



Courtside *Newsletter*

California Association of REALTORS® to

Release New Forms in June



BY: KELLY A. NEAVEL, ATTORNEY AT LAW
CASEY MCINTOSH, PARALEGAL

The California Association of REALTORS® (C.A.R.) will release two (2) new and nine (9) revised forms during the week of **June 27, 2016**. In this month's Courtside Newsletter, we will explore the new forms, their significance, and the revisions to existing forms.

NEW FORMS

1. Seller Agricultural Land Supplementary Questionnaire (SALSQ) This new form serves to supplement the Seller Property Questionnaire with a focus on agricultural land. Section II explains in no uncertain terms that the contents of the form consist of representations made by the Broker: "Unless otherwise specified in writing, Broker and any real estate licensee or other person working with or through Broker have not verified information provided by Seller. A real estate broker is qualified to advise on real estate transactions. If Seller or Buyer desire legal advice, they should consult an attorney."

The form also allows for "Seller Awareness" (Section V), allotting "Explanation" spaces after each section. The seller is also encouraged to attach any documentation regarding the disclosures, "regardless of when such documentation was originated" (Section VI). The form includes disclosures regarding the following and has a space for buyer acknowledgment at the end:

- "Geological Condition and Environmental Hazards;"
 - "Governmental" disclosures,
 - "Water-Related Issues;"
 - "Utilities and Services;"
 - "Landscaping, Agriculture, Structures or Other Improvements;"
 - "Title, Ownership, and Other Legal Claims;" and
 - "Disaster Relief, Insurance or Civil Settlement."
2. Wire Fraud Advisory (WFA) After seeing an increase in wire transfer fraud targeting the real estate industry, C.A.R. has

included a Wire Fraud Advisory form in its repertoire of forms to provide buyers and sellers. Per C.A.R., the WFA is "an advisory...regarding the need to exercise extreme caution when using wire transfers of funds and also some practical suggestions for safeguarding their transactions and private information." Among the precautions suggested is the advice to:

- Obtain the phone numbers of the escrow company and bank officers early on in the transaction;
- Always call the escrow company or bank to confirm escrow instructions; and,
- Never rely on a telephone number provided in the wiring instructions.

C.A.R. recommends making the WFA a part of the listing package provided to buyers and sellers. This sort of fraud can allow criminals access to buyer's and seller's email accounts, personal information, and bank routing numbers, enabling them to redirect funds into the criminals' accounts. It should not be taken lightly.

REVISED FORMS

3. Agricultural Addendum (AGAD) Paragraph 1E of the Agricultural Addendum has been updated to reference the Seller Agricultural Land Supplementary Questionnaire (SALSQ). The form now indicates that the seller will complete and provide the buyer with Form SALSQ "in addition to any Seller property questionnaire that may be required by the [Purchase] Agreement." This revised language removes any reference to the Vacant Land Questionnaire to avoid duplication. Paragraph 2 of the form has also been updated to encourage the buyer to "investigate" matters that may affect the buyer's decision to purchase property, such as zoning and land use (Paragraph 2B), environmental hazards (Paragraph 2D), neighborhood, area and property conditions (Paragraph 2H), or owner associations in Common Interest Subdivisions (Paragraph 2I).

Continued ...

4. Contingency for Sale of Buyer’s Property (COP) Paragraphs 7A and 7B of the COP have been added regarding Time Periods and Buyers Deposits, respectively. Specifically, Paragraph 7A “Time Periods” states:

Time periods in the Agreement for inspections, contingencies, covenants, and other obligations shall begin as specified in the Agreement, or on the Day After Buyer Delivers to Seller any of the following: (i) Escrow Evidence for Buyer's Property, or (ii) Buyer's election in writing, signed by Buyer, to begin time periods, or (iii) Buyer's removal of this contingency for the sale of Buyer's Property.

Paragraph 7B “Buyer’s Deposit” includes similar language, stating:

Buyer's deposit shall be delivered to escrow within the lime specified in the Agreement or within 3 business Days After Buyer Delivers to Seller any of the following: (i) Escrow Evidence for Buyer's Property, or (ii) Buyer's election in writing, signed by Buyer, to begin time periods, or (iii) Buyer's removal of this contingency for the sale of Buyer's Property.

Language has also been added regarding the seller’s right to cancel (Paragraph 5) after giving the buyer a Notice to Buyer to Perform. Lastly, below the signatures, a section entitled “Notice to Remove Contingencies” has been added, allowing the seller to give the buyer notice that contingencies are being removed and the actions specified in Paragraph 8A (“Immediate Right to Notify Buyer to Remove Sale of Property Contingency”) are being taken.

5. Lease/Rental Mold and Ventilation Addendum (LRM) The signature lines have been changed to include two for tenants and two for landlords.
6. Representative Capacity Signature Disclosure (For Buyer Representatives (RCSD-B))
7. Representative Capacity Signature Disclosure (For Seller Representatives (RCSD-S))

Per C.A.R., the Representative Capacity Signature Disclosures for both buyer and seller have been reformatted to “make the form easier to understand where the entity names should be inserted, where signatures should occur, and who or what should be identified for each.” Language has been added to indicate that the purpose of the form is “to identify who the principal is in the transaction and who has authority to sign documents on behalf of the principal.” If the buyer is a trust, the trustee and co-trustees will be identified as the buyer, and the full name of the trust will be included on the form. If the signatory is a power of attorney,

the principal will be listed as the buyer. It is important to remind clients that this form does not create a Power of Attorney. A Power of Attorney must have been created prior to signing the form.

8. Seller’s Purchase of Replacement Property (SPRP) This form has been updated so that the default time for buyer’s performance of covenants, contingencies and other obligations is delayed until after the seller removes the contingencies. Paragraph 2B has also been added regarding “Buyer’s Deposit,” indicating that “Buyer's deposit shall be delivered to escrow within 3 business Days After Seller delivers to Buyer a written notice removing the Finding replacement Property Contingency as specified in paragraph 1 A or as specified in the [Purchase] Agreement.” The form also reflects the potential for two contingencies: “One for seller entering into contract to acquire another property and another for seller closing escrow on another property.”
9. Contingency Removal (CR) Section II of the Contingency Removal has been updated to reflect the above-referenced changes in the Seller’s Purchase of Replacement Property (SPRP), specifically the two potential contingencies.
10. Notice to Seller to Perform (NSP) The format of this form has been changed to identify the two potential contingencies of finding a replacement property and closing escrow on a replacement property. Doing so allows the form to stay consistent with the changes in the Seller’s Purchase of Replacement Property (SPRP).
11. Text Overflow Addendum (TOA) The TOA has been updated to clarify the property and the form that it is referring to. For example, it now says, “The foregoing terms and conditions are hereby incorporated in and made a part of the paragraph(s) referred to in the document to which this TOA is attached.”

* * *

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.

Check out The Giardinelli Law Group, APC online for more articles and our schedule of classes and seminars!

www.glawgroupapc.com

This Newsletter is a copyrighted publication and may not be reproduced or transmitted in any form or by any means without written permission. This article does not necessarily reflect the point of view of The Giardinelli Law Group, APC, or other person or entity who publishes it. This article provides legal information abridged from statutes, court decisions, and administrative rulings and contains opinions of the writers. Legal information is not the same as legal advice, which is the application of law to an individual’s specific circumstances. Although every effort is made to ensure the information is accurate and useful, it is recommended that you consult with a lawyer to obtain professional assurance that the information provided and your interpretation of it is appropriate for a particular situation. To request further information or to comment on this newsletter, contact us at (951) 244-1856 and visit our website at www.glawgroupapc.com.