



CALIFORNIA ASSOCIATION OF REALTORS®

presents

## Your Guide to the California Residential Purchase Agreement

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California Department of Real Estate Disclaimer Statement:

This course is approved for Continuing Education credit by the California Department of Real Estate. However, this approval does not constitute an endorsement of the views or opinions which are expressed by the course sponsor, instructor, authors or lecturers.

This course will discuss the entire revised October 2002 C.A.R. **California Residential Purchase Agreement and Joint Escrow Instructions** (RPA-CA) and related addenda. The new purchase agreement and related addenda contain the essential terms for the formation of a real estate contract.

The RPA-CA is a multi-functional document. It serves as:

- an offer to purchase real property;
- a completed contract when it is signed by the buyer and seller and communication of the acceptance is received;
- a receipt for the good faith earnest money deposit;
- joint escrow instructions;
- a mediation and arbitration agreement;
- a confirmation of the agency relationships; and
- an irrevocable assignment of compensation to brokers.

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.

### **Downloadables**

If you have Adobe Acrobat Reader installed, you can view and print files for reading offline.

To view a file, click on its link, or SHIFT and right-click to save it to your computer. The file size is provided to allow you to gauge the download time for the file.

- 1. Forms are displayed/reprinted with permission, CALIFORNIA ASSOCIATION OF REALTORS. Endorsement not implied.**

2. Entire forms must be reproduced with the word "Sample" screened across every page of each form.
3. The forms must be reproduced and displayed/reprinted in their entirety.
  - California Residential Purchase Agreement (RPA-CA): [RPA-CA sample.pdf](#) (142K)
  - Buyer's Inspection Advisory (BIA) attached to the RPA-CA: [BIA sample.pdf](#) (90K)

## Title

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 28) and includes space for the escrow holder to sign for receipt of the document (see page 8 of the contract).

## Date

- **Date:** The date inserted is the date of preparation.

This is usually, but not always, the date the buyer signs the offer and the earnest money is received.

The important point is that the "contract date" is the date of final acceptance, provided that the acceptance has been personally communicated. All dates and time periods in the agreement are counted from the date of final acceptance, unless otherwise specified.

- **Location:** The city inserted is the place where the document is drafted.

This is usually, but not always, the city where the buyer signs the document or the city where the property is located. This may help to determine the "**venue**" in the event of a dispute.



## 1. Offer

### A. Offer/Buyers

This sentence identifies the document as being an offer. As such, it is capable of being accepted as defined later in the document, and creating a binding contract. It also informs the seller of the identity of the buyers. This aspect is important for offers that have seller financing.

Here is where the buyers' names are listed--not "assignee" or "nominee."

**All buyers should be listed, even if not all buyers have signed.**

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.

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

**B. Real Property to be Acquired**

This is the description of the property for purchase. There is also a space for the assessor's parcel number.

**C. Purchase Price: 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.

**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 sale of a principal residence capital gains exclusion), employment transfers, or other personal reasons. If either party requires a "date specific" COE, be sure to address that in the contract.

## 2. Financing

**Obtaining of the loans specified is a contingency of the agreement, unless this is an all cash offer or unless the buyer specifies that getting a loan is not a contingency.** The buyer is required to make a good faith effort to obtain the specified financing. If a contingency fails, the buyer is **not** (1) obligated to perform **nor** (2) held liable for breach of contract damages.



Obtaining deposit, down payment and closing costs are not contingencies. If the buyer does not have or cannot get the money for these items, seller may be entitled to legal remedies, such as keeping the buyer's deposit or canceling the sale.

The buyer represents that the funds will be good when deposited with escrow. Again, this is a promise by the buyer, not a contingency. If there is not enough money in an account to cover a check given to escrow, the buyer could be in breach of the contract. The seller may be entitled to cancel the sale.

## A. Initial Deposit

**The deposit is 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. Indicate to whom the check is made payable. This will usually be the broker or a title or escrow company.

**Funds received in trust from a principal must not 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. In addition, deposits must be logged whether they are placed into the broker's trust account or into a neutral escrow account.

Deposits must be disposed of properly by **the third business day after receipt** unless the parties contractually agree to another disposition. The C.A.R. contract authorizes holding the check uncashed until the third business day following acceptance of the offer, or some other choice that is specified in the blank line such as, "until this back-up offer is in primary position" or "the inspection contingency has been removed."

Although a post-dated check is not illegal, it may affect the seller's decision and must be disclosed. Make sure to indicate where the deposit money will be placed (into escrow or broker's trust account or elsewhere). The deposit is to be made by a personal check unless a different form of deposit is specifically written into the blank line.

The amount should be written out in numbers in the column to the right.

If the deposit is not made on time, seller may be entitled to cancel the sale.

## B. Increased Deposit

For the increased deposit to be included in the amount of liquidated damages there must be a separate receipt for the increased deposit at the time that it is paid, in which case the buyer initials or signs the **liquidated damages provision**. (C.A.R. Form RID complies with this requirement.)

Fill in the number of days indicating when the increased deposit will be made or specify a particular condition such as "upon removal of the inspection contingency." The amount should be written out in numbers in the column to the right.

As with the initial deposit, if the deposit is not made on time, seller may be entitled to cancel the sale.

## C. First Loan in the Amount Of

**This paragraph encompasses new first loans and can be either conventional or FHA/VA loans.**

### **Conventional Loans**

**The first sub-paragraph only refers to conventional loans.** Seller financing requires a seller-financing addendum and should be referenced in the "Additional Financing Terms" (2D) paragraph. Secondary financing and assumptions require an addendum (such as C.A.R. Form PAA) and the appropriate box checked in paragraph 2D. List only the loan amount and not financing charges or origination fees that might be included.

**The terms should be set forth specifically and not left to future interpretation.** Do not use "best available rate and terms." 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 both the fixed rate and the adjustable rate information are filled in, then the buyer is obligated to complete the transaction with whichever option is obtainable from the lender. If the buyer does not want an adjustable rate loan, then be sure **not** to complete those blanks. Some loans are due in a short period of time, such as five or seven years, but payments are amortized over a longer period, such as 20 or 30 years. This can be specified in the agreement.

**There is no place to select a "subject to" option. 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. The seller may be held personally liable for the amount of the loan or the amount of the deficiency, if permitted by law.

***A deficiency is the difference between the actual loan amount and the amount the lender actually receives from the property at sale.***

Deficiency judgments are not permitted by law (except for VA) under the following circumstances:

- if the loan was originally a purchase money loan on a one-to-four unit, single family owner-occupied dwelling;
- if the foreclosure is by trustee sale; or
- if the loan was a seller carry-back.

The above exemptions 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. Points to be inserted into the blank in paragraph 2C(1) are those to be paid by the buyer. If the seller is paying the points, indicate that in paragraph 2D - Additional Financing Terms.

**FHA/VA Loans**

**The second sub-paragraph is to be used only for FHA/VA transactions.** Although buyers are allowed to pay points on FHA/VA transactions, there are certain fees that buyers are not allowed to pay. This paragraph obligates the seller to pay those costs. If the seller has only agreed to pay for costs up to a certain limit, then the box should be checked and the pre-agreed limit should be written into the blank line. The buyer is responsible for all other financing costs.

Sometimes repairs, including those for wood destroying pests, are contingencies of the FHA/VA loan approval. This portion of the paragraph obligates the seller to pay for lender-required repairs. If the seller has only agreed to pay for repairs up to a certain limit, then the box should be checked and the pre-agreed limit should be written into the blank line.

If the Mortgage Insurance Premium (MIP) on an FHA loan, or the origination fee on a VA loan, is included in the loan amount, it can be specified in the "Additional Financing Terms" in paragraph 2D. However, the amount should not be included in the total since these costs are not part of the purchase price to the seller.

#### **D. Additional Financing Terms**

**This paragraph is only for terms that relate to financing.** Paragraph 25 is for terms and conditions other than financing. These additional financing terms will add to the total purchase price if the amount is for the seller financing, secondary financing or an assumption. However, if it is MIP or an origination fee, **do not** put it in the column or the total will not add up to the purchase price.

If there will be seller financing, secondary financing or an assumption, make sure to not only check the box provided in this paragraph, but also to complete the actual form referenced and attach that completed form to the California Residential Purchase Agreement.

The amount should be written out in numbers in the column to the right.

#### **E. Balance of Purchase Price**

The balance of the purchase price will be deposited with the escrow holder within a sufficient time of close. Remember that checks that are not drawn on a California bank have a time delay to "clear".

#### **F. 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.

#### **G. Loan Applications**

Loans require timely application by the buyer.

**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.

#### 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 a buyer, opening an 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 a set period of time that coincides with the time for providing a pre-qualification or pre-approval letter.

#### C. **Loan Contingency Removal**

**There are two choices for the length of time the financing contingency is effective:**

1. The **default choice** is for the loan contingency to be removed within a specified time. Under this choice, the buyer must remove the contingency of obtaining the loan(s) or elect to cancel the agreement. Once the 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. These damages may be limited if the liquidated damages clause is initialed by all parties.
2. The **optional choice** is for the contingency to remain in effect until the loan is actually funded. Under this method, if the lender will not make the loan, then the buyer will not be in breach of contract, the

buyer is excused from completing the sale, and the buyer is entitled to return of any deposit.

#### D. Appraisal Contingency and Removal

**Even if a lender is willing to lend the amount specified in paragraph 2C, the buyer is not obligated to purchase if the property appraises at less than the purchase price in paragraph 2F.** The appraisal contingency must be removed when the loan contingency is removed. Consequently, the buyer should determine whether the lender has appraised the property before removing the loan contingency.

Buyers who are confident of the property's value can check a box and opt-out of this contingency. Buyers who are not obtaining a loan (see 2L) or who have made an offer without a loan contingency (see 2K) may want to get an independent appraisal; they would want to set a time certain for the removal of the appraisal contingency by completing the blank line.

#### E. No Loan Contingency

**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. These damages may be limited if the liquidated damages clause is initialed by all parties.

#### F. All Cash Offer

**This paragraph must be checked to apply.**

For a cash sale, the buyer must give written verification of funds necessary to close, **within seven (7) days, or days specified**. If the buyer does not provide the verification in time, or the seller disapproves the verification, then the seller may cancel. If a buyer does not have the cash to purchase the property and requires a loan to acquire the property, but does not want to make a contingent offer, then the loan amount line should be filled in in paragraph 2C and the No Loan Contingency paragraph (2K) should be checked.

### 3. Closing and Occupancy

#### A. Buyer Occupancy

Whether or not the buyer intends to occupy the property is important for matters such as liquidated damages, loan qualification, rate, and terms, and should be noted by checking the appropriate box.



## B. Seller-occupied or Vacant Property

Occupancy is to be delivered to the buyer at a specified time on the close of escrow, or some other specified date before or after the close of escrow. 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 of the latter two cases, the parties should enter into a written agreement to document this different legal relationship. When title and occupancy do not occur at the same time, be sure to complete the applicable **"Residential Lease Agreement After Sale"** or **"Interim Occupancy Agreement"** (C.A.R. Forms RLAS or IOA-11) or **Purchase Agreement Addendum** (C.A.R. Form PAA, paragraph 2, "Seller to Remain in Possession after Close of Escrow") concurrently with the RPA-CA. The PAA should only be used for occupancies less than 30 days.

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 intends to occupy early, the risk shifts to the buyer.

Likewise, if the seller continues to occupy the property after COE, the buyer is generally not protected by the seller's hazard insurance, nor may the seller be protected.

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

## 3. Closing and Occupancy (cont.)

### C. Tenant-occupied Property

(i) **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 one of the other options should be checked.

(ii) Tenant to remain in possession: C.A.R. Form PAA should be used and paragraph 3 checked, to indicate that the tenants are to continue to occupy the property.

(iii) Contingency: If the buyer and seller have not agreed whether the tenant should remain or should leave, this option allows the parties time to come to an agreement. If no agreement is reached, then either buyer or seller may cancel.



## D. 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.

## E. Keys

Keys and means of opening all locks are to be delivered to the buyer at the time of possession. The buyer will pay for HOA key deposits.

## 4. Allocation of Costs

**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. This paragraph also 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.) & (2.) Wood Destroying Pest Inspection

Here the parties identify who is responsible to pay for an inspection for wood destroying pests and organisms and preparation of the report, including which company is to conduct the inspection and prepare the report. Be sure to specify if the report will cover detached garages and carports, decks or other identified structures. The inspection is for wood destroying pests and organisms and not all pests (such as rodents or ants, for example).

Roof coverings are not covered. A buyer wishing to inspect the roof must do so under the investigation of property, paragraph 9.

If the property is a single unit, condo or planned development, only the unit itself is inspected, not common areas.

**The report is only applicable to accessible areas of the property.** If the report shows inaccessible areas, and the buyer wants those areas inspected as well, the buyer may request a further inspection within the time specified. Since inaccessible areas are not specifically covered by this paragraph, as with any other item the buyer wants inspected pursuant to paragraph 9, the buyer is responsible for the cost. Of course, a buyer who is not satisfied with the report may exercise a right to cancel pursuant to paragraph 14. A seller may consider this fact in making a decision to pay or not pay for the inspection of inaccessible areas.

The **Wood Pest Addendum** (WPA) has language similar to that in 4A (1). One difference is that the WPA specifies that the Wood Pest Report needs to be separated into Section 1 and Section 2 recommended repairs. Section 1 means active infestation or infection by wood destroying pests or organisms. Section 2 refers to conditions likely to lead to infestation or infection. These



terms are defined in the Buyer's Inspection Advisory. The addendum also gives the parties an opportunity to decide in advance of the inspection (rather than negotiating after this information is received) which of them is going to pay for the cost of the recommended repairs.

A buyer, who wants to address the issue of inaccessible area inspections up front or pre-determine who is to pay for recommended repairs, may check the box in 4A (2) and use the Wood Pest Addendum.

### **B(1.) - (5.) Other Inspections and Reports**

If the buyer pays to have the septic system or well inspected, it is treated as any other investigation made by the buyer within the time period for the buyer's investigation. The buyer has the right to request that the seller make repairs within the designated number of days after receipt of the inspection report.

The paragraph determines if either party will pay for zone disclosure reports such as earthquake fault, seismic, flood and fire zones, and who will provide those reports. Private companies are available which, for a fee, provide zone disclosure reports on property transactions.

Two paragraphs have been added to write in common inspections for particular areas or types of properties.

### **C(1.) & (2.) Government Requirements and Retrofit**

Smoke detector installation 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.

Here the parties specify who will pay for mandatory retrofit. Many communities require retrofit to be made as a condition of closing. Examples include the installation of low flow toilets and showers heads, weather stripping, and tempered glass in showers or sliding doors. Check with your city or county for local mandatory retrofit.

### **D(1.) & (2.) Escrow and Title Costs**

Here the parties designate who is to pay for the title policy and escrow fees, as well as who will provide those services. The title policy referenced here is for an owner's policy. The buyer is to pay for any required lender's title policy unless otherwise agreed.

The owner's title policy is clarified in paragraph 12.

**Escrow fee refers only to the "bare" escrow fee and does not involve items such as notary fee, document fee, recording, etc. For VA transactions, the seller must pay the entire escrow fee.**

### **E(1.) -(7.) Other Costs**

In this section 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.

**Homeowner Association's fees** and the cost, coverage and provider of a home warranty plan are covered.

Here the parties identify who is issuing a **home warranty plan**, if any, who is going to pay for it, and the limits on coverage and cost.

Additional lines have been provided for other cost items that are common to the area or property.

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

**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: a **Transfer Disclosure Statement** (TDS) and a **Natural Hazards Disclosure** (NHD) **Statement**, created by the Legislature. 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 ***Environmental Hazards Booklet***.)

The TDS and NHD are **not** warranties, nor are they a part of the contract. Do **not** attach them as supplements to the contract or the counter-offer.

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

**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.(4)).

**A.(2) The buyer is contractually obligated to return the statutory disclosure forms within a specified period.** This way the seller knows that the disclosures have been received and can determine if the statutory right to rescind has expired.


**A.(3)** This part of the clause provides that if a seller becomes aware of adverse material conditions of which the **buyer is otherwise unaware**, the seller will give the buyer a subsequent or amended written disclosure unless the condition is disclosed in a report obtained by the buyer.

## 5. Statutory Disclosures and Cancellation Rights (cont.)

**A.(4)** If not previously delivered to the buyer, the TDS, NHD and Lead-Based Paint Disclosures and pamphlet (lead disclosures) and other disclosures 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 Purchase Agreement 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 Purchase Agreement, there is no cancellation period.

**A.5** Buyer and seller cannot give up their rights to receive these statutorily required disclosures.

**B.** A seller must, within the time specified in paragraph 14, provide to the buyer the natural hazard disclosures specified in paragraph 5A. But the booklets specified in 5B only need be provided if required by law. Keep in mind that the NHD form is required to be used to make **the six (6) natural**



**hazard zone disclosures (Earthquake Fault Zone, Seismic Hazard Zones, State Fire Responsibility Areas, Very High Fire Severity Zones, Flood Zone A and Inundation Zones)** on any residential one-to-four unit property. The disclosures are also required (even if a form is not required) on **all** real property, i.e., residential, commercial, industrial, farmland, etc.

(See C.A.R. Legal Q&A's "California Real Estate Law Disclosure Chart" and "Natural Hazard Disclosure Statement" for further information.)

### **Natural Hazard Zones**

- **Geologic, Earthquake and Seismic Hazard Zones Disclosure**

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 have actual knowledge that the property is in an identified area or when maps or a notice of where to get the maps are posted at the County Assessor, Recorder or Planning Office. Construction or development may be restricted in these zones.

- **Special Flood Hazard Areas**

Special Flood Hazard Areas (Zone A) 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.

- **Inundation Zone**

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.

- **State (Fire) Responsibility Areas (SRA)**

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 fire fighting agency, and that the buyer may have to maintain firebreaks and other maintenance requirements may have to be met.

- **Very High Fire Severity Zone**

The areas in this 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 3 of the booklet or page 27 of the combined **Earthquake and Environmental Hazards 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.

**Note:** The seller and broker must disclose known structural deficiencies and earthquake hazards on all properties.

### **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 deliver the booklet are 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.

### **C. Data Base Disclosure**

This paragraph, required by statute, informs a buyer that information is

available from law enforcement officials regarding **the location of registered sexual offenders**.

## 6. Condominium/Planned Unit Development Disclosures



- A. 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.
- B. 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 (HOA, Homeowners' Association Information Request).

## 7. Condition Affecting Property

**The property is sold without warranties.** This is consistent with common law in which no warranties are automatically included in a sale. However, the property is to be transferred in substantially the same condition as on the date of acceptance of the offer. Thus, **the seller cannot neglect the property during escrow.**

**The seller remains obligated to disclose known adverse material facts.** An important event is whether any insurance claims affecting the property have been filed within the past five years since homeowner insurance companies have the ability to check an industry database. Depending on the nature and types of such claims, the property may be uninsurable or insurance may be hard to get or expensive. **The buyer also retains the right to inspect the property and, based upon those inspections, request that the seller makes repairs. If the seller is unwilling or unable, the buyer may cancel the contract.**

**The broker remains obligated to complete a reasonably competent and diligent visual inspection.**

## 8. Items Included and Excluded

### A. Note to Buyer and Seller

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.**

### B. Items Included in Sale

The buyer is entitled to receive all existing fixtures and fittings that are





attached, free of liens and without seller warranty.

The clause lists some of the items to be included, whether or not they are fixtures.

Any personal property included in the purchase price is to be free of liens and without seller warranty.

Describe the personal property as specifically as possible including model numbers, etc.

### C. **Items Excluded from Sale**

Exclusions must be specifically indicated.

## **9. Buyer's Investigation of Property and Matters Affecting Property**

This paragraph gives the buyer the right to "investigate" the property and then to either remove the contingency or cancel the agreement. Inspections include the right to check for lead-based paint.

Inspections by government entities are not to be done without the seller's prior approval. This way, a property will not be "red-tagged" without the seller's knowledge. The seller is entitled to a copy of all reports, at no cost. The seller shall have utilities on for buyer's inspection.

## **10. Repairs**

Any repairs, including those under the pest control paragraph or any repairs 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 receipts and provide them to the buyer.

## **11. Buyer Indemnity and Seller Protection for Entry Upon Property**

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.

## **12. Title and Vesting**

- 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 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. Unless otherwise specified by the buyer in writing, all matters on record will remain on the title, such as easements, CC&R's, etc. These matters may be found in the PR or discovered prior to COE. However, existing liens on the property (such as those securing financing arranged by the seller) must be removed from the title unless agreed to as part of the contract.
- C. Seller has an obligation to disclose all known title matters, even those not appearing on a public report or otherwise of record.
- D. The transfer by grant deed or stock certificate, or as otherwise provided, will include oil, mineral, and water rights if currently owned by the seller. Vesting shall be designated in the buyer's escrow instructions. **The agent should never advise on how to take title.**
- E. This paragraph provides that a buyer is to receive a CLTA/ALTA Homeowner's Policy of Title Insurance. The Homeowner's Policy offers advantages over a CTLA Policy or ALTA-R in terms of certain post-policy forgeries, boundary disputes, transfers to trusts, and permit and map act problems.

### 13. Sale of Buyer's Property

Sale of the buyer's property is not a contingency unless paragraph 13B is checked. If this matter is to be a contingency, a separate addendum (COP) needs to be attached.

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

**Time periods for each contingency in the applicable paragraph are specified for both the buyer and the seller. Time periods run from date of acceptance. These time periods are critical for the satisfaction or removal of contingencies.**

These time periods can only be changed by written agreement from the involved parties.

- 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) days to provide the buyer with the items specified.** Examples would be zone disclosures, lead paint disclosures, water and sewage tests, and wood destroying pest inspections for which seller is responsible. (Certain items, such as the title report, wood destroying pest inspections and substituted natural hazard disclosure reports need to be requested from others and should be requested early on in order to provide them to the buyer within the required time.)
- B. **This clause gives the buyer 17 days after acceptance to complete inspections, investigations, and review reports and other information for which the buyer is responsible, and either approve the property**

**and remove contingencies 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.

Within this time:

(1) 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. Additionally, the buyer must return copies of signed statutory disclosures to the seller.

(2) The buyer may request that the seller make repairs or take other action regarding the property. The seller is not obligated to make repairs.

(3) The buyer must, in writing, either remove his or her contingencies or cancel the agreement. If within the time in paragraph 14A, the seller is unable to deliver any government-mandated disclosure, required as a condition of closing, the buyer has **five days** after receipt of the disclosure to, in writing, remove the contingency or cancel the agreement.

**C. Continuation of Contingency or Contractual Obligation; Seller Right to Cancel**

**C(1)** This clause provides that the seller may cancel the agreement and return the buyer's deposit if the buyer does not remove their contingencies or cancel the agreement within the time agreed to in paragraph 14B. However, **before the seller can cancel he must first have given the buyer a Notice to Buyer to Perform (see C(4)).**

**C(2)** This clause clarifies that even after the expiration of the time in paragraph 14B(1), and until the seller exercises cancellation rights under paragraph 14C(1), the buyer retains the right to make requests of the seller, remove contingencies or cancel the agreement.

**C(3)** This clause gives the seller the right to cancel the agreement and return buyer's deposit if buyer does not meet certain obligations provided for in the contract such as, making a deposit, providing a pre-qualification or pre-approved letter or signing a receipt for uninsured deposit. Before a seller can cancel for a buyer's failure to meet these obligations, the seller must first give the buyer a Notice to Buyer to Perform (see C(4)).

A Notice to Buyer to Perform is not required to be given if the buyer fails to close escrow on time.

**C(4) The Notice to Buyer to Perform must give the buyer at**

**least 24 hours or until the previously agreed time in paragraph 14B(1) (whichever occurs last) to either remove his or her contingencies or cancel the agreement.** The 24-hour notice period can be changed by checking the appropriate box and writing in a different number in the blank line.

#### 14. Time Periods; Waiver of Contingencies; Cancellation Rights (cont.)

##### D., E. Effect of Removal/Effect of Cancellation on Deposits

**In the event of cancellation under the rights of this paragraph, the buyer's deposit, less costs and fees, shall be returned.** A notice of cancellation shall be provided to the escrow holder along with mutually signed instructions to release the deposit. (C.A.R. Form RC satisfies these requirements. C.A.R. Form CC may be used to both cancel and release deposit.) Funds will not be released without mutual instructions, judicial decision or arbitration award. Refusal to sign the deposit release instruction, unless there is a good faith dispute, may result in a civil penalty of \$1,000.

#### 15. Final Verification of Condition

**This clause is the authorization for a final "walk-through" five days (or number specified) prior to COE.** No new obligations are created or imposed upon the seller based upon this paragraph. This clause allows the buyer to verify that the condition of the property is as agreed upon and that the seller has complied with repair and other obligations.

**The buyer does not have a cancellation right under this clause, but it may trigger rights and remedies under other paragraphs.**

#### 16. Liquidated Damages

**NOTE:** 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.

The remedy to the seller in the event the buyer is in breach of contract is as follows:

- For one-to-four unit dwellings that the buyer intends to occupy, the seller shall retain the deposit actually paid, provided that it doesn't exceed 3% of the purchase price. If the deposit exceeds 3%, the buyer is entitled to the balance. (For properties other than one-to-four residential/owner-occupied, the liquidated damages 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, it will be included in the deposit the seller can keep **only if the buyer and seller have signed a**

**Receipt for Increased Deposit (C.A.R. Form RID-11) at the time the increase was received.**

This clause limits the dollar amount the seller is entitled to; it does not authorize the automatic release of funds to the seller. The release of funds will require further written agreement of the parties or a judicial decision or arbitration award.

## 17. Dispute Resolution

### A. Mediation

This is not an "optional" clause that requires a check box or initialing.

**The buyer and the seller agree to mediation by a neutral mediator to facilitate the resolution of any disputes. The mediator is not empowered to impose a settlement.** Any mediator may be used, including mediators from an Association of REALTORS, a rabbi, priest, minister, or other neutral party.

Any party who does not attempt mediation before filing an arbitration or court action (with the limited exceptions such as small claims court actions found in paragraph 17B(2)) is not entitled to be awarded attorney's fees, even if he or she is the prevailing party.

### B. Arbitration of Disputes

**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 last paragraph is the statutory **NOTICE** which must be in **10 point bold typeset** and must be initialed by all the parties to be enforceable.

#### B(1).

- The first sentence is a reminder that non-binding mediation is a first step under this contract. It alerts the parties that a binding decision (not subject to an appeal) will be made by a neutral arbitrator (not a judge or jury).

**NOTE:** The only review a court will make is for failure of due process, fraud or corruption of the arbitrator.

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- The second 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. The arbitration shall follow California law.

**Although neither a 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.**

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).

### **B(2). Exclusions from Mediation and Arbitration**

Certain matters are excluded from the obligation to mediate and arbitrate:

- Judicial or non-judicial foreclosure
- Unlawful detainer actions
- Filing of mechanic's liens
- Probate court, small claims court or bankruptcy court.

The filing of the following specific judicial actions does not constitute a violation of the mediation or arbitration provisions:

- A lis pendens (a notice that there is a pending action against the property in order to put third parties on notice).
- An order of attachment (so that assets cannot be liquidated to avoid the judgment rendered).
- Appointing a receiver to run a business or manage a property.
- Filing an injunction to start or stop an activity or action.

### **B(3). Brokers**

The buyer and seller agree to mediate and arbitrate claims involving the broker(s) if the broker(s) agree prior to or within a reasonable time after the claim is presented. By agreeing, the broker is not deemed to be a party to the transaction.

The final portion of paragraph B is the **NOTICE** to the parties required by statute. In addition to referencing the "Arbitration of Disputes Provision" in the first two paragraphs, it 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.

**The broker should not advise the parties whether to initial the clause or not.**

## 18. Prorations and Property Taxes and Other Items

All **prorations** shall be paid current by seller and assumed by the buyer as of COE, unless specified in the space for exceptions.

The buyer will receive **NO CREDIT** 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.

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

## 19. Withholding Taxes

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

**Withholding is required unless an exemption applies.** The 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.

**An exemption from withholding is not an exemption from documentation.** Either collect the money or have proof of why you didn't collect. The "proof" may be either the **Seller's Affidavit** (C.A.R. Form AS) or the **Buyer's Affidavit** (C.A.R. Form AB), whichever one applies.



Under Federal law, the buyer is responsible for withholding 10% of the seller's gross selling price (not of the "proceeds") if the seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act (FIRPTA). The broker can be held responsible for the failure to withhold taxes -- up to the amount of the commission. The buyer is responsible for the actual amount of the tax, which should be withheld.

Under California law, 3 1/3% of the gross selling price must be withheld if the seller's last known address is outside of California or if the seller's proceeds are being paid to a financial intermediary. If notified by the escrow holder of the requirement to withhold, the buyer is responsible. If the escrow holder does not inform the buyer, the escrow holder is liable for the actual amount of the tax due.

## 20. Multiple Listing Service (MLS)

The parties authorize dissemination of price, terms, and financing to authorized entities.

## 21. Equal Housing Opportunity

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

## 22. Attorney Fees

This paragraph is only between the buyer and the seller and does **not** include the broker(s). It relates to contractual disputes between the buyer and seller.

The prevailing party is entitled to attorney's fees from the non-prevailing party except as noted in the Mediation clause.

**NOTE:** If the parties choose to "settle" a dispute, the attorney's fees are usually one of the terms of the negotiated settlement.

## 23. Selection of Service Providers

Buyers and sellers can select any provider they want. Brokers do not guarantee performance of any service providers.

## 24. Time of Essence; Entire Contract; Changes

Performance of any act shall take place on the date and/or time stated, unless the period is mutually extended in writing.

This agreement incorporates all prior oral or written agreements.

All changes must be in writing to be enforceable (**Statute of Frauds, Civil Code Section 1624**). Under this Statute, certain agreements must be in writing to be enforceable. These include:

- A lease agreement for more than one year.
- An agreement by a purchaser of real property to pay an indebtedness secured by a mortgage or deed of trust.



- An employment agreement to find a purchaser. (The listing agreement does not authorize the broker to sign for the seller, only a written power of attorney gives that authority.)
- An employment agreement to find a property. (A Buyer/Broker Agreement does not authorize the broker to sign for the buyer; only a written power of attorney gives that authority.)
- The broker compensation clause in this Purchase Agreement evidences that the broker has brought an acceptable offer to the seller. For a pre-printed commission agreement to be enforceable, it not only has to be in writing, but it must contain a bold **NOTICE** that commission rates are not fixed by law and may be negotiable.
- 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.
- An agreement for the sale of real property or an interest therein. This is the Purchase Agreement. 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.

## 25. Other Terms and Conditions; Including Attached Supplements

Additional provisions to be included in this Purchase Agreement must be in writing and can be stated here and on additional sheets of paper, if necessary.

**The Buyer's Inspection Advisory** (C.A.R. Form BIA), which is prepackaged with the Purchase Agreement, is pre-checked in this paragraph as a supplement to the contract. The form itself should be gone over thoroughly with the buyer and seller and signatures obtained.

If one of the terms in the **Purchase Agreement Addendum** (C.A.R. Form PAA) is to be included, the box should be checked, the paragraph number should be filled in, and the C.A.R. Form PAA itself should be completed and attached.

## 26. Definitions

- **"Acceptance"** means final acceptance -- after all counter-offers and the communication of the final acceptance.
- **"Days"** are calendar days. (Deposit of trust fund following "acceptance" is measured in business days.)
- **"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 11:59PM of that day.
- **"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.**

- **"Copy"** can be by any means, including photocopy, facsimile or electronic.
- **"Repairs"** means any repairs, including pest control and retrofitting.
- **"Signed"** includes handwritten and electronic signatures.
- **Singular and Plural** are interchangeable when appropriate.
- **"C.A.R. Form"** means the specific form referenced or other agreed upon comparable form.
- **"Electronic Copy"** or **"Electronic Signature"** means an electronic copy or signature complying with California law.

## 27. Agency

### A. Disclosure

Buyer and seller acknowledge prior receipt of a **Disclosure Regarding Real Estate Agency Relationships** (C.A.R. Form AD). This form is required to be presented (i) to the seller prior to taking a listing, (ii) to the buyer prior to signing a contract to purchase, and (iii) to the seller prior to presenting the offer (if the selling agent is not also the listing agent).

### B. Potentially Competing Buyers and Sellers

This language advises the principals of and gets their consent (C.A.R. Form DA) to 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 making offers on the same property. Similarly, the office representing the seller may be representing another seller of competing property and may be negotiating with the buyer for the acquisition of that property as well. The agency relationship described below is transaction specific for this buyer and seller only.

### C. Disclosure Confirmation

Confirmation needs to be signed concurrent with the execution of the Purchase Agreement. 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 confirmation in this Purchase Agreement **or** if this confirmation is blank or partially blank, then a counter-offer will need to be written and a confirmation on a statutory form must be attached to the counter-offer.



**REMINDER:** The selling broker (the one who wrote this offer) must sign and present a disclosure to the seller prior to presenting this offer even if the listing broker already gave the seller a written disclosure.

## 28. Joint Escrow Instructions to Escrow Holder

- A. Selected portions of the purchase agreement are instructions from the buyer and seller to the escrow holder. The 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 deposited with escrow, escrow is instructed to disperse broker compensation pursuant to separate compensation agreements provided for in paragraph 29 or 32A and the Real Estate Broker section of the agreement.
- B. **The parties have three (3) business days to deliver the purchase 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 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 agreement solely for the purpose of compensation. The buyer and seller agree to irrevocably assign any broker compensation provided for in paragraphs 29 and 32A. 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.
- D. The buyer and seller agree to provide escrow with a copy of any amendment affecting any paragraph that is also an escrow instruction.

## 29. Broker Compensation from Buyer

Provision is made that if the buyer has a separate compensation agreement with the buyer's broker, compensation will be paid at COE.

## 30. Terms and Conditions of Offer

The Purchase Agreement is the buyer's entire offer for the purchase of this property. There is an expiration date specified for the offer 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.

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 the Purchase Agreement 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 has initialed, there must be a **counter-offer** to clearly evidence the intent of the parties.

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.

### 31. Expiration of Offer

**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/broker. If the designee is identified as the broker, 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

Everything above the buyer's signature constitutes the entire and complete offer made by the buyer. By signing the agreement, the buyer acknowledges the confirmation of the agency relationship.



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."

### 32. Broker Compensation from Seller

Compensation is earned when the broker has procured a buyer who is "ready, willing, and able" to purchase the property under the exact terms of the listing agreement or any other terms acceptable to the seller. (Remember that the failure of a contingency means the buyer is not "able.") Commission is payable at COE pursuant to a separate written agreement, generally the listing agreement (C.A.R. Form LA).

Under the Purchase Agreement and C.A.R. Form LA, commission is payable:

- Upon recording of the deed.
- In the event of a default by the buyer 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. 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.

The prevailing party in a commission dispute is entitled to reasonable attorney's fees from the non-prevailing party. The broker is a party to any commission disputes.

### **33. Acceptance of Offer**

The seller warrants the authority to sell the property. The seller agrees to agency confirmation. 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 dated.

#### **Seller's Signature Section**

By signing the agreement, the seller acknowledges the following:

- Acceptance of the exact terms and conditions of the offer.
- Agreement to sell the property.
- Agreement with the agency confirmation.
- Agreement to pay the identified broker the amount of compensation for services set forth in a separate written agreement.

#### **Broker's Signature Section**

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 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.

#### **Confirmation of Acceptance**

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.

#### **Escrow Holder Acceptance of Escrow**

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, such as counter-offers or addenda, received. The escrow holder is also asked to identify the date that the parties have advised is the date of acceptance of the agreement.

The property address should be filled in at the top of the form. The form is attached and is identified in paragraph 25 as an addendum to the RPA-CA. The BIA can be purchased separately if the C.A.R. Purchase Agreement is not used. The form does not create any obligations for the seller.

The first part of the form informs the buyer of the following:

- A. The importance of a property inspection.
- B. The duties of the buyer, including discovery of the legal, practical or technical implications of disclosed facts. Also the rights of a buyer to conduct inspections, to request corrective action from the seller, and even to cancel under described circumstances.
- C. The seller's obligation to disclose known material facts. Also the seller's right to refuse to make any repairs requested buyer.
- D. The broker's obligation to conduct an inspection and to disclose known or discovered material information. Also the limits on a broker's expertise.
- E. The second part lists common items a buyer may wish to investigate and, in many cases, the professionals who are in the best position to give the buyer information about the item.

Specific references to mold, the insurance claims history of both the property and the buyer, and botanical diseases are new additions.

Part Three (the boxed information) is an acknowledgment by the buyer and the seller of the limits of a broker's responsibility and knowledge.

Part Four is for the buyer's and seller's signatures. The buyer's signature acknowledges that the buyer has been advised to investigate the property. If the buyer does not do so, the buyer is acting against the advice of the broker. The seller's signature acknowledges that the seller has received a copy of the advisory and is acknowledging what the buyer is advised to investigate and the limits of a broker's responsibility and knowledge.

### **(RR) Request for Repairs**

This form is used in conjunction with the RPA-CA to document a buyer's request for seller repairs, the seller's response, and the parties' agreement, if agreement is reached.

- In paragraph 1, the buyer can make repair requests by itemizing requests or attaching lists, inspections or reports.



- In paragraph 2, the seller can agree to make all repairs, agree to make some repairs or indicate that they will make no repairs.
- In paragraph 3, the buyer can (i) agree to accept the seller's response and withdraw all requests for items the seller has not agreed to repair, or (ii) withdraw this request and submit a new request for repairs.

As with counter-offers, multiple forms can be used until agreement is reached.

### **(RRCR) Receipt for Reports**

This form is used in conjunction with the RPA-CA to:

1. Document the buyer's receipt of disclosures and reports received from the seller and others.

### **(CR) Contingency Removal**

This form is used in conjunction with the RPA-CA to:

1. Provide a simple form for the buyer to remove contingencies in writing.

**The buyer can remove separate contingencies 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.**

### **(NBP) Notice to Buyer to Perform**

The **Notice to Buyer to Perform** is used in conjunction with the RPA-CA 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 contingency removal. The seller can request that the buyer remove all contingencies by checking a single box, or can ask for removal of specific contingencies by checking individual boxes.
- The second section is for contractual action. The seller can request that the buyer take specified contractual actions by checking individual boxes.

**The Notice to Buyer to Perform gives the buyer at least 24 hours, but in no case less than the time provided in the RPA-CA, to remove the indicated contingencies or take the indicated contractual action. Additionally, the RPA-CA can provide for a notice period longer than 24 hours, 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 24 hours (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.**

### **(NSP) Notice to Seller to Perform**

The **Notice to Seller to Perform** is used in conjunction with the RPA-CA to provide a notice to the seller to meet the contractual action indicated. It provides a check list for the required seller action. If the seller does not perform, the buyer may cancel the agreement or delay removing certain contingencies.



Although not specifically provided for in the RPA-CA, the Notice to Seller to Perform puts the seller on notice that he has not completed required contractual actions, such as providing 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 buyer to remove a contingency related to that report or disclosure.

### **(SSD) Supplemental Statutory and Contractual Disclosures**

This form is used in conjunction with the RPA-CA and provides a document for making disclosures required by statute that are not individually addressed on the TDS. It covers manufacturing, industrial and airport use zones, former military ordnance locations, release of illegal controlled substances and death of an occupant on the property within the last three years.

### **(WPA) Wood Destroying Pest Inspection and Allocation of Cost Addendum**

**This WPA is an addendum the buyer and seller can use to agree to pre-allocate the cost of the wood destroying pest control report and the cost of Section 1 and Section 2 repairs.**

In paragraph A, the parties identify a pest control company and who is responsible to pay for the report. Be sure to specify if the report will cover detached garages and carports, decks or other identified structures. Roof coverings are not covered. A buyer wishing to inspect the roof must do so under the investigation of property, paragraph 9 of the RPA-CA.

If the property is a single unit, condo or planned development, only the unit itself is inspected, not common areas.



In paragraph B, the parties designate who is to pay for Section 1 and Section 2 recommended work. Section 1 and Section 2 are defined in this paragraph A.

**If the report shows inaccessible areas, the buyer may request a further inspection within the time specified. If no damage is found upon further inspection, the buyer will pay for the entry, inspection, and closing of those areas. However, the seller shall pay for the inspection entry and closing of those inaccessible areas where active infestation or infection is found if the seller has agreed to pay for Section 1 work.**

If no infestation or infection is found, or upon completion of corrective work, the report will include a certification, which will be issued prior to COE, unless otherwise agreed. If the certification will be issued after COE, a separate written agreement is necessary. **Section 1 work must be completed in order to get a certification. A certification can only be issued by a registered structural pest control company.**

### **(COP) Contingency for Sale or Purchase of Other Property**

The COP is an addendum for use when either: (1) paragraph 13B in the RPA-CA, **Sale of Buyer's Property**, is checked to create a contingency for the sale of buyer's property or (2) the seller wants the contingency for the seller to locate replacement property.

#### **Sale of Buyer's Property**

**Paragraph A**, when checked, makes the purchase agreement contingent on the COE of the buyer's property. Paragraphs A1, 2 and 3 identify the property that is the subject of the contingency and provide valuable information concerning the marketing status or the pending sale of the contingent property.

The contingency is clearly the **close of escrow of the buyer's property**. However, the buyer may remove the contingency early. Be sure the buyer is aware of the consequences of removing the protection of the contingency before the actual close of escrow. If the contingency remains and the buyer's property does not close escrow and the seller has not received another offer on this property by the scheduled close date, then either party may cancel.



**The seller can continue to market the property for sale and accept another offer unless paragraph A5(b) is checked.** 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 financing contingency, 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."** If paragraph A6(b) 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. The seller can continue to offer the property for sale, but only for back-up offers.

## Seller's Purchase of Replacement Property

**Paragraph B**, when checked, makes the purchase agreement contingent on the seller entering into a contract for a replacement property. **Paragraph B2 provides that 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.

Paragraph B3 provides that when the seller removes the contingency, seller may extend close of escrow for an agreed-upon time. Paragraph B3 also provides that time periods in the purchase agreement for inspections, contingencies, covenants and other obligations will remain as specified in the purchase agreement, or, if checked, will begin the day after the seller removes their contingency.

### (PAA) Purchase Agreement Addendum

The Purchase Agreement Addendum can be used in conjunction with an offer or counter-offer.

Only those paragraphs which are checked are included in the offer or counter-offer.



#### 1. Cancellation of Prior Sale; Back-Up Offer

This offer is 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.**

- A. This portion states that the deposited check will be held uncashed until written cancellation of the prior sale has been signed by the seller and prior buyers.

If the parenthetical is checked, the deposit check will be cashed as stated in the Purchase Agreement.

- B. This portion states that the time periods begin 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.

#### 2. Seller to Remain in Possession After Close of Escrow

**This paragraph 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).** If the seller will remain in possession of the property for longer than 30 days, the **Residential Lease After Sale** (C.A.R. Form RLAS) should be used. The buyer and seller are advised that local rent control or other laws may affect their rights if the seller remains in possession after the close of escrow.

**This paragraph provides for the length of the term the seller will remain in possession, and for the amount of compensation, either on a per day basis or as one lump sum.** 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. It also provides that the seller will pay a specified amount per day for any holding over.

If payment is to be made in more than one payment, the seller agrees to pay a specified amount as a late charge for any late payment and a \$25 charge for any non-sufficient funds check.

The seller agrees to pay for all utilities and services unless otherwise provided for in the blank spaces.

The seller agrees to make the property available to the buyer for agreed upon repairs or services, and to show the property to prospective or actual purchasers, tenants, lenders or appraisers. **Twenty-four hours notice is agreed to as a reasonable notice. The buyer may enter at any time in the event of an emergency.**

**The seller agrees to maintain the property in substantially the same condition as on the date of acceptance of the Purchase Agreement.** The seller also agrees not to assign or sublet the property or transfer the right of occupancy without the buyer's written consent.

Upon vacating the property, the seller agrees to deliver the property in the condition and on the terms agreed to in the Purchase Agreement.

The seller is advised 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.

The waiver of any breach is not to be considered a waiver of any subsequent breach.

There are blank lines for the buyer and seller to provide for any other conditions.

### 3. **Tenant to Remain in Possession**

This paragraph provides for delivery of possession subject to the rights of the tenants to continue to occupy the property or to vacate.

Remember that in paragraph 3 of the Purchase Agreement, the property was to be delivered vacant unless otherwise agreed in writing; this paragraph

takes care of this.

If the tenant will remain in possession, the buyer must receive copies of all rental documents **within seven (7) days (or date specified)** after the acceptance.

If the seller makes changes to the existing leases, buyer may cancel the agreement. Further unused tenant deposits must be transferred to the buyer.

There is no warranty regarding rent or occupancy control under this paragraph. Under paragraph 13 of the BIA, the buyer is advised to investigate such controls.

Keep in mind that it may be more appropriate to use C.A.R. Form RIPA (**Residential Income Property Purchase Agreement and Receipt for Deposit**) for rental property.

#### 4. Junior or Assumed Financing

Junior financing and assumptions are not provided for in the RPA-CA. The liens must be spelled out here. If this paragraph is used as an addendum to the RPA-CA, the amount should be included in paragraph 1 of the Purchase Agreement as part of the total purchase price, and this form should be specifically referenced. The loan and assumption contingency shall remain **for 17 days or the period specified**, or until funding or approval if that option is checked.

The terms should be set forth specifically and not left to future interpretation. **Do not use "best available rate and terms."** 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 both the fixed rate and the adjustable rate (ARM) information is filled in, then the buyer is obligated to complete the transaction with whichever option is obtainable from the lender. If the buyer does not want an ARM, then be sure **NOT** to complete those blanks.

The buyer has a specified time to disapprove items in the loan documents provided by the seller. 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 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. The buyer agrees to obtain a release of liability on the assumption of a V.A. loan. 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).

The buyer agrees to a substitution of eligibility on the assumption on a V.A. 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.**

#### 5. **Short Pay**

The agreement is contingent upon the seller receiving consent from existing lien holders to a "**short pay**". The seller agrees to cooperate with all lenders in the short-pay process. Either party may cancel if the consent is not received by the contingency date. Lenders do not have to accept short pays. The seller may continue to submit other offers to the lender. The seller is advised to seek advice from other professionals regarding credit and legal or tax implications of the short pay.

#### 6. **Court Confirmation**

If the court confirmation is not received by the specified date, the buyer may cancel.

Court confirmation may be required in a number of proceedings which are listed in this clause, including probate, bankruptcy, etc. (**Probate Purchase Agreement and Joint Escrow Instructions** PPA, should be used when probate court confirmation is required.) The broker may continue to market the property and represent competing buyers.

### **(SFA Page-1) Seller Financing Addendum and Disclosure**

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.

**This form is also an addendum to the Purchase Agreement. It is not just a disclosure. It is contractual.**

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 the paragraph is not checked, a seller should read each paragraph 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. The following information is also included on this form.

- **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 the 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 lender's, 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.

### (SFA Page 2 & 3) Seller Financing Addendum and Disclosure

**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's 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 that 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 warnings that should be pointed out to the parties:

- The seller is warned that he is at risk if the buyer defaults.
- The seller is advised of the 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, both parties are reminded that the contract may not be assigned without the seller's consent.

For purposes of seller financing disclosures, the arranger of credit is usually the agent representing the buyer and is the one responsible for the preparation of this form.

### **(CBC) Cooperating Broker Compensation Agreement and Escrow Instructions**

The (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 four 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 **NOT** listed in the MLS, and the parties have agreed to compensation as set out following this option.



**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.

The Residential Listing Agreement is a contract between the owner or owners of a piece of residential real property and a real estate broker. By entering into this contract, the owner agrees to hire the broker as an exclusive agent to sell the property. The owner also agrees to compensate the broker for procuring a "ready, willing, and able" buyer during the listing period.

### 1. Exclusive Right to Sell

This paragraph provides the broker with the exclusive right to sell the subject property.

**Seller: List the names of all sellers.**

In most situations, the sellers should be the owners of the subject property, the persons who intend to sell the property, and the persons with the authority to both list and sell the property. See also "Ownership, Title and Authority" in paragraph 5 below.

**Practice Tip:** Before taking a listing, it is a good idea to obtain a property profile or check the public records for the subject property. Use this information to verify that the seller(s) entering into the listing agreement matches exactly with the owner(s) of record. If the purported seller is not the owner of record, or not the only owner of record, the listing agent's efforts in listing and marketing the property might turn out to be a waste of time.

**Broker: Insert the name of the Listing Broker.**

The seller enters into the Listing Agreement with the real estate broker or brokerage, not the individual salesperson or broker-associate.

**Beginning Date: Insert the calendar date on which the listing period will begin.**

**Practice Tip:** The listing period should begin, if possible, on the day the parties enter into the Listing Agreement. This is because the seller is less likely to have misgivings about the listing if the listing agent immediately begins advertising and marketing the subject property. Of course, in some situations, the listing agent has no choice but to schedule the listing period to begin at a later date (e.g., when waiting for a prior listing agreement to expire).

**Ending Date: Insert the calendar date on which the listing period will end.**

Always fill in this blank with an ending date! A listing agent cannot claim, demand, or



receive a commission under an exclusive listing agreement unless that agreement contains "a definite, specified date of final and complete termination" (see California Business & Professions Code Section 10176(f)).

Determining the proper length of time for a particular listing requires a careful weighing of various countervailing factors, such as the listing price, the condition of the property, the parties' requirements, and market conditions. If the listing period is very short (e.g., 30 days), the listing agent may spend a lot of time, money, and effort to market the property, yet not find a buyer, nor earn a commission, within the specified time. On the other hand, if the listing agent insists on a lengthy listing period (e.g., 12 months), the seller may distrust the listing agent's ability to sell the property.

**City:** Insert the name of the city where the subject property is located.

**County:** Insert the name of the county where the subject property is located.

## 2. Items Excluded and Included

A sale will include all fixtures and fittings attached to the subject property. **Fixtures are items that become so related to a piece of real property that they become part of the sale of that real property.** In contrast, items of personal property are not included in the sale of real property (unless specified otherwise by contract).



Whether an item is a fixture or personal property is a question of fact to be determined on a case-by-case basis. Many items are obviously a fixture (e.g., roof) or personal property (e.g., lawn chair), but some items are not so easily characterized (e.g., custom-made drapes).

**A. Items Included in Sale: List any and all items of personal property to be included in a subsequent sale.**

Whenever in doubt, simply list any and all items the seller wants to include in a subsequent sale, such as appliances, custom-made items, and the like.

**B. Items Excluded from Sale: List any and all items attached to the subject property to be excluded from a subsequent sale.**

When in doubt, list anything attached to the property that the Seller wants to exclude from a subsequent sale. Pay particular attention to items out of the ordinary, such as family heirlooms, chandeliers, antique fixtures, etc.

## 3. Listing and Pricing Terms

**A. List Price: Write out the List Price using words; in the parenthesis after the dollar sign, use numbers.**

The List Price is the target price at which, if offered by a ready, willing, and

able buyer, the broker earns his or her compensation. Hence, the List Price is usually what the seller is willing to sell the property for.

As with the listing period, determining the correct List Price requires a careful balancing of various factors, including, among other things, the condition of the property, the parties' requirements (e.g., how quickly the seller wants to sell the property), comparable sales, and market conditions. If the List Price is too low, the seller may get frustrated from receiving a lot of offers that never amount to anything. If the List Price is too high, the seller may get no sales activity at all.

**B. Additional Terms: Insert any additional terms and conditions.**

This section contains any additional terms of sale. If the space provided is not enough, insert here: "See attached Addendum Number \_\_\_\_ incorporated herein." Set forth the additional terms on a separate piece of paper entitled "Addendum Number \_\_\_\_," and attach it to the Listing Agreement.

**Note:** The terms of sale are set forth here primarily to help the listing agent advertise and market the property. For a subsequent sale, be sure to reiterate the items to be included and excluded, and any additional terms of sale, in the sales contract between the seller and the buyer.

#### 4. Compensation to the Broker

This paragraph contains the terms and conditions of the broker's compensation.



**Notice:** The amount or rate of real estate commissions is not fixed by law. It is set by each broker individually and may be negotiable between Seller and Broker.

The Notice above must be set forth in not less than 10-point boldface type on any printed or standard-form agreement establishing or altering a listing agent's right to compensation in the sale of one-to-four residential units (see California Business & Professions Code Section 10147.5(a)).

**A. (Rate or Amount of Broker's Compensation).**

The broker's commission can be expressed either as a percentage of the List Price (or the sales price if the seller has entered into a sales contract) or as a flat fee. The advantage to the seller of paying a commission rate (e.g., 6%) is

that it gives the broker an incentive to bring as high of an acceptable offer as possible. On the other hand, by using a flat fee, the seller will know exactly how much the broker's commission will be, regardless of the sales price.

Check the appropriate box and insert either the commission rate or amount. Keep in mind that, for one-to-four residential units, the broker should never pre-print the commission rate or amount (see California Business & Professions Code Section 10147.5(b)).

Some brokers charge some sort of administrative or transaction fee. Before writing in such a charge in addition to a flat fee or commission, the broker's policy should be consulted. If allowed, any recommended language should be used and any additional required documentation should be attached.

#### **A(1) (Exclusive Authorization).**

By entering into this exclusive Listing Agreement, the seller agrees to compensate the broker as long as *anyone* procures a ready, willing, and able buyer during the listing period. It makes no difference if the procuring cause is the broker, the seller, a cooperating broker, a neighbor, anyone else, or no one at all.

If, however, the seller refuses to compensate the broker for a buyer procured by the seller, the proper listing agreement to use is the **Exclusive Agency Authorization and Right to Sell** (C.A.R. Form EA-11). If the seller refuses to compensate the broker for a buyer procured by anyone other than the broker, the proper listing agreement to use is the **Non-Exclusive ("Open") Agency Authorization and Right to Sell** (C.A.R. Form NEA-11).

#### **A(2) (Safe Harbor Provision): Insert the number of "safe harbor" days after the listing period ends.**

This subparagraph is the safe harbor provision. To avoid paying the broker's compensation, a seller may be tempted to reject an offer from a buyer procured by the broker, only to sell the subject property to that same buyer after the listing period ends. The safe harbor provision reduces the possibility of this type of abuse by protecting the broker's compensation for a certain number of days after the listing period ends.

The safe harbor provision, however, has two limitations. First, it only pertains to prospective buyers who, during the listing period, physically entered and were shown the property, or who submitted written offers to the seller. Hence, the broker is not protected if the property is sold to someone other than one of the broker's prospective buyers or related entities. Second, the safe harbor applies only if, within 3 calendar days after the listing period ends, the broker provides the seller with a written list of these prospective buyers.

Determining the proper number of safe harbor days requires a weighing of various factors. If the safe harbor period is too short (e.g., 30 days), the broker has very little protection. On the other hand, if the broker demands a lengthy safe harbor period (e.g., 12 months), the seller may not give the listing to the broker.

**A(3) (Seller's Interference).**

The broker is entitled to full compensation if, without the broker's consent, the seller withdraws the property from sale, transfers the property, or renders the property unmarketable.

**B. (Third-Party Default).**

If a subsequent sale falls through at no fault of the seller, the broker's compensation is limited to one-half of whatever the seller collects as money damages, not to exceed the agreed-upon commission (plus the administrative/transaction fee).

**C. (Other Fees): List any costs to be paid by Seller, other than the commission.**

Other costs to be paid by the seller could include MLS fees, special advertising fees, or other costs for marketing the property. If there are no other costs to the seller, insert "N/A" to emphasize this fact.

**D. (Cooperating Brokers).**

The broker has the discretion to determine the rate or amount of compensation for any cooperating broker, unless such compensation is specifically set forth below.

**E. (Irrevocable Assignment; Payment Through Escrow).**

This provision entitles the broker to receive his or her compensation through escrow, thereby avoiding any problems of collecting such funds from the seller directly. Also, the irrevocable assignment language means that the seller agrees not to revoke, cancel, or put on hold any instruction to escrow to pay such compensation to the broker at close of escrow.

**F. (Previous Listings): Identify any prior listing agent(s) to whom the seller may owe compensation, AND list the names of the prospective buyers procured by that agent.**

Even if a listing period has ended, a seller who had a Listing Agreement with Broker A will not want to enter into a new Listing Agreement with Broker B during Broker A's safe harbor period (see paragraph 4A(2) above). Otherwise, the seller risks being obligated to pay full commissions to both brokers if a buyer procured by Broker A buys the property during both Broker A's safe harbor period and Broker B's listing period.

To avoid this result, subparagraph 4F allows the seller to exclude prospective buyers procured by Broker A from Broker B's Listing Agreement. Broker B will not receive any compensation if anyone on this list buys the property.

**Practice Tip:** A prudent listing agent in Broker B's position will carefully review the terms of the seller's Listing Agreement with Broker A, and verify that Broker A's list

of prospective buyers has been timely and properly submitted to the seller. Also, if Broker A's safe harbor period ends before Broker B's listing period ends, Broker B may want the exclusion to terminate when Broker A's safe harbor period ends. For example, Broker B takes a listing from January 1 to March 31, but Broker A's safe harbor period for certain buyers ends February 28. Broker B may want to exclude these buyers until February 28 only, and not for the full duration of Broker B's listing period to March 31.

#### **5. Multiple Listing Service (MLS): Do nothing if property will be listed in MLS; otherwise, check "will not" box.**

Unless otherwise checked, the broker has the authority to list the property in the MLS, and in any Internet service approved by the MLS.

#### **6. Ownership, Title and Authority**

The seller warrants that he or she owns the property, that no one else owns the property, and that the seller has the authority to both enter into the Listing Agreement and any subsequent sales contract. Any exceptions to these warranties of ownership, title, and authority should be explained under "Exceptions."

#### **7. Seller Representations**

The seller must disclose any knowledge of certain facts likely to affect the marketability of the property, such as recorded notices of default, delinquent obligations, bankruptcies, pending or threatened lawsuits or other actions, and special assessments. The existence of any of these facts affecting marketability should be explained under "Exceptions."

#### **8. Broker's and Seller's Duties**

The broker agrees to work diligently to achieve the purposes of the Listing Agreement. The broker has the authority to advertise and market the property in any medium, including the Internet.



The seller agrees to consider all offers, to act in good faith to sell the property, to make the property available for showings, to refer all inquiries to the broker, and to assume responsibility for determining the List Price. The seller also agrees to indemnify, defend, and hold the broker harmless from all claims arising from any misrepresentation or concealment of fact made by the seller.

#### **9. Deposit**

The broker has the authority to accept and hold, on the seller's behalf, any earnest money deposits received.

#### **10. Agency Relationships**

**A. Disclosure: For one-to-four residential units, provide the seller with the "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD-11).**

The agency disclosure form, which sets forth the various types of agency relationships, must be provided by the listing agent to the seller "prior to entering into the listing agreement" (see California Civil Code Section 2079.14(a)). Both the seller and the listing agent should sign and date the disclosure form where indicated.

**B. Seller Representation.**

The broker will represent the seller in any subsequent sale of the property.

**C. Possible Dual Agency with Buyer.**

The seller consents that, upon proper disclosure, the broker may act as a dual agent representing both the seller and the buyer.

**D. Other Sellers.**

The seller consents that the broker may have other listings and other clients.

**E. Confirmation.**

For one-to-four residential units, the broker agrees to confirm his or her status as the listing agent, or to modify his or her status to dual agent, before the seller enters into a sales contract.

## **11. Security and Insurance**

The seller agrees that the broker is not responsible for any loss or damage caused by using a keysafe/lockbox or by showing the property. The seller is advised to take all reasonable precautions for safeguarding the real property and its contents, and to obtain insurance to protect against any risks.

## **12. Keysafe/Lockbox**

The broker is authorized to install a keysafe/lockbox on the property.

## **13. Sign**

The broker is authorized to install a For Sale/Sold sign on the property, unless the box is checked withholding the consent.



## **14. Equal Housing Opportunity**

Both the seller of real property and a listing agent are prohibited from discriminating against a protected class, including, but not necessarily limited to, classes of race, color, religion, sex, handicap, familial status, and national origin.

## 15. Attorney's Fees

In the event of a lawsuit or other proceeding involving the broker's compensation, the prevailing party can recover attorney's fees and costs.

## 16. Additional Terms: Set forth any additional terms to the Listing Agreement

**Compare:** All additional terms involving a subsequent sale of the property should be set forth in paragraph 3B above, whereas all additional terms involving the Listing Agreement should be set forth here in paragraph 16.

## 17. Management Approval

A salesperson or broker-associate often enters into a Listing Agreement on behalf of the broker. In most cases, this poses no problem. However, if the salesperson agrees to terms that are unacceptable to the broker/manager, this provision allows the broker/manager to cancel the Listing Agreement within 5 days of execution.

## 18. Successors and Assigns

The Listing Agreement is binding upon the Seller's successors and assignees. If, without the broker's consent, the seller transfers the property in violation of the Listing Agreement (see paragraph 3A(3) above), the broker may prefer to act as the listing agent for the transferee, rather than sue for compensation. This provision may be used to assist the broker in convincing any transferee to continue with the listing.

## 19. Dispute Resolution

### A. Mediation.

The parties agree to mediate any dispute arising out of the Listing Agreement (with certain exceptions set forth in paragraph 19B(2) below). Mediation is required even if the parties do not initial anything.



Mediation entails an attempt by a neutral third-party to convince the contractual parties to voluntarily resolve their differences. If a party commences an action without first attempting mediation pursuant to this provision, that party is barred from recovering attorneys' fees.

### B. Arbitration of Disputes: Both parties must insert their initials for this clause for the Arbitration Clause to apply.

If properly initialed, the parties agree to submit to binding arbitration for any dispute arising out of the Listing Agreement, which is not settled by mediation (with certain exceptions set forth in paragraph 19 B(2) below). The "Notice" must be set forth in at least 10-point boldface type for an arbitration agreement to be enforceable.

Arbitration is an alternative dispute resolution to the court system. The parties submit their arguments and evidence to an agreed-upon arbitrator (rather than a judge or jury). The arbitrator shall render a decision. The arbitrator's decision or award can only be set aside by the losing party in very limited circumstances, such as failure of due process, fraud, or corruption by the arbitrator. Otherwise, the prevailing party can have the arbitrator's award confirmed as a judgment in any court having proper jurisdiction.

**Determining whether arbitration is a better way to resolve a dispute as compared to the court system entails legal opinion. Thus, the broker should not advise the seller to initial or not initial the arbitration clause.**

## **B2. Exclusions from Mediation and Arbitration.**

Various matters are excluded from the obligation to mediate or arbitrate, including foreclosures, unlawful detainer actions, mechanic's lien procedures, probate, small claims, and bankruptcy matters, notices of lis pendens, attachment orders, and receivership, injunction, and other provisional remedies.

## **20. Entire Contract**

The Listing Agreement supersedes any and all prior negotiations and agreements between the parties regarding this matter. The Listing Agreement, including any photocopy or facsimile, can be signed in counterparts.

### **Signature by Sellers**

By signing the Listing Agreement, the seller acknowledges that he or she has read and understands the agreement and has received a copy. The seller should insert the date of signature, and provide an address, phone, fax, and e-mail information. The seller should also initial the bottom of pages 1 and 2.

This section has space for two sellers to sign. However, in most situations, all owners of the subject property should sign the Listing Agreement. Thus, if there are additional sellers, use additional signature pages.

### **Signature by Broker**

The salesperson or broker-associate taking the listing can complete the broker's information and sign as authorized representative of the broker. The listing agent should also write in the property address and date of execution on the top of pages 2 and 3, and initial the bottom of pages 1 and 2.

No one should sign the Listing Agreement until all pages have been completed. Upon completion and signature, the listing agent should immediately provide the seller with a copy of the entire Listing Agreement.

**The two-page Seller's Advisory is attached to the Listing Agreement.** Its purpose is to inform the seller up front of various matters that may arise when selling real estate in California, including disclosure issues (such as those related to



death on the property), contract terms and legal requirements, pre-sale considerations, post-sale protections, safety precautions, and expenses.

**The goal of the form is to make the seller aware of these issues early on, encouraging the seller to identify, address, and resolve potential problems as soon as possible. These issues should be considered either before the property is put on the market or before the negotiating and selling process consumes the seller's attention. This approach establishes expectations and helps avoid surprise and efforts to sidestep or bypass necessary steps in the sale process that can result if expectations are not met. The form is both an educational and preparation tool.**

Fill in the property address of the subject property at the top of pages 1 and 2. Any additional advisory items should be set forth in paragraph 5 on page 2. The seller should initial page 1, and sign and date page 2 where indicated. Upon signing, the listing agent should immediately provide the seller with a complete copy of the Seller's Advisory.

The **C.A.R. California Residential Purchase Agreement** (RPA-CA), standing alone or with related addenda discussed in this course, 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.

### Downloadables

If you have Adobe Acrobat Reader installed, you can view and print files for reading offline.



To view a file, click on its link, or SHIFT and right-click to save it to your computer. The file size is provided to allow you to gauge the download time for the file.

### Course Content

[Your Guide to the Residential Purchase Agreement](#) (699K)

### Forms

1. **Forms are displayed/reprinted with permission, CALIFORNIA ASSOCIATION OF REALTORS. Endorsement not implied.**
2. **Entire forms must be reproduced with the word "Sample" screened across every page of each form.**
3. **The forms must be reproduced and displayed/reprinted in their entirety.**

- California Residential Purchase Agreement (RPA-CA):  
[RPA-CA 10.02 8.03 sample.pdf](#) (142K)
- Buyer's Inspection Advisory (BIA) attached to the RPA-CA:  
[BIA sample \(10\\_02\).pdf](#) (90K)
- Request for Repair (RR) attached to the RPA-CA:  
[RR \(10.02 bl rev 8.03\).pdf](#) (162K)
- Receipt for Reports (RFR) attached to the RPA-CA:  
[RRFR sample \(10.03\).pdf](#) (83K)
- Contingency Removal (CR) attached to the RPA-CA:  
[CR sample \(10.03\).pdf](#) (249K)
- Notice to Buyer to Perform (NBP) attached to the RPA-CA:  
[NBP sample \(10\\_02\).pdf](#) (66K)
- Notice to Seller to Perform (NSP) attached to the RPA-CA:  
[NSP sample \(10\\_02\).pdf](#) (66K)
- Supplemental Statutory and Contractual Disclosures (SSD) attached to the RPA-CA:  
[SSD sample \(4\\_03\).pdf](#) (67K)
- Wood Destroying Pest Inspection and Allocation of Cost Addendum (WPA) attached to the RPA-CA:  
[WPA sample \(10\\_02\).pdf](#) (66K)
- Contingency for Sale or Purchase of Other Property (COP) attached to the RPA-CA:  
[COP sample \(10.03\).pdf](#) (84K)
- Purchase Agreement Addendum (PAA) attached to the RPA-CA:  
[PAA sample \(10\\_02\).pdf](#) (92K)
- Seller Financing Addendum and Disclosure (SFA) attached to the RPA-CA:  
[SFA sample10.02 br 9.03\).pdf](#) (184K)
- Cooperating Broker Compensation Agreement and Escrow Instructions (CBC) attached to the RPA-CA:  
[CBC sample \(10\\_02\).pdf](#) (82K)
- Cancellation of Contract; Release of Deposit of Joint Escrow Instructions (CC):  
[CC sample \(10.03\) .pdf](#) (83K)
- Disclosure Regarding Real Estate Agency Relationships (AD):  
[AD sample \(10.01\).pdf](#) (66K)

- Disclosure and Consent for Representation of More Than One Buyer or Seller (DA):  
[DA sample.pdf](#) (184K)
- Counter-Offer (CO):  
[CO sample \(10\\_02\).pdf](#) (83K)
- Extension of Time Addendum (ETA):  
[ETA sample \(4.04\).pdf](#) (66K)
- Receipt and Delivery of Notices to Perform (RDN):  
[RDN sample \(4.04\).pdf](#) (66K)
- Authorization to Receive and Convey Information (ARC):  
[ARC sample \(4.04\).pdf](#) (66K)

You have now completed reviewing the contents of this course.