



Courtside *Newsletter*

C.A.R. New and Revised Forms Release

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Slated for release the week of June 26, 2017, the California Association of REALTORS® (C.A.R.) has issued four new forms and revised 16 existing forms. In keeping with tradition, this month's *Courtside Newsletter* will explore these new and revised forms, keeping real estate practitioners apprised of the industry changes and trends reflected therein.

New Forms

Bed Bug Disclosure (BBD)

Beginning July 1, 2017, landlords will be required to include the Bed Bug Disclosure form with lease/rental agreements. The form contains information about identifying bed bugs (e.g. what they look like), their life cycles, what bites look like, and signs of an infestation.

According to the Center for Disease Control (CDC), everyone is at risk for getting bed bugs, and they can live anywhere (a home's cleanliness is not a factor in determining risk). People who travel often and stay in hotels (e.g. shared living spaces) are at a higher risk. Bed bugs are experts at hiding and can go for long periods of time without feeding. They can stow away in the "seams and folds of luggage, overnight bags, folded clothes, bedding, [and] furniture," amongst other places. While bed bugs do not carry disease or pose a medical threat, they do present the risk of secondary infections if a person overzealously scratches the bite.

Tenants must tell the landlord or property manager of suspected bed bug infestations, and cooperate with any inspections or treatments. Landlords must also inform tenants within two days if any units are inspected by a pest control officer and, of course, if there are any infestations in common areas.

Cancellation of Lease or Rent (CLR)

The CLR is a single-page form that allows for the termination of a lease/rental agreement, generally prior to a tenant taking possession of the property. Reasons for cancellation include:

- Tenant failure to pay move-in rent and/or security deposit per the Lease Agreement (C.A.R. Form LR), after being given a Pre-Possession Notice to Tenant to Pay (C.A.R. Form PPN).
- Landlord is unable to deliver possession with five or more days after the agreed commencement date, in spite of tenant meeting all requirements under the Agreement.
- Mutual cancellation (no explanation required).

The form also includes a section to address the return/release of the rent and security deposits. If the Agreement is terminated by mutual decision and it is after tenant has taken possession of the property, the landlord must return any remaining security deposit to the tenant within 21 days, along with an itemized statement pursuant to Civil Code § 1950.5(g). The statement will indicate the basis for, and the amount of, any security deposit received and the disposition of the security deposit.

Lastly, the form states that Tenant and Landlord release each other from all

rights and obligations under the Agreement. They are also released from all claims, actions and demands they may have against each other (unless box B(ii) is checked, which indicates further judicial or arbitration decisions are necessary).

Landlord Pre-Possession Notice to Tenant to Pay (PPN)

The PPN is equivalent to a notice to perform issued to a tenant and is "for use when tenant does not pay [the] amount(s) due prior to taking possession" of a rental property. Such amounts include the rent and/or security deposit per Paragraph 5 of the C.A.R., "Move-In Costs Received/Due," but there are also blank lines for any other agreed-upon amounts that may be applicable. The form issues the ultimatum that if the tenant does not pay in a specified number of days after delivery of the PPN, the landlord may cancel the lease agreement (utilizing C.A.R. Form CLR). There is a section for the tenant to initial receipt of the form via personal delivery. However, it also contains the caveat that if the property is subject to a local rent or eviction control ordinance, the landlord should consult an attorney before cancelling the agreement.

Water Submeter Addendum (WSM)

Beginning January 1, 2018, landlords are required to provide certain disclosures to tenants regarding submeters. Pursuant to Civil Code § 1954.204, and covered by the new C.A.R. Form WSM, the disclosures include:

- a) That the tenant will be billed for water service separately from the rent. (WSM Paragraph 1)
- b) An estimate of the monthly bill for water service for dwelling units at the property based on either the average monthly use at the dwelling, or the average water use of a family of four (4). (WSM Paragraph 2)
- c) The due dates and payment procedures for bills for water service. (WSM Paragraph 3)
- d) The contact information, including business hours, for a tenant to contact the landlord or billing agent with questions regarding the water service billing. (WSM Paragraph 4)
- e) Specific charges that the monthly bill for water service may only include. (WSM Paragraph 5)
- f) The tenant must notify the landlord of any problems with the water system, including leaks, drips, water fixtures that do not shut off properly. The landlord is required to investigate, and, if necessary, repair these problems within 21 days, otherwise, the water bill will be adjusted pursuant to law. (WSM Paragraph 6)
- g) The landlord's contact information to report any of the above instances in Section (f). (WSM Paragraph 4)
- h) Upon request, the landlord must provide:
 - a. The location of the submeter.
 - b. The calculations used to determine a monthly bill.
 - c. The date the submeter was last certified for use, and the date it is next scheduled for certification, if known. (WSM Paragraph 7)

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- i) If the tenant believes that the submeter reading is inaccurate or the submeter is malfunctioning, the tenant shall notify the landlord in writing and request an investigation. If the landlord does not resolve the issue, the tenant may contact the local county sealer (contact information for the county sealer will be disclosed). (WSM Paragraph 8)
- j) A statement that this disclosure is only a general overview of the laws regarding submeters and where the laws can be found in the California Civil Code.

Tenant and landlord will acknowledge agreement with and receipt of the WSM.

Revised Forms

(* indicates that it is not permissible to use previous versions of the form. Current forms should be used however.)

Seller's Affidavit of Non-Foreign Status (FIRPTA) (AS)

Internal Revenue Code ("IRC") §1445 provides that a buyer of a U.S. real property interest must withhold tax if the seller is a "foreign person." The revised AS now includes an option paragraph for seller (aka "transferor") to indicate use of a qualified substitute to document federal withholding. The language regarding California tax withholding has also been revised to indicate that the seller will provide escrow with necessary information pursuant to California Withholding Law, Revenue and Taxation Code § 18662.

Residential Lease or Month-to-Month Rental Agreement (LR) *

Numerous aspects of Form LR have been revised/updated, including the below. Please note that it is not okay to use previous versions of this form.

- Addition of language regarding tenant's requirement to pay amounts due prior to taking possession of the property. Specifically, Paragraph 2 references the new C.A.R. Form PPN, giving tenant a notice to pay or the landlord has the right to terminate the agreement.
- Additional language has also been added to Paragraph 3(D) regarding how rent will be paid and to whom it will be delivered.
- A chart has been added to Paragraph 5, "Move-in Costs Received/Due," clarifying the amounts due for rent, security deposit, and other purposes, the date payment has been received, the date it's due, and who the amounts should be made payable to.
- Disclosures regarding utilities, such as water submeters, gas, and electric meters, and a bed bug disclosure have been added to the form.
- Paragraph 11, "Maintenance Use and Reporting," indicates that tenant "shall not use the premises to plant, grow, cultivate or sell marijuana." There is also a representation that if the unit is in a Common Interest Development, the landlord may not have authority or control of all parts of the building.
- Paragraph 14, "Smoking," has been added to indicate that the tenant is responsible for any damage caused by smoking. The landlord can also prohibit smoking on the premises, or indicate what substances maybe smoked on the premises.
- Per Paragraph 16(B), "Condominium; Planned Unit," tenant may be required to pay a fee to the HOA to gain access to certain areas of the development.
- Paragraph 20, "Photographs and Internet Advertising," has been added for the tenant to acknowledge that photos, virtual tours, and other media may be necessary for the purposes of advertising, etc., and that neither the broker nor landlord have control over who views such images once images are on the internet.
- An option section has been added to Paragraph 36, "Insurance," which may require the tenant to obtain insurance in a specified amount.
- Paragraph 53, "Representative Capacity," has been added to indicate whether a party to the agreement is signing a representative capacity, per the Representative Capacity Signature Disclosure (C.A.R. Form RCSDD). The signature lines have also been updated to indicate such representation.
- Paragraph 54 indicates whether the premises is being managed by the

owner or another entity, such as a property management company or brokerage.

Commercial and Residential Income Listing Agreement (CLA) *

The optional arbitration clause was removed from the form, replaced instead with the following language in Paragraph 18(C): "If Owner and Broker desire to resolve disputes arising between them through arbitration rather than court, they can document their agreement by attaching and signing an Arbitration Agreement (C.A.R. Form ARB)." Per C.A.R., "the arbitration clause was removed from the listing agreements because some attorneys for sellers were using it to draw listing agents into contract disputes between buyers and sellers. The listing agreement arbitration was intended to cover only disputes between sellers and their agents over the listing compensation." It is not okay to use previous versions of this form.

Lease Listing Agreement (LL)

Language was added to the LL regarding tenant payments via direct deposit, now including the indication that the landlord should discuss with a Landlord-Tenant attorney the implications of doing so in the event that the tenant defaults and an eviction is necessary. For example, will a Notice to Quit be affected by an electronic payment of a portion of the rent?

Paragraph 10, "Owner Disclosures," has been revised to include such disclosures as lead-based paint, pool/spa drains, mold, asbestos, pest control, meth contamination, bed bug disclosures, water submeters, carbon monoxide detectors, smoke alarms, water conserving plumbing fixtures, water heater, and a Prop. 65 warning notice. Many of these categories are in response to the enacting of recent laws.

Paragraph 13, "Broker's and Owner's Duties," was amended to include language indemnifying the broker: "Owner further agrees to indemnify, defend and hold Broker harmless from all claims, disputes, litigation, judgments, attorney fees and costs arising from any incorrect or incomplete information supplied by Owner, or from any material facts that Owner knows but fails to disclose including dangerous or hidden conditions on the Premises."

In Paragraph 20, "Dispute Resolution," the optional arbitration clause was removed for the above-described reasons.

Paragraph 21, "Time of Essence; Entire Contract; Changes," now contains an option paragraph regarding representative capacity. This indicates whether the LL is being signed for the Owner by an "individual acting in a Representative Capacity as specified on the Representative Capacity Signature Disclosure (C.A.R. Form RCSDD-LL)." It also indicates that the owner will provide documentation evidencing the authority of the entity signing to act on his or her behalf.

Property Management Agreement (PMA)

The PMA has been updated to include language regarding tenant payment by wire transfer, updated Owner Disclosures, removal of the arbitration clause, and indication of a signatory's representative capacity. These revisions and additions are similar to those in the Form LL, described above.

Probate Purchase Agreement and Joint Escrow Instructions (PPA) *

Paragraph 12(C) of the PPA has been added regarding an "Exempt Seller Disclosure" form. It indicates that seller shall provide the buyer with a completed Form ESD, identifying the disclosure required by contract and/or law. It is not okay to use previous versions of this form.

REO Advisory (REO) *

The REO seller compliance requirements have been updated to include Paragraph 1(G) regarding water-conserving plumbing fixtures. Paragraph 2 regarding potential seller exemptions has also been updated to include language that the seller does not have to provide certain forms, but must still comply with Paragraph 1, as well as statutory and contractual obligations. It is not okay to use prior versions of this form.

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Residential Listing Agreement (RLA)

The RLA has been amended to remove the arbitration clause, for the above-described reasons. There have also been minor revisions to language and formatting of the form.

Residential Listing Agreement – Agency (RLAA)

Paragraph 2, “Listing Price and Terms,” has been added to the form, as well as Paragraph 4 regarding “items to be excluded and included.” This latter section is also important because it allows the seller to list what he or she will be including and excluding in the sale (hopefully eliminating any confusion on the part of the buyer). There also a Paragraph 4(B) that indicates what items are leased or not owned by the seller, (i.e. solar power systems, alarm systems, propane tanks, water softeners), and what items have a lien for payment against them (e.g. heating/ventilation/air conditioning, solar power systems, windows/doors).

An additional section has been added to Paragraph 5, “Multiple Listing Service,” regarding MLS data on other internet sites, and the seller’s ability to opt-out of featuring the property on the internet or specific aspects of websites. Paragraph 7, “Broker’s and Seller’s Duties,” has been revised to include subparagraphs, further clarifying the duties listed. A paragraph has also been added referencing “Security, Insurance, Showings, Audio and Video,” (Paragraph 10), which indicates that the broker is not responsible should anything happen to the seller’s valuables and the seller agrees to take precautions to “safeguard and protect valuables.” Furthermore, the seller must disclose if there are surveillance cameras or security devices on the property that could constitute an invasion of privacy if persons visiting the property are not made aware of their existence.

Residential Listing Agreement – “Open” (RLAN)

The RLAN has been revised to include a section regarding items that are included and excluded from the sale, and items that are leased by the seller or have a lien for payment against them. (See the RLAA revisions above for more detail.) Paragraph 9, “Agency Relationships,” has also been reformatted regarding information about dual agency and the seller’s acknowledgement thereof. Other changes to the form include language regarding the disclosure of security devices that may record visitors to the property, the removal of the arbitration clause, and the addition of a paragraph acknowledging a signatory acting in representative capacity.

Single Party Compensation Agreement (SP)

Like many of the above-referenced forms, the SP has been revised to remove the arbitration clause. Language has also been added regarding additional mediation terms, specifically those matters excluded from mediation and arbitration, and an optional paragraph indicating a seller’s signatory acting in representative capacity.

Trust Advisory (TA) *

Seller’s compliance requirements in Paragraph 1 of the TA have been updated to include seller’s obligation to disclose “known material facts affecting the value and desirability of the property.” Subparagraph C has been added to indicate that the sale of the property is not exempt from smoke detector requirements, but it is between the buyer and seller as to who is to pay for the cost of compliance. Lastly, subparagraph G has been added regarding water conserving plumbing fixtures and seller’s obligation to disclose whether the property contains any non-complaint plumbing fixture. (C.A.R. Form WCMD is referred to for further information.)

Exemptions to seller’s required disclosures is revised in Paragraph 2, including (amongst other language), the caveat that “even exempt Sellers have statutory or contractual obligations to make certain disclosures and may, or is required by contract, to use an Exempt Seller Disclosure (C.A.R.

Form ESD) and is strongly encouraged to do so.” Please note that it is not okay to use previous versions of this form.

Vacant Land Listing Agreement (VLL) *

Paragraph 5 regarding the Multiple Listing Service has been revised to better clarify the MLS’ presence on the internet and the seller’s ability to opt-out of certain internet features. The paragraph regarding “Broker’s and Owner’s Duties” has also been revised to indicate that the owner agrees to indemnify the broker from any conflict arising out of “incorrect or incomplete information supplied by Owner, or from any material facts that Owner knows but fails to disclose including dangerous or hidden conditions of the property.” Similar to the RLAA, Paragraph 10 has been updated to include references to “Security, Insurance, Showings, Audio and Video,” broker’s responsibility (or lack thereof) for the seller’s personal belongings during showings, inspections, etc., and the owner’s responsibility to disclose the use of security devices.

As with the other listing agreements revised this time around, the VLL has had the arbitration clause removed and a section for representative capacity added. It is not okay to use prior versions of this form.

Exclusive Authorization for Vacation Rental (VRL)

The VRL, (aka “short-term occupancy listing agreement), has been updated to include the time period of the rental in Paragraph 2, “Listing Terms.” Paragraph 13, “Tax Withholding,” has also been added, which provides information regarding tax withholdings if the owner of the property is not a California resident or a corporation or LLC qualified to do business in California, or if the owner is a “nonresident alien individual, a foreign entity, or other non-U.S. person.” The dispute resolution section (Paragraph 23) has been revised to remove the arbitration clause, as with other listing agreements.

As per usual, this article only provides a brief overview of the new and revised forms release by C.A.R. this month. 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.

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