



Courtside *Newsletter*

Revisions to the Residential Purchase Agreement



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At the end of November, the California Association of REALTORS® released numerous new and revised forms, which we covered in two *Courtside Newsletters*. However, noticeably absent from those reviews was the Residential Purchase Agreement (RPA). According to the California Association of REALTORS®, “the RPA form is the cornerstone of every successful real estate transaction in the state of California and there are several essential concepts, principles, and facts about this form that all REALTORS® should know.” The RPA has been changed in so many ways that we felt it deserved a special *Courtside Newsletter* that would focus on the changes to this important document.

Residential Purchase Agreement (RPA)

The California Residential Purchase Agreement has been overhauled in order to make it easier to use, more understandable, and more relevant for the times. According to C.A.R., “with over 1,000 member comments reviewed, the RPA is being changed to meet the needs of California REALTORS®.” Below you will find an explanation of some of the more exhaustive changes to the form. Unfortunately, we cannot cover all of the changes here. For more information, the Firm teaches “Changes to the RPA” at numerous local REALTOR® associations. Check out

our website (www.glawgroupapc.com) for a class schedule.

Paragraph 3: “Finance Terms”

Subparagraph A, “Initial Deposit,” has been revised to include a buyer’s direct deposit to escrow as the default method to pay the deposit. A Buyer may still elect to pay by cashier’s check, personal check, or a buyer may deposit with his or her agent. In which case an initial or increased deposit is received by the agent, the form notes that the deposits will be recorded in the Broker’s trust log. This is important considering the Trust Fund issues and concerns that have been arising in recent litigation.

Subparagraph C, “All Cash Offer,” has been moved to the first page. All cash offers now require buyer’s verification of sufficient funds to be provided with the offer. The proceeds from a buyer’s sale, unless that sale has already been completed and funds are sitting in escrow, would not be sufficient to constitute cash unless the seller agreed expressly, since these funds are not readily available to verify the funds. Borrowing from a pension is also a problem. The seller should verify the rules that allow the buyer to borrow against such funds.

Subparagraph J, “Loan Terms” has also been revamped. The sub-subparagraphs under this header have been revised to

include more specific terms and descriptors of the loans described there under. Sub-subparagraph (5), “Lender Limits on Buyer Credits” has been added, which states that any contractual credit to a Buyer from any source must be disclosed to the Buyer’s lender. It also specifies what will occur if the total credit allowed by the Buyer’s lender is less than the contractual credit.

Subparagraph K, “Buyer Stated Financing,” has been revised to state that “Seller has no obligation to cooperate with Buyer’s efforts to obtain any financing other than that specified in the Agreement and the availability of any such alternative financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.”

Paragraph 6: “Other Terms”

This space has been added to be used in the event that there are other relevant terms that are not listed on the RPA. The new C.A.R. Text Overflow Addendum (TOAD) can be used in the event that the additional terms do not fit in this segment. Within the zipForm® software program, if any additional space is needed when filling in any blank lines, the additional words will automatically flow onto the TOAD form.

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Paragraph 7: “Allocation of Costs”

Subparagraph A, “Inspections, Reports and Certificates,” has added the verbiage that this subparagraph only specifies who is pay for the inspection, test, certificate, or service (“report”), not who is going to pay for any work recommended or identified in the report. Since the Wood Destroying Pest Addendum has been removed from the zipForms® library, this is now the paragraph to select a wood destroying pest inspection, along with any other requested reports.

Subparagraph D, “Other Costs,” now specifies whether Buyer waives the purchase of a home warranty plan. Further, under the new Civil Code Section 4525, sellers are now required to pay the HOA document prep fees.

Paragraph 8: “Items Included In and Excluded From Sale

Subparagraph B, “Items Included in Sale,” now includes a section for “existing integrated phone and home automation systems,” as well as “Leased or Liened Items and Systems.” The leased or liened items section includes language dictating Seller to disclose to Buyer whether any item specified or listed is leased, not owned by Seller, or specifically subject to a lien or encumbrance. Seller must also deliver to Buyer all written materials concerning any such items. This provision is meant to address issues surrounding solar panels.

Paragraph 10: “Statutory and Other Disclosures...and Cancellation Rights”

Subparagraph A(2) has been added, stating, “Any Statutory Disclosure required by this paragraph is considered fully completed if Seller has answered all questions and completed and signed the seller section(s) and the Listing Agent, if any, has completed and signed the listing broker section(s), or, if applicable, an Agent Visual Inspection Disclosure (C.A.R. form AVID).” It goes on to

further state the Buyer’s Broker is not relieved from his or her obligations to perform a reasonably competent visual inspection of the property or complete any necessary disclosures.

Subparagraph A(4) states that, unless exempt from the obligations to provide a Transfer Disclosure Statement (TDS), Seller must provide a Seller Property Questionnaire (SPQ) or Supplemental Contractual and Statutory Disclosure (SSD).

Paragraph 12: “Buyer’s Investigation of Property and Matters Affecting Property”

Subparagraph A now includes specifications for what will and will not be inspected in any inspections for wood destroying pests and organisms, and that the inspection will be done by a registered Structural Pest Control company if such an inspection was called for under paragraph 7.

Paragraph 14: “Time Periods”

The subparagraphs under this heading now include language regarding the requirements for the Buyer and Seller to utilize the recently created C.A.R. Notice to Seller to Perform (NSP) and Notice to Buyer to Perform (NBP) prior to cancelling the Agreement. Subparagraph G, “Effect of Cancellation on Deposits” states that a party may be subject to a civil penalty for refusal to sign cancellation instruction if no good faith dispute arises. Should a party refuse to sign, the other party may make a written demand to the Escrow Holder via C.A.R. form Buyer Demand for Release of Deposit (BDRD) or Seller Demand for Release of Deposit (SDRD). The forms require that the demanding party first submit to the opposing party a Cancellation of Contract, Release of Deposit and Joint Escrow Instructions form (C.A.R. Form CC). The opposing party will have 10 days after the Escrow

Holder’s notice to object to the release of the deposit back to demanding party. If no objection is received, the Escrow Holder may release the deposit.

Paragraph 21: “Remedies for Buyer’s Breach of Contract”

Subparagraph C, “Additional Mediation and Arbitration Terms,” contains a section for Preservation of Actions, which states that the filing a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, or the filing of a mechanic’s lien will not constitute a waiver or violation of the mediation and arbitration provisions.

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As was mentioned above, this *Newsletter* is not exhaustive in its coverage of the changes to the RPA or the ramifications of those changes. Ultimately, C.A.R. saw a need for a more up-to-date, user-friendly version of what is arguably the most important document in a real estate transaction. It is important to note that these changes have also spilled over into other purchase agreements.

Should you have any questions regarding what you see on the form or what you read here, we encourage you to reach out to your local REALTOR® association or seek qualified legal counsel.

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