for wood destroying pests and organisms at this time. Unless Buyer makes a subsequent election in writing during Buyer's investigation period, if any, Buyer waives the right to obtain an inspection for wood destroying pests and organisms.

3. OTHER: Broker recommends that Buyer obtain an inspection for the following items: \_\_\_\_\_

IF YOU DO NOT DO SO, YOU ARE ACTING AGAINST THE ADVICE OF BROKERS.

(\_\_\_\_)(\_\_\_\_) Buyer has decided not to obtain the inspection(s) noted above at this time. Unless Buyer makes a subsequent election in writing during Buyer's investigation period, if any, Buyer waives the right to obtain such inspection(s).

4. ADDITIONAL WAIVERS: Buyer has received a:

- General Home Inspection Report/Disclosure, prepared by \_\_\_\_\_ dated \_\_\_\_\_
Wood Destroying Pest and Organism Report/Disclosure, prepared by \_\_\_\_\_ dated \_\_\_\_\_
Other \_\_\_\_\_ Report/Disclosure, prepared by \_\_\_\_\_ dated \_\_\_\_\_

That report/disclosure recommends that Buyer obtain additional Investigations. Broker recommends that Buyer obtain those additional Investigations. IF YOU DO NOT DO SO, YOU ARE ACTING AGAINST THE ADVICE OF BROKERS.

(\_\_\_\_)(\_\_\_\_) Buyer has decided not to obtain any of the additional inspections or reports/disclosures at this time and, unless Buyer makes a subsequent election in writing during Buyer's investigation period, if any, Buyer waives the right to obtain such additional inspections or reports/disclosures.

Buyer represents and agrees that Buyer has independently considered the above, and all other Investigation options, has read all written reports/disclosures provided by professionals and discussed the results with the professional who conducted the Investigation. Buyer further agrees that unless Buyer makes a subsequent election in writing during Buyer's Investigation period, if any, Buyer waives the right to conduct the Investigation(s) above.

Buyer \_\_\_\_\_ Date \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_

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## MARKET CONDITIONS ADVISORY

(C.A.R. Form MCA, Revised 11/11)

**1. MARKET CONDITIONS:** Real estate markets are cyclical and can change over time. It is impossible to predict future market conditions with accuracy. In a competitive or “hot” real estate market, there are generally more Buyers than Sellers. This will often lead to multiple buyers competing for the same property. As a result, in order to make their offers more attractive, some Buyers may offer more than originally planned or eliminate certain contingencies in their offers. In a less competitive or “cool” market there are generally more Sellers than Buyers, often causing real estate prices to level off or drop, sometimes precipitously. The sales price of homes being sold as foreclosures and short sales is difficult to anticipate and can affect the value of other homes in the area. Brokers, appraisers, Sellers and Buyers take these “distressed” property sales and listings into consideration when valuing property. In light of the real estate market’s cyclical nature it is important that Buyers understand the potential for little or no appreciation in value, or an actual loss in value, of the property they purchase. This Advisory discusses some of the potential risks inherent in changing market conditions.

### 2. BUYER CONSIDERATIONS:

**A. OFFERING PRICE:** AS A BUYER, YOU ARE RESPONSIBLE FOR DETERMINING THE PRICE YOU WANT TO OFFER FOR A PROPERTY. Although Brokers may provide you with comparable sales data, generally from information published in the local multiple listing service, you should know that the reporting of this data is often delayed and prices may change, up or down, faster than reported sales indicate. All buyers should be sure they are comfortable with the price they are offering or the price they are accepting in a counter offer. You should be aware of and think about the following: **(i)** If your offer is accepted, the property’s value may not increase and may even decrease. **(ii)** If your offer is accepted, you may have “Buyer’s remorse” that you paid too much. **(iii)** If your offer is rejected there can be no guarantee that you will find a similar property at the same price. **(iv)** If your offer is rejected, you may not be satisfied that the amount you offered was right for you. Only you can determine that your offer was reasonable and prudent in light of the property and your circumstances.

**B. NON-CONTINGENT OFFERS:** Most residential purchase agreements contain contingencies allowing a Buyer within a specified period of time to cancel a purchase if: **(i)** the Buyer cannot obtain a loan; **(ii)** is dissatisfied with the property’s condition after an inspection; or **(iii)** if the property does not appraise at a certain value. To make their offers more attractive, Buyers will sometimes write offers with few or no contingencies or offer to remove contingencies within a short period of time. In a “hot” market, sellers will sometimes insist that Buyers write offers with no contingencies. Broker recommends that Buyers do not write non-contingent offers and if you do so, you are acting against Broker’s advice. However, if you do write a non-contingent offer these are some of the contractual rights you may be giving up:

**(1) LOAN CONTINGENCY:** If you give up your loan contingency, and you cannot obtain a loan, whether through your fault or the fault of your lender, and as a result, you do not or cannot purchase the property, you may legally be in default under the contract and required to pay damages or forfeit your deposit to the seller.

**(2) APPRAISAL CONTINGENCY:** If your lender’s (or your own) appraiser does not believe the property is worth what you have agreed to pay for it, your lender may not loan the full amount needed for the purchase or may not loan any amount at all because of a low appraisal. As a result, if you do not purchase the property, and you have removed your appraisal contingency, you may legally be in default under the contract and could be required to pay damages to, or forfeit your deposit to, the Seller. The Seller is not obligated to reduce the purchase price to match the appraised value.

Buyer’s Initials (\_\_\_\_)(\_\_\_\_)

Seller’s Initials (\_\_\_\_)(\_\_\_\_)

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MCA REVISED 11/11 (PAGE 1 OF 2)

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



MARKET CONDITIONS ADVISORY (MCA PAGE 1 OF 2)

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

**(3) INSPECTION CONTINGENCY:** If you disapprove of the condition of the property and as a result, you do not purchase the property, you may legally be in default under the contract and required to pay damages to, or forfeit your deposit to, the Seller if you have removed your inspection contingency. However, even if you make an offer without an inspection contingency or you remove that contingency, the Seller may still be obligated to disclose to you material facts about the property. In some cases, once you receive that information the law gives you an independent right to cancel for a limited period of time.

There is inherent risk in writing a non-contingent offer. Only you, after careful consultation and deliberation with your attorney, accountant, or financial advisor can decide how much risk you are willing to take. **IT IS YOUR DECISION ALONE AND CANNOT BE MADE BY YOUR BROKER OR REAL ESTATE AGENT.**

**C. BROKER RECOMMENDATIONS.** Broker recommends that you do not write a non-contingent offer, even if you are planning on paying all cash for the property. If you intend to write a non-contingent offer, Broker recommends that, prior to writing the offer, you: **(i)** review all available Seller reports, disclosures, information and documents; **(ii)** have an appropriate professional inspect the property (even if it is being sold "as is" in its present condition); and **(iii)** carefully assess your financial position and risk with your attorney, accountant or financial advisor.

**D. MULTIPLE OFFERS:** At times Buyers may write offers on more than one property even though the Buyer intends to purchase only one. This may occur in a short sale when the approval process can take a considerable amount of time. While it is not illegal to make offers on multiple properties with intent to purchase only one, the Buyer can be obligated to many Sellers if more than one accepts the Buyer's offers. If the Buyer has not disclosed that the Buyer is writing multiple offers with the intent to purchase only one and the Buyer subsequently cancels without using a contingency, the Seller may claim the Buyer is in breach of contract because the Buyer fraudulently induced the Seller to enter into a contract.

**3. SELLER CONSIDERATIONS:**

As a Seller, you are responsible for determining the asking price for your property. Although Brokers may provide you with comparable sales data, generally from information published in the local multiple listing service, you should know that the reporting of this data is often delayed and prices may change, up or down, faster than reported sales indicate. All Sellers should be sure they are comfortable with the asking price they are setting and the price they are accepting. There is not, and cannot be, any guarantee that the price you decide to ask for your property, or the price at which not you agree to sell your property is the highest available price obtainable for the property. It is solely your decision as to how much to ask for your property and at which price to sell your property.

**Buyer/Seller acknowledges each has read, understands and has received a copy of this Market Conditions Advisory.**

Buyer \_\_\_\_\_ Date \_\_\_\_\_  
Buyer \_\_\_\_\_ Date \_\_\_\_\_  
Seller \_\_\_\_\_ Date \_\_\_\_\_  
Seller \_\_\_\_\_ Date \_\_\_\_\_

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## REQUEST FOR REPAIR (RR)

This form is used in conjunction with the RPA-CA to document a buyer's request that the seller make repairs to the property before close of escrow, give the buyer a credit or reduce the purchase price to accommodate the fact that the buyer may incur expenses immediately upon taking title to the property. While having work done before close of escrow is appealing to many buyers, some buyers prefer a credit or purchase price reduction either because they want their own chosen contractors or repairpersons to perform the work or because the buyer was already planning on altering the property and the problem area is within the space the buyer intends to improve so it would not make sense to have the work completed only to have the buyer change that part of the property anyway. Whether for the just stated reasons or something else, the decision on repair requests is for the buyer to make.

Since having the property treated for problems associated with wood destroying pests and organisms is a often requested term, specific language has been added to the RR to address how any such requested work will be accomplished. For example, the request can cover active infestation only (Section 1 conditions) or conditions likely to lead to active infestation (Section 2) or both. In any case, if this request is made, the seller shall deliver to buyer a certification from a registered structural pest control company attesting to the completion of the work. Whenever the request is made for problems associated with wood destroying pests and organisms, the request must be based upon the findings of a specific report issued by a registered structural pest control company.



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REQUEST FOR REPAIR No. \_\_\_\_\_

(Or other Corrective Action)

(C.A.R. Form RR, Revised 11/14)

In accordance with the terms and conditions of the:  California Residential Purchase Agreement or  Other \_\_\_\_\_ ("Agreement"), dated \_\_\_\_\_, on property known as \_\_\_\_\_ ("Property"), between \_\_\_\_\_ ("Buyer"), and \_\_\_\_\_ ("Seller").

BUYER REQUEST:

1. (a)  Buyer requests that Seller, prior to final verification of condition, repair or take the other specified action for each item listed below or  on the attached list dated \_\_\_\_\_:

Multiple horizontal lines for listing repair items.

(b)  Buyer requests Seller pay to have Section 1 work completed as specified in the attached Pest Control Report dated \_\_\_\_\_ and prepared by \_\_\_\_\_

Buyer requests Seller pay to have Section 2 work completed as specified in the attached Pest Control Report dated \_\_\_\_\_ and prepared by \_\_\_\_\_

If Buyer requests either Section 1 or Section 2 work above, the request includes the following. Seller shall, no later than 5 (or \_\_\_\_\_) Days Prior to Close of Escrow, Deliver to Buyer a written pest control certification showing the corrective work has been completed.

(c)  Buyer requests that Seller credit Buyer \$ \_\_\_\_\_ at Close of Escrow.

(d)  Buyer requests that Seller reduce the purchase price to \$ \_\_\_\_\_

2. A copy of the following inspection or other report is attached.

Two lines with checkboxes for listing attached reports.

Buyer \_\_\_\_\_ Date \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_

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## SELLER RESPONSE AND BUYER REPLY TO REQUEST FOR REPAIR (RRRR)

The seller can agree to all, some or none of buyer's requests. The seller can also respond by offering something different than what the buyer asks for. As an example, the buyer may ask for repairs and the seller offers the buyer a credit instead.

- After the seller has responded, the buyer is left with two options, (i) agree to accept the Seller's response and withdraw all requests for items the seller has not agreed-to, or (ii) withdraw this request and submit a new request for repairs. The reason a brand new request for repairs is a good idea, rather than issuing a counter offer to the seller's response, is that it can be confusing what has been agreed-to or not. By starting over with a brand new RR, both sides to the transaction can have clarity and move forward, or not, based on a mutual understanding.

Whether the seller agrees to all or only some of the buyer's request, the seller's assent is conditioned upon the buyer removing contingencies. The seller can identify which contingencies are to be removed on the RRRR form itself or by attaching a completed CR form. If the buyer agrees to the seller's response, by signing the RRRR form the buyer agrees to removal of the specified contingencies whether or not a separate CR form is signed. Of course, for clarity it is best if the attached CR form is indeed signed by the Buyer.



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SELLER RESPONSE AND BUYER REPLY TO REQUEST FOR REPAIR No. \_\_\_\_\_

(Or other Corrective Action)

(C.A.R. Form RRRR, 11/14)

In accordance with the terms and conditions of the: Request For Repair No. \_\_\_\_\_ dated \_\_\_\_\_, on property known as \_\_\_\_\_ ("Property"), between \_\_\_\_\_ ("Buyer"), and \_\_\_\_\_ ("Seller").

SELLER RESPONSE TO BUYER REQUESTS:

1. A. Seller agrees: (Check all that apply).

- (1) to all of Buyer's requests in Request for Repair No. \_\_\_\_\_.
(2) to all of Buyer's requests in Request for Repair No. \_\_\_\_\_, except: \_\_\_\_\_
(3) at Close of Escrow, to credit Buyer \$ \_\_\_\_\_
(4) to reduce the purchase price to \$ \_\_\_\_\_

B. Seller's agreement only applies if Buyer both:

- (1) removes in writing the following contingency(ies) \_\_\_\_\_ or those contingencies identified on the attached Contingency Removal form (C.A.R. Form CR No. \_\_\_\_\_), or none
AND (2) releases Seller and Brokers from any loss, liability, expense, claim or cause of action regarding the disclosed condition of the Property ("Release"),

OR 2. Seller does not agree to any of Buyer's requests.

OR 3. Other: \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_

BUYER REPLY TO SELLER RESPONSE:

- 1. Buyer: (i) accepts Seller's response; (ii) withdraws all requests for items that Seller has not agreed to; (iii) removes the contingency(ies) identified or on the attached C.A.R. Form CR and; (iv) agrees to the Release as specified in paragraph 1B (2) of Seller Response to Buyer Requests above.
2. Buyer withdraws Request for Repair No. \_\_\_\_\_, and makes a new request in the attached Request for Repair No. \_\_\_\_\_.

Buyer \_\_\_\_\_ Date \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_

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## NOTICE TO BUYER TO PERFORM (NBP)

The Notice to Buyer to Perform (NBP) is used in conjunction with the RPA to provide a notice to the buyer to either remove contingencies or complete required contractual actions. It is separated into two sections.

- The first Section is for removal of contingencies. Here, the seller can request that the buyer removes all contingencies by checking a single box, or can ask for removal of specific contingencies by checking individual boxes.
- The Second Section is used when the seller wants the buyer to take specific actions required by the contract.

The Notice to Buyer to Perform gives the buyer at least 2 days, but in no case less than the time provided in the RPA to remove the indicated contingencies or take the indicated contractual action. Additionally, the RPA can provide for a notice period longer than 2 days, in which case the Notice to Buyer to Perform must provide at least that much time. If the buyer does not remove the indicated contingency or take the indicated contractual action within 2 days (or longer, if applicable) after receipt of the Notice to Perform by the buyer or the buyer's agent, the seller may cancel the agreement.

The NBP is a prerequisite to the seller's right to cancel for the buyer's failure.

When the time period specified in the NBP expires, the contract is not automatically cancelled. The party issuing the NBP must then complete a cancellation (C.A.R. form CC). If one party waits too long to send out a CC after issuing a NBP, then it is advisable to issue a new NBP to avoid claims that the issuing party waived its right to cancel based on her delay. After the CC has been sent, if the parties cannot agree on a mutual release of the deposit, then the party entitled to the funds may need to send a Demand for Deposit (C.A.R. form BDRD or SDRD) to escrow. If there is no objection by the other side within 10 calendar days, the escrow holder has the authority to release the deposit. (See paragraph 14G of the RPA for further information.)



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NOTICE TO BUYER TO PERFORM

No. \_\_\_\_\_ (C.A.R. Form NBP, Revised 11/14)

In accordance with the terms and conditions of the [ ] California Residential Purchase Agreement (C.A.R. Form RPA) or [ ] Residential Income Property Purchase Agreement (C.A.R. Form RIPA), or [ ] Commercial Property Purchase Agreement (C.A.R. Form CPA), or [ ] Vacant Land Purchase Agreement (C.A.R. Form VLPA), or [ ] Other \_\_\_\_\_ ("Agreement"), dated \_\_\_\_\_, on property known as \_\_\_\_\_

\_\_\_\_\_ ("Property"), between \_\_\_\_\_ ("Buyer"), and \_\_\_\_\_ ("Seller").

SELLER hereby gives Buyer notice to remove the following contingencies or take the specified contractual action:

I. Contingency

[ ] ALL CONTINGENCIES

- A. [ ] Loan (Paragraph 3J(3))
B. [ ] Appraisal (Paragraph 3I)
C. [ ] Disclosures/Reports (Paragraphs 7, 10 and 11)
D. [ ] Condominium/Planned Development Disclosures (HOA or OA) (Paragraph 10F)
E. [ ] Buyer Investigation, including insurability(Paragraph 12)
F. [ ] Title: Preliminary Report (Paragraph 13)
G. [ ] Sale of Buyer's Property (Paragraph 4)
H. [ ] \_\_\_\_\_
I. [ ] \_\_\_\_\_
J. [ ] \_\_\_\_\_
K. \_\_\_\_\_

II. Contractual Action

- L. [ ] Initial Deposit (Paragraph 3A)
M. [ ] Increased Deposit (Paragraph 3B)
N. [ ] Form FVA (Paragraph 3D)
O. [ ] Loan Application Letter (Paragraph 3J(1))
P. [ ] Down Payment Verification (Paragraph 3H)
Q. [ ] All Cash Verification (Paragraph 3C)
R. [ ] Return of Statutory Disclosures (Paragraph 10A(5))
S. [ ] Return of Lead Disclosures (Paragraph 10A(5))
T. [ ] Receipt for Increased Deposit (Paragraph 21B)
U. [ ] Escrow Evidence, Sale of Buyer's Property (C.A.R. Form COP, Paragraph 2(C) or 3(B))
V. [ ] Delivery of a Representative Capacity Signature Addendum and evidence of authority to act (Paragraphs 19 and 31)
W. [ ] \_\_\_\_\_

NOTE: Paragraph numbers refer to the California Residential Purchase Agreement (C.A.R. Form RPA-CA). Applicable paragraph numbers for each contingency or contractual action in other C.A.R. contracts are found in Contract Paragraph Matrix (C.A.R. Form CPM).

BUYER: If you do not remove the contingency(ies) (C.A.R. Forms CR or RR) or take the contractual actions specified above within 2 (or [ ] \_\_\_\_\_) Days After Delivery (but no less than the time specified in the Agreement) of this Notice to Buyer to Perform, Seller may cancel the Agreement.

Seller \_\_\_\_\_ Date \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_

(\_\_\_\_/\_\_\_\_) (Initials) CONFIRMATION OF RECEIPT: A Copy of this Signed Notice to Buyer to Perform was personally received by Buyer or authorized agent on \_\_\_\_\_ (date), at \_\_\_\_\_ [ ] AM [ ] PM.

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NBP REVISED 11/14 (PAGE 1 OF 1) Print Date

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## DEMAND TO CLOSE ESCROW (DCE)

Just as the RPA requires a seller to give a buyer a NBP before the seller has the right to cancel the contract, the RPA requires either buyer or seller to give the other a Demand to Close Escrow (C.A.R. form DCE) before cancelling due to the other's failure to close escrow on time. By default, the DCE needs to be given at least three days before the right to cancel becomes effective. If the buyer has already removed all contingencies but has not closed escrow as scheduled, and the seller issues a DCE and the buyer still does not close within the specified time, the seller may cancel and could hold the buyer responsible for breach of contract damages.

When the time period specified in the DCE expires, the contract is not automatically cancelled. The party issuing the DCE must then complete a cancellation (C.A.R. form CC). If one party waits too long to send out a CC after issuing a DCE then it is advisable to issue a new DCE to avoid claims that the issuing party waived its right to cancel based on her delay.



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DEMAND TO CLOSE ESCROW (C.A.R. Form DCE, 10/05)

In accordance with the terms and conditions of the: [ ] California Residential Purchase Agreement or [ ] Other \_\_\_\_\_ ("Agreement"), dated \_\_\_\_\_, on property known as \_\_\_\_\_ ("Property"), between \_\_\_\_\_ ("Buyer"), and \_\_\_\_\_ ("Seller") with an agreed upon Close Of Escrow date of \_\_\_\_\_:

1. Seller hereby demands that Buyer close escrow on the Property:

A. [ ] Within 3 (or [ ] \_\_\_\_\_) Days After receipt of this Demand To Close Escrow but no earlier than the agreed upon Close Of Escrow date.

OR

B. [ ] By \_\_\_\_\_ (Date), which is at least 3 Days After receipt of this Demand to Close Escrow but no earlier than the agreed upon Close Of Escrow date.

Note To Buyer: If you do not close escrow by the end of the time period specified in this Demand to Close Escrow, and Seller has fully performed, Seller may (i) immediately cancel the Agreement; (ii) bring legal action against you for damages (including but not limited to the deposit); or (iii) bring legal action against you to force you to buy the Property (specific performance).

Seller \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_ AM/PM
Seller \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_ AM/PM

2. Buyer hereby demands that Seller close escrow on the Property:

A. [ ] Within 3 (or [ ] \_\_\_\_\_) Days After receipt of this Demand To Close Escrow but no earlier than the agreed upon Close Of Escrow date.

OR

B. [ ] By \_\_\_\_\_ (Date), which is at least 3 Days After receipt of this Demand to Close Escrow but no earlier than the agreed upon Close Of Escrow date.

Note To Seller: If you do not close escrow by the end of the time period specified in this Demand to Close Escrow, and Buyer has fully performed, Buyer may (i) bring legal action against you for damages because of your breach of contract, (ii) bring legal action against you to force you to sell the Property (specific performance), or (iii) both.

Buyer \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_ AM/PM
Buyer \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_ AM/PM

(\_\_\_\_\_/\_\_\_\_\_) (Initials) CONFIRMATION OF RECEIPT: A Copy of this Signed Demand to Close Escrow was personally received by the Buyer or Seller to whom it was sent or that person's authorized agent on \_\_\_\_\_ (date), at \_\_\_\_\_ AM/PM.

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DCE 10/05 (PAGE 1 OF 1) Print Date

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## **BUYER DEMAND FOR RELEASE OF DEPOSIT (BDRD) SELLER DEMAND FOR RELEASE OF DEPOSIT (SDRD)**

Paragraph 14G of the RPA allows an escrow holder to release a deposit to the buyer or seller in the absence of mutual escrow instruction provided certain procedures are followed and conditions met. First, if required by the RPA, one party should have given the other a Notice to Perform (C.A.R. forms NBP or NSP) or a Demand to Close Escrow (C.A.R. form DCE). Second the party giving the notice must then provide the other with a Cancellation of Contract that includes instruction to release the deposit. If the other party does not sign the mutual instructions, then the party who is attempting to cancel can then give the escrow holder a Demand for Deposit (C.A.R. form BDRD or SDRD). If the other party does not object in writing to the DFD, then escrow holder has authority to release the deposit to the party making the demand. (See paragraph 14G of the RPA for further information.) Form DFD can be used to satisfy the contractual requirement but the escrow holder may require the demand to be made on a form of the escrow holder's own choosing.



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**BUYER DEMAND FOR RELEASE OF DEPOSIT**  
(C.A.R. Form BDRD, 11/14)

In accordance with the terms and conditions of the  California Residential Purchase Agreement (C.A.R. Form RPA),  
 Other \_\_\_\_\_ ("Agreement"), dated \_\_\_\_\_,  
 on property known as \_\_\_\_\_ ("Property"),  
 between \_\_\_\_\_ ("Buyer")  
 and \_\_\_\_\_ ("Seller"),  
 in which \_\_\_\_\_ has agreed to act as escrow holder ("Escrow Holder"),  
 escrow number \_\_\_\_\_, Buyer **hereby informs Escrow Holder of the following and makes the following demand.**

**1. CANCELLATION:**

- A. Buyer has cancelled the Agreement and Delivered to Seller a Cancellation of Contract, Release of Deposit and Joint Escrow Instructions (C.A.R. Form CC) dated \_\_\_\_\_.
- B. Seller has not signed mutual instructions releasing the deposit.

**2. DEMAND FOR NOTICE AND RELEASE OF DEPOSIT:**

- A. Upon receipt of this Demand For Release of Deposit, Escrow Holder is asked to deliver notice of this Demand to the Seller.
- B. If Seller does not object to the Demand within 10 Days After Escrow Holder's notice, Escrow Holder is requested to release the deposit to Buyer as authorized by paragraph 14G ( \_\_\_\_\_) of the Agreement.

\_\_\_\_\_  
Buyer Date \_\_\_\_\_

\_\_\_\_\_  
Buyer Date \_\_\_\_\_

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**BDRD 11/14 (PAGE 1 OF 1)**

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_





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SELLER DEMAND FOR RELEASE OF DEPOSIT (C.A.R. Form SDRD, 11/14)

In accordance with the terms and conditions of the [ ] California Residential Purchase Agreement (C.A.R. Form RPA), [ ] Other \_\_\_\_\_ ("Agreement"), dated \_\_\_\_\_, on property known as \_\_\_\_\_ ("Property"), between \_\_\_\_\_ ("Buyer") and \_\_\_\_\_ ("Seller"), in which \_\_\_\_\_ has agreed to act as escrow holder ("Escrow Holder"), escrow number \_\_\_\_\_, Seller hereby informs Escrow Holder of the following and makes the following demand.

1. CANCELLATION:

- A. Seller has cancelled the Agreement and Delivered to Buyer a Cancellation of Contract, Release of Deposit and Joint Escrow Instructions (C.A.R. Form CC) dated \_\_\_\_\_.
B. Buyer has not signed mutual instructions releasing the deposit.

2. DEMAND FOR NOTICE AND RELEASE OF DEPOSIT:

- A. Upon receipt of this Demand For Release of Deposit, Escrow Holder is asked to deliver notice of this Demand to the Buyer.
B. If Buyer does not object to the Demand within 10 Days After Escrow Holder's notice, Escrow Holder is requested to release the deposit to Seller as authorized by paragraph 14G ( [ ] ) of the Agreement.

Seller \_\_\_\_\_ Date \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_

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SDRD 11/14 (PAGE 1 OF 1)

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## VERIFICATION OF PROPERTY CONDITION (VP)

Paragraph 16 of the RPA gives the buyer the right to inspect the property within the last 5 days prior to close of escrow. Once the buyer's investigation contingency period expires, the buyer has no rights to enter the seller's property until the final verification. While the buyer's right to remove the contingency or cancel the contract based upon that contingency remains in place until either has been done in writing, the right to conduct further inspections based on that contingency has been lost. Therefore, this verification of property is a last chance for the buyer to determine if the seller has complied with the terms of the contract. No new contingency is created by this last inspection right but if the seller has not completed a required function, such as making a repair agreed to in the RRRR form, then the buyer upon discovering the seller's failure can exercise legal rights. The VP form is used to document the findings of the buyer or the buyer's inspector at the time of the final verification. If the buyer does not conduct a final verification inspection, the VP form should still be used and the buyer should check the box indicating that the buyer is waiving their right.



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VERIFICATION OF PROPERTY CONDITION (BUYER FINAL INSPECTION) (C.A.R. Form VP, Revised 4/07)

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

The purpose of this inspection is to satisfy Buyer regarding the condition of the Property. Buyer and Seller understand and agree that unless otherwise agreed in the prior contractual agreement between Buyer and Seller: (i) a final inspection is not a contingency of the purchase and sale, and (ii) the inspection or waiver is not intended in any way to alter the contractual obligations of Seller regarding the condition of Property to be delivered to Buyer at possession date. The inspection or waiver is not based upon any statement or representation by Broker(s), Associate-Licensee(s) or brokerage employees. The undersigned agree to hold Broker(s), Associate licensees and brokerage employees harmless from any liability, claims, demands, damages or costs arising out of the contractual obligations of Buyer and Seller concerning the condition of Property.

1. Buyer acknowledges that: (1) Property is in substantially the same condition as on the date of acceptance of the offer to purchase/sell; and (2) Seller has completed any repairs, alterations, replacements or modifications as agreed to by Buyer and Seller with the following exceptions:

Lined area for listing exceptions to the inspection.

The evaluation of the condition of the Property, including any items listed above, is based upon a personal inspection by Buyer and/or tests, surveys, inspections, or other studies performed by inspector(s) selected by Buyer.

OR (if checked):

2. Broker recommends that Buyer conduct a final inspection. If Buyer does not do so, Buyer is acting against the advice of the Broker.
[ ] Buyer waives the right to conduct a final inspection.

Receipt of a copy is hereby acknowledged.

Date \_\_\_\_\_ Buyer \_\_\_\_\_

Date \_\_\_\_\_ Buyer \_\_\_\_\_

Date \_\_\_\_\_ Seller \_\_\_\_\_

Date \_\_\_\_\_ Seller \_\_\_\_\_

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VP REVISED 4/07 (PAGE 1 OF 1) Print Date

## NOTICE OF YOUR SUPPLEMENTAL PROPERTY TAX BILL (SPT)

California law requires that buyers receive notice that supplemental tax bills will be issued after close of escrow reflecting any change in property taxes that are owed as a result of the sale. The reason for this is that property taxes are paid in advance. If the value of the property changes, that will necessarily affect the amount due for the balance of the tax period. Even if the buyer has estimated taxes incorporated into loan payments, and the lender pays the taxes as they become due, the buyer is responsible for the supplemental taxes, if any. Form SPT satisfies the legal requirements but is not needed if the SBSA is incorporated into the transaction since the language already appears in that form.





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**NOTICE OF YOUR "SUPPLEMENTAL"  
PROPERTY TAX BILL**  
(C.A.R. Form SPT, 10/05)

Name of Buyer(s) \_\_\_\_\_

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

Pursuant to Civil Code §1102.6c, Seller or his or her agent is providing this "Notice of Your 'Supplemental' Property Tax Bill":

"California property tax law requires the Assessor to revalue real property at the time the ownership of the property changes. Because of this law, you may receive one or two supplemental tax bills, depending on when your loan closes.

The supplemental tax bills are not mailed to your lender. If you have arranged for your property tax payments to be paid through an impound account, the supplemental tax bills will not be paid by your lender. It is your responsibility to pay these supplemental bills directly to the Tax Collector.

If you have any question concerning this matter, please call your local Tax Collector's Office."

**Buyer acknowledges Buyer has read, understands and has received a copy of this "Notice of Your 'Supplemental' Property Tax Bill".**

Buyer \_\_\_\_\_ Date \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_

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SPT 10/05 (PAGE 1 OF 1) Print Date

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NOTICE OF YOUR SUPPLEMENTAL PROPERTY TAX BILL (SPT PAGE 1 OF 1)

## REPRESENTATIVE CAPACITY SIGNATURE ADDENDUM (RCSA)

Many transactions are entered into not by a person in an individual capacity but instead by an individual representing another or an entity. Common examples include an individual acting as trustee of a trust; an individual acting in the capacity as executor of a decedent's estate; an individual acting under the power of attorney on behalf of another; and an individual acting as an officer or managing member of a corporation or LLC. Paragraph 19 of the RPA requires an individual acting in some capacity other than in his own individual capacity that party shall attach the RCSA to the RPA. Further, the party shall also provide evidence of authority to act in the representative capacity. The RCSA is not the authority to act. A power of attorney, order from a court or authorizing document from the corporation would be the kind of document needed. The RCSA provides that if the individual acting in the representative capacity signs or initials any document in the transaction using his or her own name, even without the applicable title, the signature is deemed to be in the representative capacity. This clause and permission is important given that electronic signatures and initials often cannot accommodate lengthy titles and designations.



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**REPRESENTATIVE CAPACITY SIGNATURE ADDENDUM**

(C.A.R. Form RCSA, Revised 11/14)

**This form is not an assignment. It should not be used to add new parties after a contract has been formed.**

This is an addendum to the Residential Purchase Agreement,  Other \_\_\_\_\_ (“Agreement”),  
dated \_\_\_\_\_, for the property known as \_\_\_\_\_ (“Property”),  
between \_\_\_\_\_ (“Buyer”)  
and \_\_\_\_\_ (“Seller”).

1.  **A.** (1) Seller is an  estate,  conservatorship, or  guardianship identified by Superior Court Case name as \_\_\_\_\_, Case # \_\_\_\_\_.  
(2) The person(s) signing below is/are court approved representatives (whether designated as Sole or Co-Executor, Administrator, Conservator, Guardian) of the entity described in paragraph 1A1.
  - B.** (1) The Property ( assets used to acquire/lease the Property) is held in trust pursuant to a trust document dated \_\_\_\_\_, titled \_\_\_\_\_.  
(2) The person(s) signing below is/are Sole/Co/Substitute Trustee(s) of the Trust.
  - C.**  Seller  Buyer  Other: \_\_\_\_\_ (“Principal”) has authorized the person(s) signing below (“Attorney-In-Fact”, “Power of Attorney” or “POA”) to act on his/her behalf pursuant to a General Power of Attorney ( Specific Power of Attorney for the Property), dated \_\_\_\_\_. **This form is not a Power of Attorney. A Power of Attorney must have already been executed before this form is used.**
  - D.**  Seller  Buyer  Other: \_\_\_\_\_ is a  Corporation,  Limited Liability Company,  Partnership which has authorized the following officer(s), managing member(s) or partner(s) signing below to act on its behalf. An authorizing resolution of the applicable body of the entity described above  is  is not attached.
2. Wherever the signature or initials of the representatives identified in paragraph 1 appear on the Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described in paragraph 1, unless otherwise indicated.
  3. The Party acting in a representative capacity: (i) represents that the entity for which that party is acting already exists, and (ii) shall Deliver to the other Party and Escrow Holder, within 3 Days After Acceptance, evidence of authority to act in that capacity (such as but not limited to: applicable trust document, or portion thereof, letters testamentary, court order, power of attorney, resolution, or formation documents of the business entity).

(Signature) \_\_\_\_\_ Date: \_\_\_\_\_

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

(Signature) \_\_\_\_\_ Date: \_\_\_\_\_

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

(Signature) \_\_\_\_\_ Date: \_\_\_\_\_

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

**Acknowledged and Agreed to By:**

Seller  Buyer  Other: \_\_\_\_\_

(Signature) \_\_\_\_\_ Date: \_\_\_\_\_

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

Seller  Buyer  Other: \_\_\_\_\_

(Signature) \_\_\_\_\_ Date: \_\_\_\_\_

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

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RCSA Revised 11/14 (PAGE 1 OF 1) Print Date

**REPRESENTATIVE CAPACITY SIGNATURE ADDENDUM (RCSA PAGE 1 OF 1)**

# ASSIGNMENT OF AGREEMENT ADDENDUM (AOAA)

The RPA provides that the contract cannot be assigned without the consent of the Seller. This form not only documents the Seller's consent but also the following:

- Assignee has received all documents previously provided to Buyer
- Buyer is not released from any obligation to Seller
- Whether Buyer was paid by the assignee



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**ASSIGNMENT OF AGREEMENT ADDENDUM**  
**(For Use As An Addendum To A Purchase Agreement)**

(C.A.R. Form AOAA, 11/14)

The following terms and conditions are hereby incorporated in and made a part of the:  California Residential Purchase Agreement,  other \_\_\_\_\_ (“Agreement”),  
dated \_\_\_\_\_, on property known as \_\_\_\_\_ (“Property”),  
between \_\_\_\_\_ (“Buyer”) and \_\_\_\_\_ (“Seller”):

**Assignment of Agreement:** Seller agrees that Buyer may assign the Agreement to \_\_\_\_\_ (“Assignee”) upon the following terms and conditions:

1. For good and valuable consideration, the receipt and adequacy of which are acknowledged, Buyer assigns to Assignee all of Buyer’s right, title, and interest under the Agreement, including without limitation, all right, title, and interest in any down payment or earnest money.
2. Assignee acknowledges that Buyer has already provided Assignee all of the transaction documents previously approved by Buyer including, but not limited to, all contract documents, inspection reports, pamphlets, advisories, disclosures (“Prior Documents”) and Assignee has signed all Prior Documents and provided signed copies to Seller prior to signing this Assignment of Agreement Addendum (“Assignment”).
3. Assignee represents for the benefit of Seller that Assignee ratifies and approves as Assignee’s own acts all prior approvals and acts of Buyer pursuant to the Agreement up to and including the date of this Assignment.
4. Assignee assumes and agrees to perform and observe all of the obligations and covenants of Buyer in the Agreement to be performed after the date of this Assignment.
5. Buyer acknowledges and agrees that, notwithstanding Seller’s agreement to this Assignment, Buyer is not released from any obligations or covenants under the Agreement.
6. Other terms: \_\_\_\_\_
7. Seller has been advised that Buyer  has  has not received monetary consideration from Assignee for this Assignment.
8. Without releasing Buyer from any obligations or covenants under the Agreement and preserving all rights and remedies under the Agreement, Seller acknowledges and consents to the foregoing Assignment.
9. The parties acknowledge and agree that they have been advised to review this Assignment with their own attorney and/or accountant prior to signing this Assignment. The Brokers and agents make no representation as to the propriety, adequacy, legality or tax consequences of this Assignment.

**By signing below, Buyer, Assignee, and Seller acknowledge that each has read, understands, received a copy of and agrees to the terms of this Assignment of Agreement Addendum.**

Buyer _____	Date _____
Buyer _____	Date _____
Assignee _____	Date _____
Assignee _____	Date _____
Seller _____	Date _____
Seller _____	Date _____

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## **ADDITIONAL SIGNATURE ADDENDUM (ASA)**

Paragraphs 31 and 32 of the RPA have signature lines for the buyers and sellers, respectively. There are two signature lines for each. If there are more than two buyers or sellers, the additional parties need to sign a separate addendum in which they agree to the terms of the RPA. The ASA form satisfies this requirement. Each time a new form is introduced into the transaction, a new ASA form needs to be included as well. If several forms are added at the same time, the ASA can refer to all of those forms.



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**ADDITIONAL SIGNATURE ADDENDUM**

(C.A.R. Form ASA, 4/06)

**This form is not an assignment. It should not be used to add new parties after a contract has been formed.**

The following are additional signatories to the  Residential Purchase Agreement,  Other \_\_\_\_\_, dated \_\_\_\_\_, for the property known as \_\_\_\_\_ ("Property"), between \_\_\_\_\_

\_\_\_\_\_ ( Buyer  Seller  Landlord  Tenant  Other)

and \_\_\_\_\_ ( Buyer  Seller  Landlord  Tenant  Other).

**By signing below, the undersigned (i) acknowledges receipt of the document identified above; and, except as specified below (ii) agrees to the terms, conditions, representations and disclosures in the document.**

Buyer  Seller  Landlord  Tenant  Other \_\_\_\_\_  
(Print Name) \_\_\_\_\_  
(If applicable) By \_\_\_\_\_ Title \_\_\_\_\_

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

**(Only initial the following if the document identified above contains an arbitration or liquidated damages provision which has been initialed by one or more parties.)**

I (\_\_\_\_\_) agree (\_\_\_\_\_) do not agree to have disputes decided in accordance with the arbitration provision.

I (\_\_\_\_\_) agree (\_\_\_\_\_) do not agree to the liquidated damages provision.

Buyer  Seller  Landlord  Tenant  Other \_\_\_\_\_  
(Print Name) \_\_\_\_\_  
(If applicable) By \_\_\_\_\_ Title \_\_\_\_\_

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

**(Only initial the following if the document identified above contains an arbitration or liquidated damages provision which has been initialed by one or more parties.)**

I (\_\_\_\_\_) agree (\_\_\_\_\_) do not agree to have disputes decided in accordance with the arbitration provision.

I (\_\_\_\_\_) agree (\_\_\_\_\_) do not agree to the liquidated damages provision.

Buyer  Seller  Landlord  Tenant  Other \_\_\_\_\_  
(Print Name) \_\_\_\_\_  
(If applicable) By \_\_\_\_\_ Title \_\_\_\_\_

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

**(Only initial the following if the document identified above contains an arbitration or liquidated damages provision which has been initialed by one or more parties.)**

I (\_\_\_\_\_) agree (\_\_\_\_\_) do not agree to have disputes decided in accordance with the arbitration provision.

I (\_\_\_\_\_) agree (\_\_\_\_\_) do not agree to the liquidated damages provision.

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (CND)

In the absence of an agreement to the contrary, the existence of an offer, or the terms and conditions of an offer, are not confidential. Paragraph 45 of the SBSA informs buyer and seller of this reality under both the contract and the Code of Ethics. If the buyer wants to keep the offer or its terms confidential, the buyer must first obtain the seller's agreement. Form CND is used to create a mutual agreement to keep the offer or its terms confidential. Preferably this agreement should come before the buyer even makes an offer. If not done before, then the CND should at the latest be attached to the buyer's offer. If the seller signs, along with an acceptance or counter offer, then the buyer's offer or terms remain private. A seller may decide however not to sign the CND, in which case the seller is not bound to contractually keep the information confidential.





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**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**  
(C.A.R Form CND, 11/12)

This CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT ("Confidentiality Agreement") is given in connection with or in contemplation of that certain:  Residential Purchase Agreement,  Other \_\_\_\_\_ ("Proposed Agreement"), dated \_\_\_\_\_, regarding property described as \_\_\_\_\_, the ("Property") in which \_\_\_\_\_ is referred to as ("Buyer/Tenant") and \_\_\_\_\_ is referred to as ("Seller/Landlord").

**1. CONFIDENTIALITY:** Seller/Landlord or Buyer/Tenant is or will be delivering information described in paragraph 2 to the other party provided that the other party and its agents agree to keep the information confidential and not to disclose it prior to, during the pendency of, or after the completion or termination of any transaction that may result from the Proposed Agreement, except as authorized by the MLS rules or applicable law. Both parties agree that by signing this Confidentiality Agreement, and by providing or receiving the information below, neither party shall be required to execute or be bound by the Proposed Agreement. Each party agrees that it shall be responsible for any breach of this Confidentiality Agreement by its respective agents.

**2. CONFIDENTIAL INFORMATION:** (Check all that apply)

- Seller's/Landlord's  Buyer's/Tenant's name \_\_\_\_\_
- Offering price for the Property \_\_\_\_\_
- Offered terms for the Property \_\_\_\_\_
- Other: \_\_\_\_\_

**3. ATTORNEYS' FEES:** In any action, proceeding, or arbitration between Buyer/Tenant and Seller/Landlord arising out of this Confidentiality Agreement, the prevailing Buyer/Tenant or Seller/Landlord shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer/Tenant or Seller/Landlord, except as otherwise provided in the Proposed Agreement.

**4. TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the parties are incorporated in this Confidentiality Agreement. Its terms are intended by the parties as a final, complete and exclusive expression of their agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Confidentiality Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as otherwise specified, this Confidentiality Agreement shall be interpreted and dispute shall be resolved in accordance with the laws of the State of California. Neither this Confidentiality Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.

THIS CONFIDENTIALITY AGREEMENT HAS SIGNIFICANT LEGAL CONSEQUENCES. BROKERS ARE NOT ATTORNEYS AND DO NOT PROVIDE LEGAL ADVICE. PRIOR TO SIGNING BELOW, EACH PARTY SHOULD SEEK THE ADVICE OF THEIR OWN LEGAL COUNSEL AS TO THE CONSEQUENCES OF THIS CONFIDENTIALITY AGREEMENT.

Date \_\_\_\_\_ Date \_\_\_\_\_  
BUYER/TENANT \_\_\_\_\_ BUYER/TENANT \_\_\_\_\_  
(Print name) (Print name)

Date \_\_\_\_\_ Date \_\_\_\_\_  
SELLER/LANDLORD \_\_\_\_\_ SELLER/LANDLORD \_\_\_\_\_  
(Print name) (Print name)

Real Estate Broker (Listing Firm) \_\_\_\_\_ DRE Lic. # \_\_\_\_\_  
By \_\_\_\_\_ (Salesperson or Broker-Associate) DRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_

Real Estate Broker (Selling Firm) \_\_\_\_\_ DRE Lic. # \_\_\_\_\_  
By \_\_\_\_\_ (Salesperson or Broker-Associate) DRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_

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**CND 11/12 (PAGE 1 OF 1)**

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## **ELECTRONIC SIGNATURE VERIFICATION FOR THIRD PARTIES (ESV)**

With the advent of paperless or near-paperless transactions, buyers and sellers are increasingly using electronic signatures to document their agreement to a transaction or document as part of a transaction. Affiliated industries are not always comfortable accepting an electronically signed document into the transaction. The ESV form is intended to address the concerns of those related and necessary industries, such as escrow or lenders. In the ESV form, one or two parties provide the affiliated service with a form with a “wet” signature to acknowledge and approve the use of electronic signatures as part of the transaction.



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**ELECTRONIC SIGNATURE VERIFICATION  
FOR THIRD PARTIES**  
(C.A.R. Form ESV, 11/11)

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

To  Escrow,  Lender,  Other \_\_\_\_\_, and whomever else this may concern:

\_\_\_\_\_ (Principal)

(i), is a party to a Residential Purchase Agreement  Other \_\_\_\_\_ (“Agreement”)

on property known as \_\_\_\_\_ dated \_\_\_\_\_ and the real estate

transaction resulting therefrom in which \_\_\_\_\_ is referred to as Buyer

and \_\_\_\_\_ is referred to as Seller;

(ii) has used electronic signature technology in order to sign and initial documents in the transaction; and

(iii) verifies that those documents containing an electronic signature or initial from Principal were in fact executed by Principal.

(iv) verifies that those documents containing an electronic signature or initial from Principal were in fact executed by Principal.

Date \_\_\_\_\_

Principal \_\_\_\_\_

**(Do not sign electronically)**

**(Print name)**

\_\_\_\_\_

\_\_\_\_\_ (Principal)

(i), is a party to a Residential Purchase Agreement  Other \_\_\_\_\_ (“Agreement”)

on property known as \_\_\_\_\_ dated \_\_\_\_\_ and the real estate

transaction resulting therefrom in which \_\_\_\_\_ is referred to as Buyer

and \_\_\_\_\_ is referred to as Seller;

(ii) has used electronic signature technology in order to sign and initial documents in the transaction; and

(iii) verifies that those documents containing an electronic signature or initial from Principal were in fact executed by Principal.

(iv) verifies that those documents containing an electronic signature or initial from Principal were in fact executed by Principal.

Date \_\_\_\_\_

Principal \_\_\_\_\_

**(Do not sign electronically)**

**(Print name)**

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## **SELLER COUNTER OFFER (SCO) SELLER MULTIPLE COUNTER OFFER (SMCO) BUYER COUNTER OFFER (BCO)**

In paragraph 32 of the RPA the seller can accept a buyer's offer in its entirety or accept subject to a counter offer on specific terms. If the seller is responding to more than one buyer's offer at the same time, the seller should use a multiple counter offer form so that the seller will not be bound to any particular buyer if more than one buyer accepts the terms of the multiple counter offer. A seller is only bound by the terms of a multiple counter offer if the seller resigns the form after the buyer has signed and returned it. If the buyer wants to respond to either a seller counter offer or a seller multiple counter offer in any way other than an outright acceptance, the buyer should do so on a buyer counter offer form.

Regardless of which counter offer form is used, the liquidated damage clause and the arbitration clause are automatically deleted from the final contract unless initialed by both parties in the body of the RPA or specifically referenced in one of the counter offer terms. If the price for the property is being changed, the buyer's down payment and loan amount automatically adjust to the same percentage of the new purchase price as they were to the old purchase price in the original offer. The buyer or seller does not have to calculate the amounts as part of the counter offer terms.

In paragraph 1C of any of the counter offer forms, the party issuing the counter offer specifies the terms of the contract that are being changed or added. It is helpful to number the items in the counter offer and to specifically reference the clause in the RPA or a previous counter offer that is being modified. In order for the counter offer to result in a binding agreement, the person making the counter offer must sign it and deliver it to the other party. The other party then must sign and return it to the person making the counter, or that person's authorized agent specifically identified in the counter offer form. The signing in and of itself by the person receiving the counter offer does not create a binding contract. And, as stated above, if the seller is issuing a multiple counter offer, the seller must sign a second time and return the twice-signed multiple counter offer back to the buyer or identified agent. All of this must happen within the time specified.

If the seller has received offers from more than one buyer, rather than issuing multiple counter offers to each buyer the seller wants to respond to, the seller may counter them sequentially, putting one in primary position and the others in back up position. If this is done, the BUO form should be included.



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SELLER COUNTER OFFER No. \_\_\_\_\_  
May not be used as a multiple counter offer.  
(C.A.R. Form SCO, 11/14)

This is a counter offer to the:  California Residential Purchase Agreement,  Buyer Counter Offer No. \_\_\_\_\_, or  Other \_\_\_\_\_ ("Offer"), dated \_\_\_\_\_, on property known as \_\_\_\_\_ ("Property"), between \_\_\_\_\_ ("Buyer") and \_\_\_\_\_ ("Seller").

- 1. **TERMS:** The terms and conditions of the above referenced document are accepted subject to the following:
  - A. Paragraphs in the Offer that require initials by all parties, but are not initialed by all parties, are excluded from the final agreement unless specifically referenced for inclusion in paragraph 1C of this or another Counter Offer or an addendum.
  - B. Unless otherwise agreed in writing, down payment and loan amount(s) will be adjusted in the same proportion as in the original Offer.
  - C. **OTHER TERMS:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. The following attached addenda are incorporated into this Seller Counter offer:  Addendum No. \_\_\_\_\_  
 \_\_\_\_\_  \_\_\_\_\_

- 2. **EXPIRATION:** This Seller Counter Offer shall be deemed revoked and the deposits, if any, shall be returned:
  - A. Unless by 5:00pm on the third Day After the date it is signed in paragraph 3 (if more than one signature then, the last signature date)(or by \_\_\_\_\_ AM \_\_\_\_\_ PM on \_\_\_\_\_ (date)) (i) it is signed in paragraph 4 by Buyer and (ii) a copy of the signed Seller Counter Offer is personally received by Seller or \_\_\_\_\_, who is authorized to receive it.
  - OR B. If Seller withdraws it in writing (CAR Form WOO) anytime prior to Acceptance.

3. **OFFER: SELLER MAKES THIS COUNTER OFFER ON THE TERMS ABOVE AND ACKNOWLEDGES RECEIPT OF A COPY.**  
Seller \_\_\_\_\_ Date \_\_\_\_\_  
Seller \_\_\_\_\_ Date \_\_\_\_\_

4. **ACCEPTANCE: I/WE** accept the above Seller Counter Offer (If checked  **SUBJECT TO THE ATTACHED COUNTER OFFER**) and acknowledge receipt of a Copy.  
Buyer \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_ AM/PM  
Buyer \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_ AM/PM

**CONFIRMATION OF ACCEPTANCE:**  
(\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_) (Initials) **Confirmation of Acceptance:** A Copy of Signed Acceptance was personally received by Seller, or Seller's authorized agent as specified in paragraph 2A on (date) \_\_\_\_\_ at \_\_\_\_\_ AM/PM. **A binding Agreement is created when a Copy of Signed Acceptance is personally received by Seller or Seller's authorized agent whether or not confirmed in this document.**

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SELLER MULTIPLE COUNTER OFFER No. \_\_\_\_\_ (C.A.R. Form SMCO, 11/13)

This is a counter offer to the:  California Residential Purchase Agreement,  Other \_\_\_\_\_ ("Offer"), dated \_\_\_\_\_, on property known as \_\_\_\_\_ ("Property"), between \_\_\_\_\_ ("Buyer") and \_\_\_\_\_ ("Seller").

- 1. TERMS: The terms and conditions of the above referenced document are accepted subject to the following:
A. Paragraphs in the Offer that require initials by all parties, but are not initialed by all parties, are excluded from the final agreement unless specifically referenced for inclusion in paragraph 1C of this or another Counter Offer.
B. Unless otherwise agreed in writing, down payment and loan amount(s) will be adjusted in the same proportion as in the original Offer.
C. OTHER TERMS:

D. The following attached addenda are incorporated into this Multiple Counter Offer:  Addendum No. \_\_\_\_\_

- 2. EXPIRATION: Seller is making Multiple Counter Offers to other prospective Buyers on terms that may or may not be the same as in this Multiple Counter Offer. This Multiple Counter Offer shall be deemed revoked and the deposits, if any, shall be returned:
A. Unless by 5:00PM on the third Day After the date Seller signs in paragraph 3 (if more than one Seller, then the last date) (or by \_\_\_\_\_ AM \_\_\_\_\_ PM on \_\_\_\_\_ (Date)) all of the following occur:
(i) Buyer has signed this Counter Offer
AND (ii) A copy of the Counter Offer signed by Buyer is personally received by Seller or \_\_\_\_\_, who is authorized to receive it.
AND (iii) After Buyer signs in paragraph 4, Seller signs in paragraph 5.
AND (iv) A copy of this Multiple Counter Offer with Seller's signed selection in paragraph 5 is personally received by Buyer or \_\_\_\_\_ who is authorized to receive it. (Note: Prior to the completion of 2A(i),(ii),(iii), and (iv) Buyer and Seller shall have no duties or obligations for the purchase or sale of the Property.)
OR B. If Seller withdraws this Multiple Counter Offer in writing (CAR form WOO) anytime prior to its Acceptance.

3. SELLER MAKES THIS MULTIPLE COUNTER OFFER ON THE TERMS ABOVE AND ACKNOWLEDGES RECEIPT OF A COPY.
\_\_\_\_\_ Date \_\_\_\_\_
\_\_\_\_\_ Date \_\_\_\_\_

4. ACCEPTANCE: Buyer accepts the above Multiple Counter Offer (If checked  SUBJECT TO THE ATTACHED COUNTER OFFER # \_\_\_\_\_) and acknowledges receipt of a Copy.
\_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_ AM/PM
\_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_ AM/PM

5. SELECTION OF ACCEPTED MULTIPLE COUNTER OFFER: By signing below, Seller accepts this Multiple Counter Offer. NOTE TO SELLER: Do NOT sign in this box until after Buyer signs in paragraph 4.
\_\_\_\_\_ Date \_\_\_\_\_
Time \_\_\_\_\_ AM/PM

(\_\_\_\_\_/\_\_\_\_\_) (Initials) Confirmation of Acceptance: A Copy of the Signed Seller Selection was personally received by Buyer or Buyer's authorized agent on (date) \_\_\_\_\_ at \_\_\_\_\_ AM/PM. A binding Agreement is created when a Copy of the Signed Seller Selection is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document.

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_





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**BUYER COUNTER OFFER No. \_\_\_\_\_**  
(C.A.R. Form BCO, 11/14)

This is a counter offer to the:  Seller Counter Offer No.\_\_\_\_,  Seller Multiple Counter Offer No.\_\_\_\_, or  Other \_\_\_\_\_ Date \_\_\_\_\_  
dated \_\_\_\_\_, on property known as \_\_\_\_\_ ("Property"),  
between \_\_\_\_\_ ("Buyer") and \_\_\_\_\_ ("Seller").

1. **TERMS:** The terms and conditions of the above referenced document are accepted subject to the following:
- A. Paragraphs in the Offer that require initials by all parties, but are not initialed by all parties, are excluded from the final agreement unless specifically referenced for inclusion in paragraph 1C of this or another Counter Offer or an addendum.
  - B. Unless otherwise agreed in writing, down payment and loan amount(s) will be adjusted in the same proportion as in the original Offer.

C. **OTHER TERMS:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. The following attached addenda are incorporated into this Buyer Counter offer:  Addendum No. \_\_\_\_\_  
 \_\_\_\_\_  \_\_\_\_\_

2. **EXPIRATION:** This Buyer Counter Offer shall be deemed revoked and the deposits, if any, shall be returned:
- A. Unless by 5:00pm on the third Day After the date it is signed in paragraph 3 (if more than one signature then, the last signature date)(or by \_\_\_\_\_  AM  PM on \_\_\_\_\_ (date)) (i) it is signed in paragraph 4 by Seller and (ii) a copy of the signed Buyer Counter Offer is personally received by Buyer or \_\_\_\_\_, who is authorized to receive it.
  - OR B. If Buyer withdraws it in writing (CAR Form WOO) anytime prior to Acceptance.

3. **OFFER: BUYER MAKES THIS COUNTER OFFER ON THE TERMS ABOVE AND ACKNOWLEDGES RECEIPT OF A COPY.**  
Buyer \_\_\_\_\_ Date \_\_\_\_\_  
Buyer \_\_\_\_\_ Date \_\_\_\_\_

4. **ACCEPTANCE: I/WE** accept the above Buyer Counter Offer (If checked  **SUBJECT TO THE ATTACHED COUNTER OFFER**) and acknowledge receipt of a Copy.  
Seller \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_ AM/PM  
Seller \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_ AM/PM

**CONFIRMATION OF ACCEPTANCE:**

(\_\_\_\_\_/\_\_\_\_\_) (Initials) **Confirmation of Acceptance:** A Copy of Signed Acceptance was personally received by Buyer or Buyer's authorized agent as specified in paragraph 2A on (date) \_\_\_\_\_ at \_\_\_\_\_ AM/PM. **A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document.**

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## WITHDRAWAL OF OFFER (WOO)

All of the counter offer forms provide that the counter must be accepted within the specified time period and before the counter offer has been withdrawn in writing. The same rule applies to an offer. While legally it is possible to withdraw an offer or counter offer verbally, and such withdrawal is effective if communicated to the receiving party, proof of verbal revocation is difficult. The better practice, and indeed the contractually required practice when it comes to withdrawal of a counter offer, is for the withdrawal to be in writing. The WOO form does just that and even allows for an option for the seller to replace a counter offer with multiple counter offer.





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**WITHDRAWAL OF OFFER**  
(C.A.R. Form WOO, 4/06)

**1. Offer/Counter Offer Not Yet Accepted:**

**A.** Buyer has made an offer dated \_\_\_\_\_ on  California Residential Purchase Agreement (C.A.R. Form RPA-CA),  
 Other \_\_\_\_\_  
on property known as \_\_\_\_\_  
in which \_\_\_\_\_ is referred to as ("Buyer")  
and \_\_\_\_\_ is referred to as ("Seller").

**B.** (if checked)  Buyer  Seller has issued a counter offer dated \_\_\_\_\_.

**C.** According to the terms of the offer/counter offer, the offer/counter offer has not yet been accepted. If the offer/counter offer requires acceptance by personal receipt, the person making the offer/counter offer (or that person's authorized agent) has not personally received back a copy of that offer/counter offer signed by the Buyer or Seller to whom it was sent.

**2. A. Withdrawal and Revocation:** The Buyer or Seller making the offer/counter hereby withdraws and revokes it.

**B.**  (if checked) **Confirmation of Withdrawal and Revocation:** This document confirms that the offer/counter offer was orally withdrawn and revoked on \_\_\_\_\_ (date) at \_\_\_\_\_ AM/PM  
by \_\_\_\_\_  
giving notice to \_\_\_\_\_.

**C.**  (if checked) **Replacement by Multiple Counter Offer:** The counter offer withdrawn and revoked is replaced with the attached multiple counter offer dated \_\_\_\_\_.

Buyer/  Seller \_\_\_\_\_ (date) at \_\_\_\_\_ AM/PM

Buyer/  Seller \_\_\_\_\_ (date) at \_\_\_\_\_ AM/PM

(\_\_\_\_\_/\_\_\_\_\_) (Initials) **CONFIRMATION OF RECEIPT:** A copy of this signed Withdrawal of Offer was personally received by  Buyer  Seller or authorized agent on \_\_\_\_\_ (date), at \_\_\_\_\_ AM/PM.

**(An offer/counter offer is withdrawn/revoked when the withdrawal/revocation is communicated to the other party or the other party's authorized agent whether or not confirmed in this document. Completion of this confirmation is not legally required in order to withdraw/revoke an offer/counter offer; it is solely intended as evidence this Withdrawal of Offer has been received.)**

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**WOO 4/06 (PAGE 1 OF 1) Print Date**

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



## COOPERATING BROKER COMPENSATION AGREEMENT AND ESCROW INSTRUCTIONS (CBC)

The Cooperating Broker Compensation Agreement and Escrow Instructions (CBC) is used to confirm the commission agreement between the listing broker and the selling (cooperating broker), and to provide an escrow instruction for the disbursement of commission at the COE.

Paragraph 1 identifies the listing broker, the property and the seller. Paragraph 2 identifies the selling broker and the buyer.

Paragraph 3 sets out the commission agreement between the brokers and provides six options:

- The Property IS listed in the MLS and the Selling broker IS a Participant in that MLS or a reciprocal MLS and accepts the MLS offer of compensation.
- The Property IS listed in the MLS and the Selling broker IS a Participant In that MLS or a reciprocal MLS, but the parties have agreed to modify the MLS offer of compensation as set out following this option.
- The Property IS listed in the MLS and the Selling broker IS NOT a participant in that MLS or a reciprocal MLS, and the parties have agreed to compensation as set out following this option.
- The Property IS listed in the MLS, the Selling broker IS a member of the MLS, the sale and commission are subject to approval of the seller's lender and the selling broker agrees to whatever reduction in commission has been specified in the MLS if the lender reduces the commission.
- The Property IS NOT listed in the MLS, and the Parties have agreed to compensation as set out following this option.
- The Property IS listed for lease and the Selling broker desires Compensation in the event that the tenant purchases the property during the tenancy.

Paragraph 4 is an instruction from the listing agent to escrow to disburse the amount agreed to in paragraph 3 from the listing agent's proceeds at the COE.

Some of the terms in the CBC do not follow the contractual promise made in the MLS, either because a modification is deemed necessary by one of the brokers or because the MLS is not applicable for the transaction. In that case, broker or manager authority from the listing office is needed to ratify the compensation specified in the CBC. Until that signature is obtained in the box above the cooperating broker signature, the CBC is not binding on either party.

The CBC form can be used to satisfy the requirement in the real estate broker box that any agreement between the brokers for commission must be in writing.



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**COOPERATING BROKER COMPENSATION AGREEMENT  
AND ESCROW INSTRUCTION**  
(C.A.R. Form CBC, Revised 4/09)

**1. IDENTITY OF LISTING BROKER, PROPERTY AND SELLER:**

\_\_\_\_\_ (“Listing Broker”) is a real estate broker who has entered into a written agreement for the marketing and sale or lease of the real property, manufactured home, or business opportunity described as \_\_\_\_\_, Assessor’s Parcel No. \_\_\_\_\_, situated in \_\_\_\_\_, County of \_\_\_\_\_, California (“Property”) for \_\_\_\_\_ (“Seller”).

**2. IDENTITY OF COOPERATING (SELLING) BROKER AND BUYER:**

\_\_\_\_\_ (“Cooperating Broker”) is a real estate broker licensed to practice real estate in California (or  if checked \_\_\_\_\_) and represents \_\_\_\_\_ (“Buyer”) who has offered, is contemplating making an offer, or has entered into a contract, to purchase or lease the Property.

**3. LISTING BROKER COMPENSATION TO COOPERATING BROKER:**

Provided the transaction between the principals closes or Listing Broker receives compensation for the transaction, Listing Broker agrees to pay Cooperating Broker, and Cooperating Broker agrees to accept, compensation as follows:

- A. PROPERTY LISTED WITH THE \_\_\_\_\_ MULTIPLE LISTING SERVICE (“MLS”):**
  - Confirmation of Compensation in MLS:** Cooperating Broker is a participant in the MLS or reciprocal MLS and accepts the offer of compensation published in the MLS as: \_\_\_\_\_% of the selling (or leasing) price or \$ \_\_\_\_\_  and/or \_\_\_\_\_.
  - Modification of Compensation in MLS:** Cooperating Broker is a participant in the MLS or reciprocal MLS and accepts the offer of compensation published in the MLS as modified herein: \_\_\_\_\_% of the selling (or leasing) price or \$ \_\_\_\_\_  and/or \_\_\_\_\_.
  - Cooperating Broker Not a Member of the MLS or Reciprocal MLS:** Cooperating Broker compensation shall be \_\_\_\_\_% of the selling (or leasing) price or \$ \_\_\_\_\_  and/or \_\_\_\_\_. Listing Broker and Cooperating Broker agree to resolve disputes arising out of this agreement by arbitration conducted by the Association of Realtors® (or if none, the MLS) to which the Listing Broker belongs.
  - Short Sale Confirmation of Compensation in MLS:** Cooperating Broker (i) is a participant in the MLS or a reciprocal MLS; (ii) accepts the offer of compensation published in the MLS; and (iii) if the amount or method of reduction of commission upon Lender approval is specified in the MLS, agrees to such reduction.
- B. PROPERTY NOT LISTED WITH ANY MULTIPLE LISTING SERVICE (“MLS”):**
  - Cooperating Broker compensation shall be \_\_\_\_\_% of the selling (or leasing) price or \$ \_\_\_\_\_  and/or \_\_\_\_\_.
- C. COOPERATING BROKER HAS PROCURED A TENANT FOR THE PROPERTY LISTED FOR LEASE, AND THAT TENANT ACQUIRES THE PROPERTY DURING THE TERM OF THE LEASE OR ANY EXTENSION:**
  - Cooperating Broker compensation on the sale shall be \_\_\_\_\_% of the selling price or \$ \_\_\_\_\_  and/or \_\_\_\_\_.

**4. BROKER INSTRUCTION TO ESCROW HOLDER:**

Listing Broker and Cooperating Broker instruct Escrow Holder to disburse to Cooperating Broker the amount specified in paragraph 3, out of Listing Broker’s proceeds in escrow, and upon Close Of Escrow of the Property. This compensation instruction can be amended or revoked only with the written consent of both Brokers. Escrow Holder shall immediately notify Brokers if either Broker instructs Escrow Holder to change the terms of this instruction.

**5. MANAGEMENT APPROVAL:**

If Paragraph 3A(ii), 3A(iii), or 3B is checked, this Agreement is not binding until the Broker or office manager for the Listing Broker firm has signed below.

**6. ACKNOWLEDGMENT:**

By signing below, the undersigned acknowledge that each has read, understands, accepts and has received a Copy of this Agreement.

Listing Broker (Firm) \_\_\_\_\_ DRE Lic. # \_\_\_\_\_  
 By (Agent) \_\_\_\_\_ DRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_  
 Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

**If paragraph 3A(ii), 3A(iii), or 3 B is checked:**

Listing Broker/Office Manager: \_\_\_\_\_, \_\_\_\_\_ Date \_\_\_\_\_  
 (Name) (Signature)

Cooperating Broker (Firm) \_\_\_\_\_ DRE Lic. # \_\_\_\_\_  
 By (Agent) \_\_\_\_\_ DRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_  
 Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

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## DECLARATION REGARDING REAL ESTATE LICENSE AND TAX REPORTING (DLT)

Real estate activity can only be engaged in by a person properly licensed, and if that person holds a real estate salesperson license, the salesperson must act under the authority of a properly licensed real estate broker. Because it is a violation of the real estate law, and a crime, for a real estate broker to pay a non-licensed person who has conducted real estate activity, the listing broker wants assurance that the salesperson and broker acting on behalf of the buyer are properly licensed. Section 1 of this form permits both agent and broker to identify them by name and license number, thus allowing the paying listing broker to easily verify the licensed status of both.

California's Franchise Tax Board and the IRS require anyone who pays another more than \$600.00 per year to notify the taxing agency of the payments. The reason for this is that it provides a form of a cross check to see that the recipient is reporting taxable income. In order to properly report, the listing broker needs the cooperating broker's taxpayer identification number. For an individual that would be the taxpayer's social security number. Entities would have a taxpayer ID. No reporting is required if the recipient is a corporation. Reporting is made on a 1099 form. Section 2 of the DLT can be used as a substitute 1099 if it is completed. If neither the ID nor the verification of an exemption is provided, then the listing broker is authorized to make a withholding from the payment due.



CALIFORNIA  
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**DECLARATION REGARDING REAL ESTATE LICENSE AND  
TAX REPORTING**

(C.A.R Form DLT, Revised 4/14)

This declaration is made in connection with the Residential Purchase Agreement, or  \_\_\_\_\_  
dated \_\_\_\_\_ on Property known as \_\_\_\_\_

in which, \_\_\_\_\_ is referred to as Buyer/Tenant  
and \_\_\_\_\_ is referred to as Seller/Landlord.

**1. A. I.** \_\_\_\_\_ (print name), am

- (i) a real estate salesperson.
- (ii) a real estate broker working as a broker-associate and the transaction will be conducted under another broker's license.
- (iii) a real estate broker and the transaction will be conducted under my own license.

**B.** I have a valid current real estate license. My real estate license number is: \_\_\_\_\_

**C.**  **If 1.A. (i) or (ii) is checked,** the name of the Broker under whose license this transaction will be conducted is \_\_\_\_\_  
(print name).

That Broker's real estate license number is: \_\_\_\_\_.

**D.** The Broker under whose license the transaction will be conducted is the:

- Cooperating Broker representing the Buyer/Tenant,
- Listing Broker representing the Seller/Landlord.

**E.** The licensing information above may be verified by checking the California Bureau of Real Estate website  
(<http://www2.dre.ca.gov/PublicASP/ppinfo.asp>).

I, declare for myself (and, if applicable, also my real estate Broker), under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Real estate Salesperson/Broker Associate/Broker \_\_\_\_\_ Date: \_\_\_\_\_

**2. TAX REPORTING - SUBSTITUTE W-9:** The Listing Broker is required to report to the applicable state and federal tax collection agency payments made to the Cooperating Broker identified above UNLESS THE COOPERATING BROKER IS A CORPORATION. If a taxpayer identification number is not provided, Listing Broker may withhold payment to the Cooperating Broker unless an exemption to reporting is documented below, or elsewhere in writing. For a copy of the W-9 instructions go to <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.

**A. Cooperating Broker** is (check the appropriate box):  an Individual/Sole Proprietor,  a Partnership,  
 a Corporation and no tax reporting is required. If the Corporation's name is different from Broker's name above, the Corporation's name is \_\_\_\_\_

**B. Taxpayer Identification Number ("TIN"):** Unless exempt, the Cooperating Broker's TIN is:  
(social security number) \_\_\_\_/\_\_\_\_/\_\_\_\_, (employer identification number) \_\_\_\_/\_\_\_\_.

**C. CERTIFICATION:** Under penalty of perjury I, the Cooperating Broker or the person authorized to sign for the Cooperating Broker, certify that:

1. The TIN shown on this form is the Cooperating Broker's correct tax identification number.
2. The Cooperating Broker is not subject to backup withholding due to the failure to report interest and dividend income.
3. The Cooperating Broker is a U.S. citizen or other U.S. person (as defined in the W-9 instructions).
4. The Cooperating Broker is exempt from Foreign Account Tax Compliance Act (FATCA) withholding.

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications above in order to avoid backup withholding.

Real estate Broker (Cooperating Broker) \_\_\_\_\_ Date: \_\_\_\_\_

By: (Signature) \_\_\_\_\_ Date: \_\_\_\_\_

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DLT REVISED 4/14 (PAGE 1 OF 1)

DECLARATION REGARDING REAL ESTATE LICENSE AND TAX REPORTING (DLT PAGE 1 OF 1)

## **ADDITIONAL AGENT ACKNOWLEDGEMENT (AAA) ADDITIONAL BROKER ACKNOWLEDGEMENT (ABA)**

In the Real Estate Broker Box on page 10 of the RPA, each broker signs to indicate approval of the terms specified in the box, such as approving the agency relationships (paragraph B) and agreeing that any broker compensation agreements have to be in writing (paragraph D). A salesperson of broker-associate signs on behalf of the broker. There are two signature lines under each broker's name. The reason is that many licensees work with partners or in teams. Under paragraph 30I in the RPA, after acceptance of the contract, if any document is delivered to any specific licensee named in the broker box, then delivery is deemed effective on the principal. Sometimes one of the licensees is not available to sign the Broker Box or sometimes licensees work in groups of more than two. In either case, an Additional Agent Acknowledgement (C.A.R. form AAA) should be attached. The AAA identifies up to five licensees that all work under the same broker who are working together on behalf of the same principal. The AAA acknowledges the agreement of these individuals to work together and notices their agreement regarding agency and to accept documents on behalf of one another. If it is attached to the RPA, it effectively acts as if there were additional signatures in the Real Estate Broker Box.

Although there is space in the Real Estate Broker Box for more than one licensee to sign on behalf of each broker, there is only room for one broker representing each principal. There are times, such as when the property is co-listed, when more than one broker represents a buyer or seller. Since there is no room to accommodate such relationships within the body of the RPA, an addendum should be used to put all parties on notice of the arrangement. The Additional Broker Acknowledgement (C.A.R. form ABA) should be used in those situations. The ABA is not the co-listing or co-buyer representation agreement but instead an acknowledgement by all parties that there are multiple brokers representing a buyer or seller. If there are multiple licensees representing one of those brokers, then the AAA form should also be attached.



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**ADDITIONAL AGENT ACKNOWLEDGEMENT**

(C.A.R. Form AAA, Revised 11/14)

This is an addendum to the California Residential Purchase Agreement,  Other \_\_\_\_\_ (“Agreement”),  
dated \_\_\_\_\_, on property known as \_\_\_\_\_  
between \_\_\_\_\_ (“Buyer/Tenant”)  
and \_\_\_\_\_ (“Seller/Landlord”).

1. Check **ONE** box **ONLY**. If more than one applies, use separate forms for each.
    - A.  Multiple Associate-Licensees working with Seller/Landlord;
    - OR** B.  Multiple Associate-Licensees working with Buyer/Tenant;
  2. A. The real estate licensees signing below are all conducting real estate licensed activity under the same Broker:
    - Real Estate Broker name: \_\_\_\_\_
    - If applicable, Team Name: \_\_\_\_\_
  - B. The licensees below have entered into a separate written agreement to share responsibility and compensation for certain real estate licensed activity and have informed Broker of, or given Broker a copy of, that separate written agreement.
  - C. Agent \_\_\_\_\_ CalBRE Lic # \_\_\_\_\_
  - Agent \_\_\_\_\_ CalBRE Lic # \_\_\_\_\_
  - Agent \_\_\_\_\_ CalBRE Lic # \_\_\_\_\_
  - Agent \_\_\_\_\_ CalBRE Lic # \_\_\_\_\_
  - Agent \_\_\_\_\_ CalBRE Lic # \_\_\_\_\_
3. By signing below, all parties understand, acknowledge and agree that, wherever the name of any licensee above is indicated in the Agreement or related document, as a representative for the Buyer or Seller specified in 1A or B above, the other licensees shall also be deemed to be named.

Buyer/Tenant \_\_\_\_\_ Date \_\_\_\_\_

Buyer/Tenant \_\_\_\_\_ Date \_\_\_\_\_

Seller/Landlord \_\_\_\_\_ Date \_\_\_\_\_

Seller/Landlord \_\_\_\_\_ Date \_\_\_\_\_

Real Estate Broker \_\_\_\_\_ CalBRE Lic. # \_\_\_\_\_

By \_\_\_\_\_ CalBRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_

Real Estate Broker \_\_\_\_\_ CalBRE Lic. # \_\_\_\_\_

By \_\_\_\_\_ CalBRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_

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CALIFORNIA ASSOCIATION OF REALTORS®

ADDITIONAL BROKER ACKNOWLEDGEMENT

(C.A.R. Form ABA, Revised 11/14)

This is an addendum to the California Residential Purchase Agreement, [ ] Other \_\_\_\_\_ ("Agreement"), dated \_\_\_\_\_, on property known as \_\_\_\_\_ ("Buyer/Tenant") and \_\_\_\_\_ ("Seller/Landlord").

1. Check ONE box ONLY. If more than one applies, use separate forms for each.

A. [ ] Multiple Brokers Representing Seller/Landlord: \_\_\_\_\_ (Broker 1) and \_\_\_\_\_ (Broker 2) are parties to a Residential Listing Agreement, [ ] Other \_\_\_\_\_ dated \_\_\_\_\_ in which they have agreed to share responsibility and compensation for the representation of Seller/Landlord.

OR B. [ ] Multiple Brokers Representing Buyer/Tenant: \_\_\_\_\_ CalBRELic # \_\_\_\_\_ (Broker 1) and \_\_\_\_\_ CalBRELic # \_\_\_\_\_ (Broker 2) are real estate brokers who have entered into an agreement to share responsibility and compensation for the representation of Buyer/Tenant.

2. [ ] Activity under the license of Broker 1 and/or Broker 2 will be conducted by multiple associate licensees, partners or teams as indicated on the attached Additional Agent Acknowledgement form(s) (C.A.R. Form AAA).

3. By signing below, all parties understand, acknowledge and agree that, wherever the name of either Broker 1 or Broker 2, as applicable, is indicated in the Agreement or related documents, as a representative for the Buyer or Seller specified in 1A or B above, the other Broker shall also be deemed to be named.

Buyer/Tenant \_\_\_\_\_ Date \_\_\_\_\_

Buyer/Tenant \_\_\_\_\_ Date \_\_\_\_\_

Seller/Landlord \_\_\_\_\_ Date \_\_\_\_\_

Seller/Landlord \_\_\_\_\_ Date \_\_\_\_\_

RealEstateBroker(Broker1) \_\_\_\_\_ CalBRELic.# \_\_\_\_\_

By \_\_\_\_\_ CalBRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_

RealEstateBroker(Broker2) \_\_\_\_\_ CalBRELic.# \_\_\_\_\_

By \_\_\_\_\_ CalBRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_

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ABA REVISED 11/14 (PAGE 1 OF 1) Print Date

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_







CALIFORNIA ASSOCIATION OF REALTORS®

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS For Use With Single Family Residential Property — Attached or Detached (C.A.R. Form RPA-CA, Revised 11/14)

Date Prepared: \_\_\_\_\_

1. OFFER:

- A. THIS IS AN OFFER FROM \_\_\_\_\_ ("Buyer").
B. THE REAL PROPERTY to be acquired is \_\_\_\_\_, situated in \_\_\_\_\_ (City), \_\_\_\_\_ County, California, \_\_\_\_\_ (Zip Code), Assessor's Parcel No. \_\_\_\_\_ ("Property").
C. THE PURCHASE PRICE offered is \_\_\_\_\_ Dollars \$ \_\_\_\_\_.
D. CLOSE OF ESCROW shall occur on \_\_\_\_\_ (date) (or \_\_\_\_\_ Days After Acceptance).
E. Buyer and Seller are referred to herein as the "Parties." Brokers are not Parties to this Agreement.

2. AGENCY:

- A. DISCLOSURE: The Parties each acknowledge receipt of a [X] "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD).
B. CONFIRMATION: The following agency relationships are hereby confirmed for this transaction:
Listing Agent \_\_\_\_\_ (Print Firm Name) is the agent of (check one):
[ ] the Seller exclusively; or [ ] both the Buyer and Seller.
Selling Agent \_\_\_\_\_ (Print Firm Name) (if not the same as the Listing Agent) is the agent of (check one): [ ] the Buyer exclusively; or [ ] the Seller exclusively; or [ ] both the Buyer and Seller.
C. POTENTIALLY COMPETING BUYERS AND SELLERS: The Parties each acknowledge receipt of a [X] "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

3. FINANCE TERMS:

- Buyer represents that funds will be good when deposited with Escrow Holder.
A. INITIAL DEPOSIT: Deposit shall be in the amount of \_\_\_\_\_ \$ \_\_\_\_\_.
(1) Buyer Direct Deposit: Buyer shall deliver deposit directly to Escrow Holder by electronic funds transfer, [ ] cashier's check, [ ] personal check, [ ] other \_\_\_\_\_ within 3 business days after Acceptance (or \_\_\_\_\_);
OR (2) [ ] Buyer Deposit with Agent: Buyer has given the deposit by personal check (or \_\_\_\_\_) to the agent submitting the offer (or to \_\_\_\_\_), made payable to \_\_\_\_\_. The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder within 3 business days after Acceptance (or \_\_\_\_\_). Deposit checks given to agent shall be an original signed check and not a copy.
(Note: Initial and increased deposits checks received by agent shall be recorded in Broker's trust fund log.)
B. INCREASED DEPOSIT: Buyer shall deposit with Escrow Holder an increased deposit in the amount of \_\_\_\_\_ \$ \_\_\_\_\_ within \_\_\_\_\_ Days After Acceptance (or \_\_\_\_\_). If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount in a separate liquidated damages clause (C.A.R. Form RID) at the time the increased deposit is delivered to Escrow Holder.
C. [ ] ALL CASH OFFER: No loan is needed to purchase the Property. Written verification of sufficient funds to close this transaction IS ATTACHED to this offer or [ ] Buyer shall, within 3 (or \_\_\_\_\_) Days After Acceptance, Deliver to Seller such verification.
D. LOAN(S):
(1) FIRST LOAN: in the amount of \_\_\_\_\_ \$ \_\_\_\_\_. This loan will be conventional financing or [ ] FHA, [ ] VA, [ ] Seller financing (C.A.R. Form SFA), [ ] assumed financing (C.A.R. Form AFA), [ ] Other \_\_\_\_\_. This loan shall be at a fixed rate not to exceed \_\_\_\_\_% or, [ ] an adjustable rate loan with initial rate not to exceed \_\_\_\_\_%. Regardless of the type of loan, Buyer shall pay points not to exceed \_\_\_\_\_% of the loan amount.
(2) [ ] SECOND LOAN in the amount of \_\_\_\_\_ \$ \_\_\_\_\_. This loan will be conventional financing or [ ] Seller financing (C.A.R. Form SFA), [ ] assumed financing (C.A.R. Form AFA), [ ] Other \_\_\_\_\_. This loan shall be at a fixed rate not to exceed \_\_\_\_\_% or, [ ] an adjustable rate loan with initial rate not to exceed \_\_\_\_\_%. Regardless of the type of loan, Buyer shall pay points not to exceed \_\_\_\_\_% of the loan amount.
(3) FHA/VA: For any FHA or VA loan specified in 3D(1), Buyer has 17 (or \_\_\_\_\_) Days After Acceptance to Deliver to Seller written notice (C.A.R. Form FVA) of any lender-required repairs or costs that Buyer requests Seller to pay for or otherwise correct. Seller has no obligation to pay or satisfy lender requirements unless agreed in writing. A FHA/VA amendatory clause (C.A.R. Form FVAC) shall be a part of this transaction.
E. ADDITIONAL FINANCING TERMS: \_\_\_\_\_
F. BALANCE OF DOWN PAYMENT OR PURCHASE PRICE in the amount of \_\_\_\_\_ \$ \_\_\_\_\_ to be deposited with Escrow Holder pursuant to Escrow Holder instructions.
G. PURCHASE PRICE (TOTAL): \_\_\_\_\_ \$ \_\_\_\_\_

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)



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

Date: \_\_\_\_\_

- H. **VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS:** Buyer (or Buyer's lender or loan broker pursuant to paragraph 3J(1)) shall, within **3 (or \_\_\_\_ ) Days** After Acceptance, Deliver to Seller written verification of Buyer's down payment and closing costs. (  Verification attached.)
- I. **APPRAISAL CONTINGENCY AND REMOVAL:** This Agreement is (or  is NOT) contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the purchase price. Buyer shall, as specified in paragraph 14B(3), in writing, remove the appraisal contingency or cancel this Agreement within **17 (or \_\_\_\_ ) Days** After Acceptance.
- J. **LOAN TERMS:**
  - (1) **LOAN APPLICATIONS:** Within **3 (or \_\_\_\_ ) Days** After Acceptance, Buyer shall Deliver to Seller a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in paragraph 3D. If any loan specified in paragraph 3D is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate. (  Letter attached.)
  - (2) **LOAN CONTINGENCY:** Buyer shall act diligently and in good faith to obtain the designated loan(s). Buyer's qualification for the loan(s) specified above **is a contingency** of this Agreement unless otherwise agreed in writing. If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan. Buyer's contractual obligations regarding deposit, balance of down payment and closing costs **are not contingencies** of this Agreement.
  - (3) **LOAN CONTINGENCY REMOVAL:** Within **21 (or \_\_\_\_ ) Days** After Acceptance, Buyer shall, as specified in paragraph 14, in writing, remove the loan contingency or cancel this Agreement. If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.
  - (4)  **NO LOAN CONTINGENCY:** Obtaining any loan specified above is NOT a contingency of this Agreement. If Buyer does not obtain the loan and as a result does not purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.
  - (5) **LENDER LIMITS ON BUYER CREDITS:** Any credit to Buyer, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.
- K. **BUYER STATED FINANCING:** Seller is relying on Buyer's representation of the type of financing specified (including but not limited to, as applicable, all cash, amount of down payment, or contingent or non contingent loan). Seller has agreed to a specific closing date, purchase price and to sell to Buyer in reliance on Buyer's covenant concerning financing. Buyer shall pursue the financing specified in this Agreement. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in the Agreement and the availability of any such alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

4. **SALE OF BUYER'S PROPERTY:**

- A. This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer.
- OR B.  This Agreement and Buyer's ability to obtain financing are contingent upon the sale of property owned by Buyer as specified in the attached addendum (C.A.R. Form COP).

5. **ADDENDA AND ADVISORIES:**

- A. **ADDENDA:**
  - Addendum # \_\_\_\_\_ (C.A.R. Form ADM)
  - Back Up Offer Addendum (C.A.R. Form BUO)  Court Confirmation Addendum (C.A.R. Form CCA)
  - Septic, Well and Property Monument Addendum (C.A.R. Form SWPI)
  - Short Sale Addendum (C.A.R. Form SSA)  Other \_\_\_\_\_
- B. **BUYER AND SELLER ADVISORIES:**
  - Buyer's Inspection Advisory (C.A.R. Form BIA)
  - Probate Advisory (C.A.R. Form PAK)  Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)
  - Trust Advisory (C.A.R. Form TA)  REO Advisory (C.A.R. Form REO)
  - Short Sale Information and Advisory (C.A.R. Form SSIA)  Other \_\_\_\_\_

6. **OTHER TERMS:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. **ALLOCATION OF COSTS**

**A. INSPECTIONS, REPORTS AND CERTIFICATES:** Unless otherwise agreed in writing, this paragraph only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; it **does not determine who is to pay for any work recommended or identified in the Report.**

- (1)  Buyer  Seller shall pay for a natural hazard zone disclosure report, including  environmental and tax reports  Other: \_\_\_\_\_ prepared by \_\_\_\_\_.
- (2)  Buyer  Seller shall pay for the following Report \_\_\_\_\_ prepared by \_\_\_\_\_.
- (3)  Buyer  Seller shall pay for the following Report \_\_\_\_\_ prepared by \_\_\_\_\_.

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)



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

**B. GOVERNMENT REQUIREMENTS AND RETROFIT:**

- (1)  Buyer  Seller shall pay for smoke alarm and carbon monoxide device installation and water heater bracing, if required by Law. Prior to Close Of Escrow ("COE"), Seller shall provide Buyer written statement(s) of compliance in accordance with state and local Law, unless Seller is exempt.
- (2) (i)  Buyer  Seller shall pay the cost of compliance with any other minimum mandatory government inspections and reports if required as a condition of closing escrow under any Law.  
(ii)  Buyer  Seller shall pay the cost of compliance with any other minimum mandatory government retrofit standards required as a condition of closing escrow under any Law, whether the work is required to be completed before or after COE.  
(iii) Buyer shall be provided, within the time specified in paragraph 14A, a copy of any required government conducted or point-of-sale inspection report prepared pursuant to this Agreement or in anticipation of this sale of the Property.

**C. ESCROW AND TITLE:**

- (1) (a)  Buyer  Seller shall pay escrow fee \_\_\_\_\_.  
(b) Escrow Holder shall be \_\_\_\_\_.  
(c) The Parties shall, within 5 (or \_\_\_\_\_) Days After receipt, sign and return Escrow Holder's general provisions.
- (2) (a)  Buyer  Seller shall pay for owner's title insurance policy specified in paragraph 13E \_\_\_\_\_.  
(b) Owner's title policy to be issued by \_\_\_\_\_.  
(Buyer shall pay for any title insurance policy insuring Buyer's lender, unless otherwise agreed in writing.)

**D. OTHER COSTS:**

- (1)  Buyer  Seller shall pay County transfer tax or fee \_\_\_\_\_.
- (2)  Buyer  Seller shall pay City transfer tax or fee \_\_\_\_\_.
- (3)  Buyer  Seller shall pay Homeowners' Association ("HOA") transfer fee \_\_\_\_\_.
- (4)  Buyer  Seller shall pay HOA document preparation fees \_\_\_\_\_.
- (5)  Buyer  Seller shall pay for any private transfer fee \_\_\_\_\_.
- (6)  Buyer  Seller shall pay for \_\_\_\_\_.
- (7)  Buyer  Seller shall pay for \_\_\_\_\_.
- (8)  Buyer  Seller shall pay for the cost, not to exceed \$ \_\_\_\_\_, of a standard (or  upgraded) one-year home warranty plan, issued by \_\_\_\_\_, with the following optional coverages:  Air Conditioner  Pool/Spa  Other: \_\_\_\_\_.  
Buyer is informed that home warranty plans have many optional coverages in addition to those listed above. Buyer is advised to investigate these coverages to determine those that may be suitable for Buyer.

**OR  Buyer waives the purchase of a home warranty policy. Nothing in this paragraph precludes Buyer's purchasing a home warranty policy during the term of this Agreement.**

**8. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:**

**A. NOTE TO BUYER AND SELLER:** Items listed as included or excluded in the MLS, flyers or marketing materials are **not** included in the purchase price or excluded from the sale unless specified in paragraph 8 B or C.

**B. ITEMS INCLUDED IN SALE:** Except as otherwise specified or disclosed,

- (1) All EXISTING fixtures and fittings that are attached to the Property;
- (2) EXISTING electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar power systems, built-in appliances, window and door screens, awnings, shutters, window coverings, attached floor coverings, television antennas, satellite dishes, air coolers/conditioners, pool/spa equipment, garage door openers/remote controls, mailbox, in-ground landscaping, trees/shrubs, water features and fountains, water softeners, water purifiers, security systems/alarms and the following if checked:  all stove(s), except \_\_\_\_\_;  all refrigerator(s) except \_\_\_\_\_;  all washer(s) and dryer(s), except \_\_\_\_\_;
- (3) Existing integrated phone and home automation systems, including necessary components such as internet connected hardware or devices, control units (other than non-dedicated mobile devices, electronics and computers) and applicable software, permissions, passwords, codes and access information, are ( are NOT) included in the sale.
- (4) **LEASED OR LIENED ITEMS AND SYSTEMS:** Seller shall, within the time specified in paragraph 14A, (i) disclose to Buyer if any item or system specified in paragraph 8B or otherwise included in the sale is leased, or not owned by Seller, or specifically subject to a lien or other encumbrance, and (ii) Deliver to Buyer all written materials (such as lease, warranty, etc.) concerning any such item. Buyer's ability to assume any such lease, or willingness to accept the Property subject to any such lien or encumbrance, is a contingency of this Agreement as specified in paragraph 14B.
- (5) The following additional items: \_\_\_\_\_.
- (6) Seller represents that all items included in the purchase price, unless otherwise specified, (i) are owned by Seller and shall be transferred free and clear of liens and encumbrances, except the items and systems identified pursuant to 8B(4) and \_\_\_\_\_, and (ii) are transferred without Seller warranty regardless of value.

**C. ITEMS EXCLUDED FROM SALE:** Unless otherwise specified, the following items are excluded from sale: (i) audio and video components (such as flat screen TVs, speakers and other items) if any such item is not itself attached to the Property, even if a bracket or other mechanism attached to the component or item is attached to the Property; (ii) furniture and other items secured to the Property for earthquake purposes; and (iii) \_\_\_\_\_.

\_\_\_\_\_. Brackets attached to walls, floors or ceilings for any such component, furniture or item shall remain with the Property (or  will be removed and holes or other damage shall be repaired, but not painted).

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)



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

Date: \_\_\_\_\_

**9. CLOSING AND POSSESSION:**

- A.** Buyer intends (or  does not intend) to occupy the Property as Buyer's primary residence.
- B. Seller-occupied or vacant property:** Possession shall be delivered to Buyer: (i) at 6 PM or (\_\_\_\_  AM/ PM) on the date of Close Of Escrow; (ii)  no later than \_\_\_\_ Days After Close Of Escrow; or (iii)  at \_\_\_\_  AM/ PM on \_\_\_\_\_.
- C. Seller remaining in possession After Close Of Escrow:** If Seller has the right to remain in possession after Close Of Escrow, (i) the Parties are advised to sign a separate occupancy agreement such as  C.A.R. Form SIP, for Seller continued occupancy of less than 30 days,  C.A.R. Form RLAS for Seller continued occupancy of 30 days or more; and (ii) the Parties are advised to consult with their insurance and legal advisors for information about liability and damage or injury to persons and personal and real property; and (iii) Buyer is advised to consult with Buyer's lender about the impact of Seller's occupancy on Buyer's loan.
- D. Tenant-occupied property: Property shall be vacant at least 5 (or \_\_\_\_ ) Days Prior to Close Of Escrow, unless otherwise agreed in writing. Note to Seller: If you are unable to deliver Property vacant in accordance with rent control and other applicable Law, you may be in breach of this Agreement.**
- OR**  **Tenant to remain in possession** (C.A.R. Form TIP).
- E.** At Close Of Escrow: Seller assigns to Buyer any assignable warranty rights for items included in the sale; and Seller shall Deliver to Buyer available Copies of any such warranties. Brokers cannot and will not determine the assignability of any warranties.
- F.** At Close Of Escrow, unless otherwise agreed in writing, Seller shall provide keys, passwords, codes and/or means to operate all locks, mailboxes, security systems, alarms, home automation systems and internet connected devices included in the purchase price, and garage door openers. If the Property is a condominium or located in a common interest subdivision, Buyer may be required to pay a deposit to the Homeowners' Association ("HOA") to obtain keys to accessible HOA facilities.

**10. STATUTORY AND OTHER DISCLOSURES (INCLUDING LEAD-BASED PAINT HAZARD DISCLOSURES) AND CANCELLATION RIGHTS:**

- A. (1)** Seller shall, within the time specified in paragraph 14A, Deliver to Buyer: (i) if required by Law, a fully completed: Federal Lead-Based Paint Disclosures (C.A.R. Form FLD) and pamphlet ("Lead Disclosures"); and (ii) unless exempt, fully completed disclosures or notices required by sections 1102 et. seq. and 1103 et. seq. of the Civil Code ("Statutory Disclosures"). Statutory Disclosures include, but are not limited to, a Real Estate Transfer Disclosure Statement ("TDS"), Natural Hazard Disclosure Statement ("NHD"), notice or actual knowledge of release of illegal controlled substance, notice of special tax and/or assessments (or, if allowed, substantially equivalent notice regarding the Mello-Roos Community Facilities Act of 1982 and Improvement Bond Act of 1915) and, if Seller has actual knowledge, of industrial use and military ordnance location (C.A.R. Form SPQ or SSD).
- (2)** Any Statutory Disclosure required by this paragraph is considered fully completed if Seller has answered all questions and completed and signed the seller section(s) and the Listing Agent, if any, has completed and signed the listing broker section(s), or, if applicable, an Agent Visual Inspection Disclosure (C.A.R. Form AVID). Nothing stated herein relieves a Buyer's Broker, if any, from the obligation to (i) conduct a reasonably competent and diligent visual inspection of the accessible areas of the Property and disclose, on Section IV of the TDS, or an AVID, material facts affecting the value or desirability of the Property that were or should have been revealed by such an inspection or (ii) complete any sections on all disclosures required to be completed by Buyer's Broker.
- (3) Note to Buyer and Seller:** Waiver of Statutory and Lead Disclosures is prohibited by Law.
- (4)** Seller, unless exempt from the obligation to provide TDS, shall, within the time specified in paragraph 14A, complete and provide Buyer with a Seller Property Questionnaire (C.A.R. Form SPQ) **OR**  Supplemental Contractual and Statutory Disclosure (C.A.R. Form SSD).
- (5)** Buyer shall, within the time specified in paragraph 14B(1), return Signed Copies of the Statutory, Lead and other disclosures to Seller.
- (6)** In the event Seller or Listing Broker, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer, Seller shall promptly provide a subsequent or amended disclosure or notice, in writing, covering those items. **However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies of which Buyer is otherwise aware, or which are disclosed in reports provided to or obtained by Buyer or ordered and paid for by Buyer.**
- (7)** If any disclosure or notice specified in paragraph 10A(1), or subsequent or amended disclosure or notice is Delivered to Buyer after the offer is Signed, Buyer shall have the right to cancel this Agreement within **3 Days After Delivery** in person, or **5 Days After Delivery** by deposit in the mail, by giving written notice of cancellation to Seller or Seller's agent.
- B. NATURAL AND ENVIRONMENTAL HAZARD DISCLOSURES AND OTHER BOOKLETS:** Within the time specified in paragraph 14A, Seller shall, if required by Law: (i) Deliver to Buyer earthquake guide(s) (and questionnaire), environmental hazards booklet, and home energy rating pamphlet; (ii) disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; and Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.
- C. WITHHOLDING TAXES:** Within the time specified in paragraph 14A, to avoid required withholding, Seller shall Deliver to Buyer or qualified substitute, an affidavit sufficient to comply with federal (FIRPTA) and California withholding Law (C.A.R. Form AS or QS).
- D. MEGAN'S LAW DATABASE DISCLOSURE:** Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at [www.meganslaw.ca.gov](http://www.meganslaw.ca.gov). Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides. (Neither Seller nor Brokers are required to check this website. If Buyer wants further information, Broker recommends that Buyer obtain information from this website during Buyer's inspection contingency period. Brokers do not have expertise in this area.)
- E. NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES:** This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Web site.

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)



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

Date: \_\_\_\_\_

**F. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:**

(1) **SELLER HAS: 7 (or \_\_\_\_ ) Days** After Acceptance to disclose to Buyer if the Property is a condominium, or is located in a planned development or other common interest subdivision (C.A.R. Form SPQ or SSD).

(2) If the Property is a condominium or is located in a planned development or other common interest subdivision, Seller has **3 (or \_\_\_\_ ) Days** After Acceptance to request from the HOA (C.A.R. Form HOA): (i) Copies of any documents required by Law; (ii) disclosure of any pending or anticipated claim or litigation by or against the HOA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of HOA minutes for regular and special meetings; and (v) the names and contact information of all HOAs governing the Property (collectively, "CI Disclosures"). Seller shall itemize and Deliver to Buyer all CI Disclosures received from the HOA and any CI Disclosures in Seller's possession. Buyer's approval of CI Disclosures is a contingency of this Agreement as specified in paragraph 14B(3). The Party specified in paragraph 7, as directed by escrow, shall deposit funds into escrow or direct to HOA or management company to pay for any of the above.

**11. CONDITION OF PROPERTY:** Unless otherwise agreed in writing: (i) the Property is sold (a) "AS-IS" in its PRESENT physical condition as of the date of Acceptance and (b) subject to Buyer's Investigation rights; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow.

**A.** Seller shall, within the time specified in paragraph 14A, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, and make any and all other disclosures required by law.

**B.** Buyer has the right to conduct Buyer Investigations of the Property and, as specified in paragraph 14B, based upon information discovered in those investigations: (i) cancel this Agreement; or (ii) request that Seller make Repairs or take other action.

**C. Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had permits issued.**

**12. BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:**

**A.** Buyer's acceptance of the condition of, and any other matter affecting the Property, is a contingency of this Agreement as specified in this paragraph and paragraph 14B. Within the time specified in paragraph 14B(1), Buyer shall have the right, at Buyer's expense unless otherwise agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations"), including, but not limited to, the right to: (i) inspect for lead-based paint and other lead-based paint hazards; (ii) inspect for wood destroying pests and organisms. Any inspection for wood destroying pests and organisms shall be prepared by a registered Structural Pest Control company; shall cover the main building and attached structures; may cover detached structures; shall NOT include water tests of shower pans on upper level units unless the owners of property below the shower consent; shall NOT include roof coverings; and, if the Property is a unit in a condominium or other common interest subdivision, the inspection shall include only the separate interest and any exclusive-use areas being transferred, and shall NOT include common areas; and shall include a report ("Pest Control Report") showing the findings of the company which shall be separated into sections for evident infestation or infections (Section 1) and for conditions likely to lead to infestation or infection (Section 2); (iii) review the registered sex offender database; (iv) confirm the insurability of Buyer and the Property including the availability and cost of flood and fire insurance; (v) review and seek approval of leases that may need to be assumed by Buyer; and (vi) satisfy Buyer as to any matter specified in the attached Buyer's Inspection Advisory (C.A.R. Form BIA). Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations except to the extent required to prepare a Pest Control Report; or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.

**B.** Seller shall make the Property available for all Buyer Investigations. Buyer shall (i) as specified in paragraph 14B, complete Buyer Investigations and either remove the contingency or cancel this Agreement, and (ii) give Seller, at no cost, complete Copies of all such Investigation reports obtained by Buyer, which obligation shall survive the termination of this Agreement.

**C.** Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is made available to Buyer.

**D. Buyer indemnity and seller protection for entry upon property:** Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-Responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.

**13. TITLE AND VESTING:**

**A.** Within the time specified in paragraph 14, Buyer shall be provided a current preliminary title report ("Preliminary Report"). The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. Buyer's review of the Preliminary Report and any other matters which may affect title are a contingency of this Agreement as specified in paragraph 14B. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities. Seller shall within 7 Days After Acceptance, give Escrow Holder a completed Statement of Information.

**B.** Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record (which Seller is obligated to pay off) unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing.

**C.** Within the time specified in paragraph 14A, Seller has a duty to disclose to Buyer all matters known to Seller affecting title, whether of record or not.

**D.** At Close Of Escrow, Buyer shall receive a grant deed conveying title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's leasehold interest), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's supplemental escrow instructions. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)



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

Date: \_\_\_\_\_

- E. Buyer shall receive a CLTA/ALTA "Homeowner's Policy of Title Insurance", if applicable to the type of property and buyer. If not, Escrow Holder shall notify Buyer. A title company can provide information about the availability, coverage, and cost of other title policies and endorsements. If the Homeowner's Policy is not available, Buyer shall choose another policy, instruct Escrow Holder in writing and shall pay any increase in cost.
- 14. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS: The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).**
- A. SELLER HAS: 7 (or \_\_\_\_ ) Days** After Acceptance to Deliver to Buyer all Reports, disclosures and information for which Seller is responsible under paragraphs 5, 6, 7, 8B(4), 10A, B, C, and F, 11A, 13A, and 19. If, by the time specified, Seller has not delivered any such item, Buyer after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP) may cancel this Agreement.
- B. (1) BUYER HAS: 17 (or \_\_\_\_ ) Days** After Acceptance, unless otherwise agreed in writing, to:
- (i) complete all Buyer Investigations; review all disclosures, reports, lease documents to be assumed by Buyer pursuant to paragraph 8B(4), and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property; and (ii) Deliver to Seller Signed Copies of Statutory and Lead Disclosures and other disclosures Delivered by Seller in accordance with paragraph 10A.
  - (2) Within the time specified in paragraph 14B(1), Buyer may request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to (C.A.R. Form RRRR) Buyer's requests.
  - (3) By the end of the time specified in paragraph 14B(1) (or as otherwise specified in this Agreement), Buyer shall Deliver to Seller a removal of the applicable contingency or cancellation (C.A.R. Form CR or CC) of this Agreement. However, if any report, disclosure or information for which Seller is responsible is not Delivered within the time specified in paragraph 14A, then Buyer has **5 (or \_\_\_\_ ) Days** After Delivery of any such items, or the time specified in paragraph 14B(1), whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.
  - (4) **Continuation of Contingency:** Even after the end of the time specified in paragraph 14B(1) and before Seller cancels, if at all, pursuant to paragraph 14C, Buyer retains the right, in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to paragraph 14C(1).
- C. SELLER RIGHT TO CANCEL:**
- (1) **Seller right to Cancel; Buyer Contingencies:** If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
  - (2) **Seller right to Cancel; Buyer Contract Obligations:** If, by the time specified in this Agreement, Buyer does not take the following action(s), then Seller, after first delivering to Buyer a NBP may cancel this Agreement: (i) Deposit funds as required by paragraph 3A, or 3B or if the funds deposited pursuant to paragraph 3A or 3B are not good when deposited; (ii) Deliver a notice of FHA or VA costs or terms as required by paragraph 3D(3) (C.A.R. Form FVA); (iii) Deliver a letter as required by paragraph 3J(1); (iv) Deliver verification, or a satisfactory verification if Seller reasonably disapproves of the verification already provided, as required by paragraph 3C or 3H; (v) Return Statutory and Lead Disclosures as required by paragraph 10A(5); or (vi) Sign or initial a separate liquidated damages form for an increased deposit as required by paragraphs 3B and 21B; or (vii) Provide evidence of authority to sign in a representative capacity as specified in paragraph 19. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
- D. NOTICE TO BUYER OR SELLER TO PERFORM:** The NBP or NSP shall: (i) be in writing; (ii) be signed by the applicable Buyer or Seller; and (iii) give the other Party at least **2 (or \_\_\_\_ ) Days** After Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A NBP or NSP may not be Delivered any earlier than **2 Days** Prior to the expiration of the applicable time for the other Party to remove a contingency or cancel this Agreement or meet an obligation specified in paragraph 14.
- E. EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES:** If Buyer removes, in writing, any contingency or cancellation rights, unless otherwise specified in writing, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.
- F. CLOSE OF ESCROW:** Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a demand to close escrow (C.A.R. Form DCE). The DCE shall: (i) be signed by the applicable Buyer or Seller; and (ii) give the other Party at least **3 (or \_\_\_\_ ) Days** After Delivery to close escrow. A DCE may not be Delivered any earlier than **3 Days** Prior to the scheduled close of escrow.
- G. EFFECT OF CANCELLATION ON DEPOSITS:** If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to Sign mutual instructions to cancel the sale and escrow and release deposits, if any, to the party entitled to the funds, less fees and costs incurred by that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. Except as specified below, **release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award.** If either Party fails to execute mutual instructions to cancel, one Party may make a written demand to Escrow Holder for the deposit. Escrow Holder, upon receipt, shall promptly deliver notice of the demand to the other Party. If, within 10 Days After Escrow Holder's notice, the other Party does not object to the demand, Escrow Holder shall disburse the deposit to the Party making the demand. If Escrow Holder complies with the preceding process, each Party shall be deemed to have released Escrow Holder from any and all claims or liability related to the disbursement of the deposit. Escrow Holder, at its discretion, may nonetheless require mutual cancellation instructions. **A Party may be subject to a civil penalty of up to \$1,000 for refusal to sign cancellation instructions if no good faith dispute exists as to who is entitled to the deposited funds (Civil Code §1057.3).**
- 15. FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final verification of the Property within **5 (or  \_\_\_\_ ) Days** Prior to Close Of Escrow, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to paragraph 11; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)



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

Date: \_\_\_\_\_

- 16. REPAIRS:** Repairs shall be completed prior to final verification of condition unless otherwise agreed in writing. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. It is understood that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: **(i)** obtain invoices and paid receipts for Repairs performed by others; **(ii)** prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and **(iii)** provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.
- 17. PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless otherwise agreed in writing, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, rents, HOA regular, special, and emergency dues and assessments imposed prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special assessments that are now a lien but not yet due. Property will be reassessed upon change of ownership. Any supplemental tax bills shall be paid as follows: **(i)** for periods after Close Of Escrow, by Buyer; and **(ii)** for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information). TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be made based on a 30-day month.
- 18. BROKERS:**
- A. COMPENSATION:** Seller or Buyer, or both, as applicable, agree to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
- B. SCOPE OF DUTY:** Buyer and Seller acknowledge and agree that Broker: **(i)** Does not decide what price Buyer should pay or Seller should accept; **(ii)** Does not guarantee the condition of the Property; **(iii)** Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; **(iv)** Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; **(v)** Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Broker; **(vi)** Shall not be responsible for inspecting public records or permits concerning the title or use of Property; **(vii)** Shall not be responsible for identifying the location of boundary lines or other items affecting title; **(viii)** Shall not be responsible for verifying square footage, representations of others or information contained in Investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; **(ix)** Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; **(x)** Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and **(xi)** Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.
- 19. REPRESENTATIVE CAPACITY:** If one or more Parties is signing this Agreement in a representative capacity and not for him/herself as an individual then that Party shall so indicate in paragraph 31 or 32 and attach a Representative Capacity Signature Addendum (C.A.R. Form RCSA). Wherever the signature or initials of the representative identified in the RCSA appear on this Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Party acting in a representative capacity shall Deliver to the other Party and Escrow Holder, within 3 Days After Acceptance, evidence of authority to act in that capacity (such as but not limited to: applicable trust document, or portion thereof, letters testamentary, court order, power of attorney, resolution, or formation documents of the business entity).
- 20. JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:**
- A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder,** which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: paragraphs 1, 3, 4B, 5A, 6, 7, 10C, 13, 14G, 17, 18A, 19, 20, 26, 29, 30, 31, 32 and paragraph D of the section titled Real Estate Brokers on page 10. If a Copy of the separate compensation agreement(s) provided for in paragraph 18A, or paragraph D of the section titled Real Estate Brokers on page 10 is deposited with Escrow Holder by Broker, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder and will execute such provisions within the time specified in paragraph 7C(1)(c). To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller will execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within 3 (or \_\_\_) Days, shall pay to Escrow Holder or HOA or HOA management company or others any fee required by paragraphs 7, 10 or elsewhere in this Agreement.
- B. A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within 3 Days After Acceptance (or \_\_\_\_\_).** Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title company when received from Seller. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under paragraph 10C, Escrow Holder shall deliver to Buyer a Qualified Substitute statement that complies with federal Law.
- C. Brokers are a party to the escrow for the sole purpose of compensation pursuant to paragraph 18A and paragraph D of the section titled Real Estate Brokers on page 10. Buyer and Seller irrevocably assign to Brokers compensation specified in paragraph 18A, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.**

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)



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

Date: \_\_\_\_\_

- D. Upon receipt, Escrow Holder shall provide Seller and Seller's Broker verification of Buyer's deposit of funds pursuant to paragraph 3A and 3B. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify all Brokers: (i) if Buyer's initial or any additional deposit or down payment is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.
- E. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within 3 Days after mutual execution of the amendment.

**21. REMEDIES FOR BUYER'S BREACH OF CONTRACT:**

- A. Any clause added by the Parties specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase in violation of this Agreement shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.
- B. **LIQUIDATED DAMAGES:** If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. If the Property is a dwelling with no more than four units, one of which Buyer intends to occupy, then the amount retained shall be no more than 3% of the purchase price. Any excess shall be returned to Buyer. Release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award. **AT TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R. FORM RID).**

Buyer's Initials \_\_\_\_\_ / \_\_\_\_\_

Seller's Initials \_\_\_\_\_ / \_\_\_\_\_

**22. DISPUTE RESOLUTION:**

**A. MEDIATION:** The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action through the C.A.R. Real Estate Mediation Center for Consumers ([www.consumermediation.org](http://www.consumermediation.org)) or through any other mediation provider or service mutually agreed to by the Parties. The Parties also agree to mediate any disputes or claims with Broker(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. Mediation fees, if any, shall be divided equally among the Parties involved. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. **THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED. Exclusions from this mediation agreement are specified in paragraph 22C.**

**B. ARBITRATION OF DISPUTES:**  
**The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The Parties also agree to arbitrate any disputes or claims with Broker(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of residential real estate Law experience, unless the parties mutually agree to a different arbitrator. The Parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 22C.**

**"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."**

**"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."**

Buyer's Initials \_\_\_\_\_ / \_\_\_\_\_

Seller's Initials \_\_\_\_\_ / \_\_\_\_\_

**C. ADDITIONAL MEDIATION AND ARBITRATION TERMS:**

- (1) **EXCLUSIONS:** The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; and (iii) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court.
- (2) **PRESERVATION OF ACTIONS:** The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (ii) the filing of a mechanic's lien.
- (3) **BROKERS:** Brokers shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Broker(s) participating in mediation or arbitration shall not be deemed a party to this Agreement.

Buyer's Initials (\_\_\_\_)(\_\_\_\_)

Seller's Initials (\_\_\_\_)(\_\_\_\_)



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

Date: \_\_\_\_\_

- 23. SELECTION OF SERVICE PROVIDERS:** Brokers do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Broker or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.
- 24. MULTIPLE LISTING SERVICE ("MLS"):** Brokers are authorized to report to the MLS a pending sale and, upon Close Of Escrow, the sales price and other terms of this transaction shall be provided to the MLS to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS.
- 25. ATTORNEY FEES:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 22A.
- 26. ASSIGNMENT:** Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the separate written consent of Seller to a specified assignee. Such consent shall not be unreasonably withheld. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless otherwise agreed in writing by Seller.
- 27. EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.
- 28. TERMS AND CONDITIONS OF OFFER:**

This is an offer to purchase the Property on the above terms and conditions. The liquidated damages paragraph or the arbitration of disputes paragraph is incorporated in this Agreement if initialed by all Parties or if incorporated by mutual agreement in a counter offer or addendum. If at least one but not all Parties initial, a counter offer is required until agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance. The Parties have read and acknowledge receipt of a Copy of the offer and agree to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing.

- 29. TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as otherwise specified, this Agreement shall be interpreted and disputes shall be resolved in accordance with the Laws of the State of California. **Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.**

- 30. DEFINITIONS:** As used in this Agreement:

- A. "Acceptance"** means the time the offer or final counter offer is accepted in writing by a Party and is delivered to and personally received by the other Party or that Party's authorized agent in accordance with the terms of this offer or a final counter offer.
- B. "Agreement"** means this document and any incorporated addenda, counter offers and written terms Signed by all Parties collectively forming the binding agreement between the Parties. All terms and conditions of any addenda checked and Signed are incorporated into this Agreement.
- C. "C.A.R. Form"** means the most current version of the specific form referenced or another comparable form agreed to by the parties.
- D. "Close Of Escrow"**, including "COE", means the date the grant deed, or other evidence of transfer of title, is recorded.
- E. "Copy"** means copy by any means including photocopy, NCR, facsimile and electronic.
- F. "Days"** means calendar days. However, after Acceptance, the last **Day** for performance of any act required by this Agreement (including Close Of Escrow) shall not include any Saturday, Sunday, or legal holiday and shall instead be the next Day.
- G. "Days After"** means the specified number of calendar days after the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59 PM on the final day.
- H. "Days Prior"** means the specified number of calendar days before the occurrence of the event specified, not counting the calendar date on which the specified event is scheduled to occur.
- I. "Deliver", "Delivered" or "Delivery"**, unless otherwise specified in writing, means and shall be effective upon: personal receipt by Buyer or Seller or the individual Real Estate Licensee for that principal as specified in the section titled Real Estate Brokers on page 10, regardless of the method used (i.e., messenger, mail, email, fax, other).
- J. "Electronic Copy" or "Electronic Signature"** means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.
- K. "Law"** means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
- L. "Repairs"** means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
- M. "Signed"** means either a handwritten or electronic signature on an original document, Copy or any counterpart.

- 31. EXPIRATION OF OFFER:** This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless the offer is Signed by Seller and a Copy of the Signed offer is personally received by Buyer, or by \_\_\_\_\_, who is authorized to receive it, by 5:00 PM on the third Day after this offer is signed by Buyer (or by  \_\_\_\_\_ AM/PM, on \_\_\_\_\_ (date)).

One or more Buyers is signing this Agreement in a representative capacity and not for him/herself as an individual. See attached Representative Capacity Signature Addendum (C.A.R. Form RCSA) for additional terms.

Date \_\_\_\_\_ BUYER \_\_\_\_\_

(Print name) \_\_\_\_\_

Date \_\_\_\_\_ BUYER \_\_\_\_\_

(Print name) \_\_\_\_\_

Additional Signature Addendum attached (C.A.R. Form ASA).

RPA-CA REVISED 11/14 (PAGE 9 of 10) Print Date

Seller's Initials (\_\_\_\_)(\_\_\_\_)

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 9 OF 10)

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

32. ACCEPTANCE OF OFFER: Seller warrants that Seller is the owner of the Property, or has the authority to execute this Agreement. Seller accepts the above offer, agrees to sell the Property on the above terms and conditions. Seller has read and acknowledges receipt of a Copy of this Agreement, and authorizes Broker to Deliver a Signed Copy to Buyer.

(If checked) SELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED COUNTER OFFER (C.A.R. Form SCO or SMCO) DATED: \_\_\_\_\_

One or more Sellers is signing this Agreement in a representative capacity and not for him/herself as an individual. See attached Representative Capacity Signature Addendum (C.A.R. Form RCSA) for additional terms.

Date \_\_\_\_\_ SELLER \_\_\_\_\_

(Print name) \_\_\_\_\_

Date \_\_\_\_\_ SELLER \_\_\_\_\_

(Print name) \_\_\_\_\_

Additional Signature Addendum attached (C.A.R. Form ASA).

(Initials) (Do not initial if making a counter offer.) CONFIRMATION OF ACCEPTANCE: A Copy of Signed Acceptance was personally received by Buyer or Buyer's authorized agent on (date) \_\_\_\_\_ at \_\_\_\_\_ AM/PM. A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence the date that Confirmation of Acceptance has occurred.

REAL ESTATE BROKERS:
A. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.
B. Agency relationships are confirmed as stated in paragraph 2.
C. If specified in paragraph 3A(2), Agent who submitted the offer for Buyer acknowledges receipt of deposit.
D. COOPERATING BROKER COMPENSATION: Listing Broker agrees to pay Cooperating Broker (Selling Firm) and Cooperating Broker agrees to accept, out of Listing Broker's proceeds in escrow, the amount specified in the MLS, provided Cooperating Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS.
Real Estate Broker (Selling Firm)
By \_\_\_\_\_ CalBRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_
By \_\_\_\_\_ CalBRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_
Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_
Real Estate Broker (Listing Firm)
By \_\_\_\_\_ CalBRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_
By \_\_\_\_\_ CalBRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_
Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

ESCROW HOLDER ACKNOWLEDGMENT:
Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, a deposit in the amount of \$ \_\_\_\_\_), counter offer numbers \_\_\_\_\_ Seller's Statement of Information and \_\_\_\_\_, and agrees to act as Escrow Holder subject to paragraph 20 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.
Escrow Holder is advised that the date of Confirmation of Acceptance of the Agreement as between Buyer and Seller is \_\_\_\_\_
Escrow Holder \_\_\_\_\_ Escrow # \_\_\_\_\_
By \_\_\_\_\_ Date \_\_\_\_\_
Address \_\_\_\_\_
Phone/Fax/E-mail \_\_\_\_\_
Escrow Holder has the following license number # \_\_\_\_\_
Department of Business Oversight, Department of Insurance, Bureau of Real Estate.

PRESENTATION OF OFFER: (\_\_\_\_\_) Listing Broker presented this offer to Seller on \_\_\_\_\_ (date).
Broker or Designee Initials \_\_\_\_\_

REJECTION OF OFFER: (\_\_\_\_\_) (\_\_\_\_\_) No counter offer is being made. This offer was rejected by Seller on \_\_\_\_\_ (date).
Seller's Initials \_\_\_\_\_

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Reviewed by
Broker or Designee \_\_\_\_\_

Buyer's Initials (\_\_\_\_\_) (\_\_\_\_\_)



# CONCLUSION

The C.A.R. California Residential Purchase Agreement (RPA-CA), standing alone or with related addenda discussed in this book, can be used in almost all residential transactions as it serves the needs of most parties desiring to contract to purchase and sell real estate.

Remember, the purchase and sale of a home is a major financial investment and should be handled as such. In addition, the Purchase Agreement is the foundation of the real estate transaction. Be sure that you understand the entire Purchase Agreement **BEFORE** drafting or reviewing an offer for your client.

# Your FREE Member Benefits from C.A.R.

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### zipFormMLS-Connect<sup>®</sup>

Import data straight from your MLS into a zipForm<sup>®</sup> transaction. With a single click fill out the most popular fields in a document such as property address, listing agent information and more! Visit [www.car.org/tools/zipform/mlsconnect](http://www.car.org/tools/zipform/mlsconnect) to see if *your local Association is participating*. If you don't see your Association listed, please inquire with your MLS about the status of this C.A.R. member benefit.

## zipVault<sup>®</sup>

### zipVault<sup>®</sup>

The online filing cabinet for you to store unlimited transactional documents online for up to five years within your zipForm<sup>®</sup> Plus and zipForm<sup>®</sup> Mobile account. Some of the capabilities include document upload and delivery via web, email, fax, or scanning directly to a specific transaction. For more information, visit [www.car.org/tools/zipform](http://www.car.org/tools/zipform).

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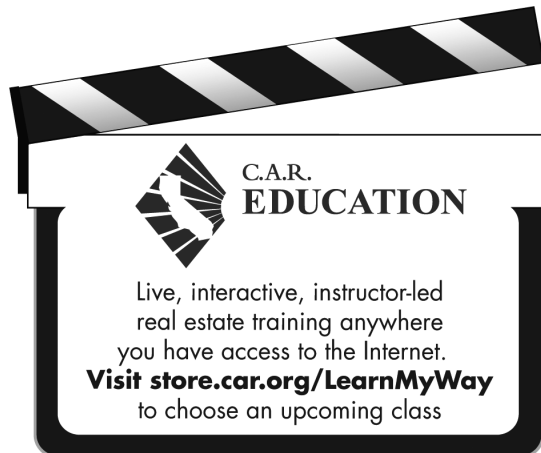
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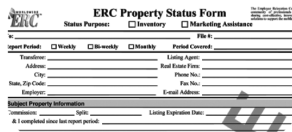
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