



Courtside *Newsletter*

C.A.R. to Release New Forms in November



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During the week of **November 24, 2014**, the California Association of REALTORS® has slated 13 new and 27 revised forms for release.

In this month's *Courtside Newsletter*, we are going to explore the new forms that C.A.R. will be issuing in November. Many of these forms are necessary and support the changes to the Residential Purchase Agreement (RPA).

New Forms

Assignment of Agreement (AOAA)

The AOAA is an addendum to a Purchase Agreement, such as the California Residential Purchase Agreement, stating in pertinent part:

"...Seller agrees that Buyer may assign all or a partial interest of Buyer's right, title, and interest under the Agreement, including without limitation, the right, title, and interest in any down payment or earnest money upon... [conditions set forth on the form]"

Buyer may partially or totally assign his or her interest in the Purchase Agreement to an assignee, who is named on the form. The form also acknowledges that the Assignee will sign and return to Seller any prior documents provided to Buyer, including all contract documents, inspection reports, pamphlets, advisories, and disclosures. The Buyer and Assignee sign the form, and the Seller's signature consents to the assignment.

Buyer Counter Offer (BCO) Seller Counter Offer (SCO)

The C.A.R. Counter Offer form previously used when either the buyer or the seller made a counter offer has been replaced by two separate Counter Offer forms. These forms specifically address which party is making the Counter Offer, the offer number, and contain a space for acceptance of the counter offer. However, it is important to note that these forms should not be used in the event that the Seller is making a multiple counter offer. If that occurs, the seller should use the C.A.R. Seller Multiple Counter Offer Form (SMCO), which was released in November 2013.

Buyer Demand for Release of Deposit (BDRD)

As a result of the changes to the Residential Purchase Agreement, the BDRD has been created for use when the Seller will not sign the form releasing the deposit, but Buyer has legitimate grounds for the return of the deposit. The form requires that the Buyer first submit to the seller a Cancellation of Contract, Release of Deposit and Joint Escrow Instructions form (C.A.R. Form CC). The Seller will have 10 days after the Escrow Holder's notice to object to the release of the deposit back to Buyer.

Seller Demand for Release of Deposit (SDRD)

This form is similar to the Buyer Demand for Release of Deposit (BDRD), described above. However, the SDRD is used when

the Seller is demanding the deposit be released to him or her, but the Buyer will not comply. The same requirements apply in this instance as when the Buyer is demanding the deposit: a Cancellation of Contract, Release of Deposit and Joint Escrow Instructions must be sent to the Buyer, and the Buyer will have 10 days after the Escrow Holder's notice to object to the release of the deposit to the Seller.

Charges for Required Documents (HOA2)

Pursuant to California Civil Code (CC) Section 4525, a Homeowners Association (HOA) must provide an owner with specific documents outlined in the Code within 10 days of an owner's request. Pursuant to CC Section 4530(b)(1), "The association may collect a reasonable fee based upon the association's actual cost for the procurement, preparation, reproduction, and delivery of the documents requested..." The law now requires that the Seller pay the HOA fees for producing these documents. C.A.R.'s HOA2 form itemizes these charges and indicates whether the document is attached, not available (n/a), not applicable (n/app) or if it was directly provided to the Seller and confirmed in writing by the Seller as a current document (DP). Both the Buyer and the Seller must sign the form, and it does not cover any additional fees that are not related to the requirements of Section 4525. HOA2 also includes the statement that "broker(s) have not and will not review the documents provided."

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Charges for other HOA Documents (HOA3)

HOA3 covers those “other documents” that are not required by Civil Code Section 4525, but are nonetheless required by the Purchase Agreement. These are the documents for which either the Buyer or Seller may pay the HOA fee for producing. Amongst those documents are:

- Name of contact information of other HOAs governing the property;
- Pending or anticipated claims or litigation by or against HOA;
- Number of designated parking spaces;
- Location of parking spaces;
- Number of designated storage spaces;
- Location of storage spaces;
- Private Transfer Fees and/or Taxes;
- Pet restrictions;
- Smoking restrictions; and
- Any other documents required by law.

Similar to HOA2, HOA3 itemizes the charges and indicates whether the document is attached, not available (n/a), not applicable (n/app) or if it was directly provided to the Seller and confirmed in writing by the Seller as a current document (DP). Both the Buyer and the Seller must sign the form.

Possible Representation of More than One Buyer or Seller (PRBS)

This form replaces the C.A.R. Disclosure and Consent for Representation of More than One Buyer or Seller (Form DA), so as not to be confused with the Agency Disclosure (Form AD). The PRBS alerts the Buyer and Seller to the possibility that the brokerage firm may represent other principals that might compete against them.

As stated on the PRBS, a real estate broker may represent more than one buyer or seller “through an individual licensed as a broker or salesperson or through different individual broker’s or salespersons (associate licensees) acting under the Broker’s license.” By signing this form, the “Buyer and seller understand that Broker may represent more than one buyer or more than one seller and even both buyer and seller on the same transaction and

consents to such relationships.” Ultimately, Buyer and Seller would be agreeing to a dual agency relationship within the brokerage.

Possible Representation of More than One Buyer (PRMB)

The PRMB alerts Buyers that the brokerage may be working with other buyers who may be interested in the same properties as Buyer. The form states that “Broker will not limit or restrict any particular buyer form making an offer on any particular property whether or not Broker represents other buyers interested in the same property.”

The form also causes the Buyer to acknowledge that the Broker “may represent sellers of property that Buyer is interested in acquiring. As a result, the Buyer “consents to Broker acting as a dual agent for both Buyer and Seller with regard to that property.” This form can be used at the time the Buyer Representation Agreement is entered into.

Possible Representation of More than One Seller (PRMS)

The PRMS alerts Sellers that the brokerage may represent other sellers who properties may appeal to the same sort of buyers. The form also discloses the fact that the brokerage may represent prospective buyers of Seller’s property, and Seller consents to the brokerage acting as a dual agent to both Seller and Buyer. This can be used at the time the Listing Agreement is entered into.

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

The new RRRR has been separated from the C.A.R. Request for Repair form. Utilizing this form, the Seller will be able to respond to the Buyer’s request, agreeing to all, some, or none of the repairs. Seller can also stipulate to the repairs pursuant to the removal of certain contingencies, and a release from “any loss, liability, expense, claim, or cause of action regarding the disclosed condition of the property.”

The “Buyer Reply to Seller Response” is also contained on this form, and includes the ability for buyer to withdraw the Request for Repair and make a new Request.

Seller’s Purchase of Replacement Property (SPRP)

This form contains the language that has been separated from the Contingency for Sale or Purchase of Other Property form (C.A.R. Form COP). Seller creates the contingency to allow time for Seller to find, and potentially close escrow on, a replacement property.

Text Overflow Addendum (TOAD)

This form has been created as an addendum to the Purchase Agreement, in the event that there is not enough space on the RPA to include all relevant terms. 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 new TOAD form.

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As noted above, C.A.R. will also be releasing numerous revised forms, including the Residential Purchase Agreement, in late November. Our November *Courtside Newsletter* will touch upon those. In the meantime, 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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