



Courtside *Newsletter*

C.A.R. to Release Revised Forms in December



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The California Association of REALTORS® (C.A.R.) will release eight (8) new and twenty-one (21) revised forms during the week of **December 14, 2015**. It will also discontinue the use of one form. In our last *Courtside Newsletter*, we discussed the eight new forms being released; past *Newsletters* can be accessed on our website at www.glawgroupapc.com. In this month's Newsletter, we are going to explore the revised forms that C.A.R. will be issuing, with the exception of the Residential Purchase Agreement (RPA) and the Residential Listing Agreement (RLA). A special *Courtside Newsflash* will be issued on those forms in the coming weeks.

REVISED FORMS

1. Additional Agent Acknowledgement (AAA)

The AAA has been revised to act as an addendum to the Purchase Agreement, Residential Listing Agreement, Buyer Representation Agreement, or other "Agreement." The form also now states that, "Listing Broker and Seller signatures are not necessary if this form is only used to modify a Buyer Representation Agreement. Selling Broker and Buyer signatures are not necessary if this form is only used to modify a Listing Agreement." According to C.A.R., "Even though multiple agents are named, the form only needs to be signed by one."

2. Addendum (ADM)

The addendum has been updated to include a line that indicates whether the form is being used to modify a Transfer Disclosure Statement (TDS). It also includes the caveat that, "An amendment to the TDS may give the buyer the right to rescind."

3. Commission Agreement (CA)

The Commission Agreement contains a new segment on the benefits of using the MLS, the impact of opting out of the MLS, and the requirement for brokers to present all offers to the seller, unless seller gives written instruction to the contrary. The form addresses closed and private listing clubs or groups, also known as "pocket listings," and how those may impact the sale of a property. It also contains an acknowledgement in which the seller indicates he understands that excluding the listing from the MLS could mean: "(a) real estate agents and brokers from other real estate offices, and their buyer clients, who have access to that MLS may not be aware that Seller's Property is offered for sale; (b) Information about Seller's Property will not be transmitted to various real estate Internet sites that are used by the public to search for property listings; (c) real estate agents, brokers and members of the public may be unaware of the terms and conditions under which Seller is marketing the Property." Furthermore, the arbitration and mediation terms have also been updated on the CA.

4. Single Party Compensation Agreement (SP)

Like the Commission Agreement (CA) form, Single Party Compensation Agreement contains a new segment on the benefits of using the MLS, the impact of opting out of the MLS, and the requirement for brokers to present all offers to the seller. It is the same language used in the CA, and therefore also addresses "pocket listings" and the potential consequences of

utilizing a closed- or private-listing club or group. The "Dispute Resolution" segment of the form has also been revised, adding an arbitration and mediation clause for seller and broker to acknowledge.

5. Commercial Lease Agreement (CL)

Paragraph 29, "Insurance," of the Commercial Lease Agreement has been revised to include the tenant's requirement to carry property insurance "in an amount sufficient to cover the replacement cost of the property if Tenant is responsible for [maintaining the roof, foundation, exterior walls, common areas, and other specified areas.]"

6. Contingency for Sale of Buyer's Property (COP)

A "Notice to Remove Contingencies" segment has been added to the end of the COP form, which gives the buyer notice to remove the contingencies specified in Paragraph 7A entitled, "Back Up Offers and Seller Right to Have Buyer Remove Contingencies or Cancel." As a result, the buyer and seller will no longer need to use the Notice to Buyer to Perform (NBP) to remove contingencies.

7-9. Commercial Property Purchase Agreement (CPA);

Residential Income Property Purchase Agreement and Joint Escrow Instructions (RIPA);

Vacant Land Purchase Agreement and Joint Escrow Instructions (VLPA)

The "Changes During Escrow" section of the CPA, RIPA, and VLPA has been revised to add a segment stating, "Within 5 (or ___) Days After receipt of such notice [of any Proposed Changes], Buyer, in writing, may give Seller notice of Buyer's objections to the Proposed Changes in which case Seller shall not make the Proposed Changes." This effectively prevents seller from making changes to any leases, service contracts, or property conditions during escrow.

10. Exempt Seller Disclosure (formerly SSD) (ESD)

The ESD was formerly the Supplemental and Contractual Disclosure (SSD) form. Paragraph 2 has been added, which makes sellers aware that although they may be exempt from filling out the TDS, there are other disclosures under California law that they are obligated to make to buyers. Sellers who are not legally required to complete a TDS can use this form to make other required disclosures. It is not okay to use previous versions of this form.

11. Residential Lease or Month-to-Month Rental Agreement (LR)

The LR has been revised to include updates to several sections of the form, including:

- "Rent" (Paragraph 3E): "Rent Payments received by Landlord shall be applied to the earliest amount(s) due or past due."
- "Maintenance Use and Reporting" (Paragraph 11E): "Landlord and Tenant agree that State or local water use restrictions shall supersede any obligation of Landlord or Tenant to water or maintain any garden, landscaping, trees or shrubs pursuant to [previous stipulations in Paragraph 11.]"

Continued ...

- “Pets” (Paragraph 13): A checkbox regarding the C.A.R. Pet Addendum has been added to indicate that pets may be allowed on or about the premises.
- “Waterbeds/Portable Washers” (Paragraph 34) “Tenant shall not use, on the Premises, Portable Dishwasher Portable Washing Machine.”
- “Attorney Fees” (Paragraph 40) “In any action or proceeding arising out of this Agreement, the prevailing party between Landlord and Tenant shall be entitled to reasonable attorney fees and costs collectively not to exceed \$1,000 (or \$____), except as provided in paragraph 39A [Mediation].”

A space for the landlord’s signature has also been provided.

12. Application to Rent/Screening Fee (LRA)

On the Application to Rent (LRA), the Social Security Number moved from the tenant information (“Application to Rent”) section to the “Screening Fee” section (Section II).

13. Notice to Perform Covenant (Cure) or Quit (PCQ)

Paragraph 1B has been added to the PCQ to allow for the form to be used to pay a monetary obligation other than that of past due rent. The section includes to whom the money is owed, and when and where it should be paid.

14. Property Management Agreement (PMA)

The term “Broker” has been replaced with the term “Property Manager” throughout the agreement. Paragraph D, “Repair; Maintenance” has been updated to include the provision that, “Owner agrees that state and local water use restriction will supersede any obligation by Property Manager or any Tenant to water/maintain gardens, landscaping trees or shrubs.”

15. Seller Response and Buyer Reply to Request for Repair (RRRR)

The RRRR has been revised to include a section where the buyer can accept the seller’s response to buyer’s requests with modifications (Paragraph 1B under “Buyer Reply to Seller Response”). Another section was added that only applies if the buyer checks the box for 1B. This section (aply titled “Only Applies If Buyer Checks 1B”), allows the seller to indicate whether he agrees or rejects the buyer’s modifications.

16. Seller’s Advisory (SA)

The Seller’s advisory now contains revisions to Paragraph D, “Government Required Repairs, Replacements and Alterations,” which includes instructions regarding smoke alarms and brace water heaters. Paragraph 4A, “Pre-Sale Inspections and Considerations,” has been revised to include advice about how to prepare the property for sale, including “making cosmetic improvements, and staging.” It also includes language regarding pre-sale inspections, in order to be made aware of, and possibly fix, faults in the home prior to the buyer’s eventual inspection.

17. Statewide Buyer and Seller Advisory (SBSA)

Paragraph 20, “Future Repairs, Replacements and Remodels,” has been updated to include language regarding the eventual discontinuation of the use of R-22 Freon and new efficiency standards for water heaters. These changes will impact the repairs and replacements of air conditioning units and heat pumps as “... replacement water heaters will generally be larger than existing units and may not fit in the existing space” and “additional venting and other modifications may be required as well.”

Paragraph 35, “PACE Loans and Liens” has also been added to provide information regarding Property Assessed Clean Energy (PACE) program loans, (also be referred to as HERO or SCEIP programs). The programs allow property owners to finance energy and water conservation improvements through an assessment on the owner’s property. If a property owner chooses to utilize this program, a lien similar to a tax lien is placed on

the property, which the owner is required to disclose. The form directs the buyer to request the C.A.R. Legal Q&A “PACE Programs and Solar Leases” from the broker for further information.

Paragraph 36, “Solar Panel Leases,” has also been added to the SBSA, which provides information regarding the standard practices behind leased and owned solar panels. Although leased panels may be considered personal property, they are included in the sale of the property and must be disclosed to the buyer, along with the any documentation concerning the lease and system. The buyer can then investigate the solar panel system and may assume the lease, which is generally secured by leasing companies by a UCC-1 form giving notice of a creditor’s security interest against the property. The form again directs the buyer to request the C.A.R. Legal Q&A “PACE Programs and Solar Panels” from his broker for more information.

Lastly, Paragraph 37, “Homeowner Associations and Covenants, Conditions and Restrictions (“CC&Rs”); Charging Stations,” has been updated to include a reference to the C.A.R. Legal Q&A entitled, “Homeowners’ Associations: A Guide for REALTORS®.” The buyer can request this from the broker for review.

18. Seller Property Questionnaire (SPQ)

Paragraph V.B., “Repairs and Alterations,” now includes a segment in which the seller can indicate whether there have been “any alterations, modifications, replacements, improvements, remodeling, or material repairs to the property done for the purpose of energy or water efficiency improvement or renewable energy.” Paragraph V.J, “Title Ownership, Liens, and Legal Claims,” has also been updated to allow the seller to reference “any PACE lien (such as HERO or SCEIP) or other lien...” against the property and “the cost of any alteration, modification, replacement, improvement, remodel or material repair of the Property being paid by an assessment on the Property tax bill.”

19. Seller Multiple Counter Offer (SMCO)

The Seller Multiple Counter Offer has undergone revisions for the sake of clarity. Specifically, Paragraph 2, “Binding Effect,” has been updated to indicate the conditions under which the Multiple Counter Offer is considered binding on buyer and seller:

- “Seller signs in paragraph 5 [“Seller Makes this Multiple Counter Offer on the Terms Above and Acknowledges Receipt of a Copy”].
- “Buyer signs in paragraph 7 [“Acceptance”].
- “Seller signs in paragraph 8 [“Acceptance of Seller Multiple Counter Offer”], and Buyer receives a copy of the Multiple Counter Offer with all of the signatures.

“...Prior to the completion of all of the foregoing, Buyer and Seller shall have no duties or obligations for the purchase or sale of the property.”

Paragraphs 3, “Expiration of Seller Multiple Counter Offer,” and 6, “Acceptance of Seller Multiple Counter Offer,” have been changed so the buyer’s response and seller’s selection do not have to occur in same time period. Paragraph 4, “Marketing to Other Buyers,” has also been added to indicate that the seller has the right to continue to market the property for sale and accept any other offers, prior to the seller selection of the SMCO.

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As always, should you have any questions or concerns regarding these forms, we encourage you seek qualified counsel—either through an attorney or your local REALTOR® Association—for answers. Look out for our *Courtside Newsflash* regarding the Residential Purchase Agreement (RPA) and the Residential Listing Agreement (RLA).

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