



Courtside *Newsletter*

California Association of REALTORS®

Releases New & Revised Forms



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The California Association of REALTORS® released four (4) new and six (6) revised forms on April 27, 2015.

New Forms

Buyer Amendment to Escrow Instructions (BAEI) | Seller Amendment to Escrow Instructions (SAEI)

The BAEI and SAEI were created by C.A.R. following the changes to the Residential Purchase Agreement that were implemented late last year. According to C.A.R., these two new forms satisfy the requirement of the “Department of Business Oversight, [a] government body with regulatory authority over independent escrow holders.” The SAEI and BAEI allow independent escrow holders to release a deposit in the absence of signed mutual instructions. The forms state,

“If either Party fails to execute mutual instructions to cancel, one Party may make a written demand to Escrow Holder for the deposit (C.A.R. Form BDRD or SDRD). Escrow Holder, upon receipt, shall promptly deliver notice of the demand to the other Party. If, within 10 Days After Escrow Holder's notice, the other Party does not object to the demand, Escrow Holder shall disburse the deposit to the Party making the demand. If Escrow Holder complies with the preceding process, each Party shall be deemed to have released Escrow Holder from any and all claims or liability related to the disbursal of the deposit.”

Ultimately, these forms will allow escrow to release a deposit following the cancellation of the escrow instructions as set forth in the RPA.

Independent Contractor Agreement with Binding Arbitration Option (ICA-BA)

This agreement between broker and associate-licensee includes a binding arbitration clause, to be enacted in the event that the broker and associate-licensee cannot resolve any disputes that may arise through mediation. According to the form,

“Such claims would include, without limitation, any concerning the initiation of the work relationship, the pay or other compensation for the work performed, breach of contract, expenses, any claims by Broker or Associate-Licensee for violations of applicable law or regulations, the decision by Broker or Associate-Licensee to end the assignment, any claims for conversion and/or breach of fiduciary duty, as well as any claims that arise from or relate to Broker's classification of Associate-Licensee as an independent contractor rather than an employee.”

The broker will be responsible for all costs of the arbitration, which will be conducted through JAMS at an office closest to the county of the broker's office with which the associate-licensee was associated. However, each party shall pay their own attorneys' fees and costs.

Independent Contractor Agreement with Mediation (ICA-NA)

This agreement between broker and associate-licensee contains a clause that makes mediation the mandatory first step to resolve disputes. Unlike the ICA-BA, described above, if disputes are not resolved through mediation, the broker and associate-licensee may submit the matter to binding arbitration, but it is not required.

Continued...

Revised Forms

C.A.R. also made minor modifications to the below forms, “such as updates to code references and changing reference to BRE to CalBRE, to satisfy CalBRE requirements”

- Options and Upgrades Addendum to New Construction Residential Purchase Agreement (NCA)
- New Construction Property Disclosure Statement (NCDS)
- Common Interest Subdivision Supplemental Escrow Instructions (NCEI)
- New Construction Notice of Completion and Notice to Close Escrow (NCNC)
- New Construction Residential Purchase Agreement and Joint Escrow Instructions (NCPA)
- New Construction Addendum to RPA-CA (NCRPA)

Silent Revisions to the Residential Purchase Agreement

According to C.A.R., there will also be numerous “silent revisions” to the Residential Purchase Agreement, including:

- Paragraph 1B (Property Identification) is being reformatted to eliminate duplicate language.
- Language is being added to Paragraph 3C (All Cash Offer) to make explicit that the sale is not contingent upon buyer obtaining a loan.
- Paragraph 7D(6) (Allocation of Costs—Other Costs) is being revised to indicate the buyer has the responsibility to pay for any requested HOA Certification fees.
- Language in paragraph 10A(4) (Statutory and Other Disclosures) is being modified to clarify that if the seller will not be providing a Transfer Disclosure Statement (TDS) or a Seller Property Questionnaire (SPQ), then the seller is obligated to provide a Supplemental Contractual and Statutory Disclosure (SSD).
- Paragraph 14C (Time Periods; Removal of Contingencies; Cancellation Rights—Seller Right to Cancel) will be modified to clarify that if the buyer does not assume or accept leased items, the

seller may give the buyer a Notice to Buyer to Perform (NBP).

- The Exclusion from Mediation and Arbitration Paragraph (22C) is being modified to specifically mention that filing a lawsuit to preserve a statute of limitation is allowed without violating the mediation or arbitration requirement.
- Language is being added to the bottom of page 10 to specifically allow the buyer to acknowledge that the last page is part of the agreement.

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As usual, should you have any questions regarding new, revised, or even old forms, contact your local REALTOR® association or qualified legal counsel.

Calendar

RPA

Date: June 9, 2015
 Time: 9:00 a.m. – 1: 00 p.m.
 Location: Pacific West Association of REALTORS® - Long Beach
 Contact PWR for more info!
www.pwr.net

New Loan Disclosure

Date: June 17, 2015
 Time: 2:00 p.m. – 4: 00 p.m.
 Location: Pacific West Association of REALTORS® - Anaheim
 Contact PWR for more info!

RPA

Date: June 18, 2015
 Time: 9:00 a.m. – 1: 00 p.m.
 Location: Tri-Counties Association of REALTORS®
 Contact Tri-Co for more info!
www.tricorealtors.com

Property Management

Date: June 25, 2015
 Time: 9:00 a.m. – 1: 00 p.m.
 Location: Pacific West Association of REALTORS® - Anaheim
 Contact PWR for more info!

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