



Courtside *Newsletter*

C.A.R. New & Revised Forms to Be Released in June



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The California Association of REALTORS® (C.A.R.) will release three (3) new and eight (8) revised forms on or about June 25, 2018. In this month's *Courtside Newsletter*, we will explore the new forms, their significance, and the revisions to existing forms.

NEW FORMS

1. Buyer Homeowner Association Advisory (BHAA)

The Buyer Homeowner Association Advisory (BHAA) is a new form created by C.A.R. to assist brokers and agents in advising prospective purchasers of a home in a common interest development (CID), which is a homeowner's or condo association. Civil Code (CC) Section 4525 requires sellers to provide buyers with the governing, financial and other documents maintained by the homeowners association (HOA). However, as the form states, "these documents can be quite lengthy, causing buyers not to take the time to make a careful review of all HOA materials." This can be problematic when the Covenants, Conditions, and Restrictions (CC&Rs), Rules and Regulations, or other documents place limits on or affect what homeowners can or cannot do with their property. To that end, the BHAA outlines the documents that buyers should pay specific attention to, such as:

- CC&Rs
- Rules and Regulations
- Minutes
- Financial information
 - The HOA's reserves are something to take note of since "the financial status of the HOA could impact the future costs of owning the property." An accountant can also review these documents to give a professional assessment of the financial health of the HOA.
- Rental restrictions
- Lending considerations
- Noise
- Common areas
- Parking and storage
- Litigation
 - Many CIDs get caught up in litigation regarding the development. Litigating can be a costly endeavor that could impact the financial future of the HOA.
- Special needs

Paragraph 12, "Brokers," offers the caveat that the real estate licensee who forwarded the HOA information to the buyer has not and will not independently verify the accuracy of the documentation.

Ultimately, it is important for buyers to realize the full extent of what it means to live in a planned community under the rules of a HOA. If necessary, the buyer should consult qualified professionals to review and interpret the documentation provided, to ensure the buyer knows exactly what they are buying into.

2. Disclosure Information Advisory (DIA)

Disclosures are always a hot topic in real estate. Costly litigation can arise from failure to disclose, either willfully or negligently. As a result, C.A.R. created the Disclosure Information Advisory (DIA) for REALTORS® to provide to sellers prior to completing the required disclosure forms. The advisory discusses how to prepare to complete the disclosure form and then goes into how to complete the forms. It specifically discusses the Real Estate Transfer Disclosure Statement (TDS), Seller Property Questionnaire (SPQ), and the Exempt Seller Disclosure (ESD). It is recommended that the seller contact a qualified real estate attorney should he have any questions regarding a disclosure or the applicability of a law to the property. The form closes with the statement, "When in doubt, the best answer to the question: 'Do I need to disclose...?' is almost always 'YES, disclose it.'"

3. Tenant Flood Hazard Disclosure (TFHD)

The Tenant Flood Hazard Disclosure (TFHD) is intended to be incorporated into the Residential Lease or Month-to-Month Rental Agreement (LR). According to C.A.R., "In every residential lease or rental agreement entered into after July 1, 2018, the landlord or agent must disclose certain information regarding flood hazards including the landlord's 'actual knowledge.'" The TFHD does so, as well as informs the tenant that the owner's insurance does not cover the tenant's personal possessions in the event of a flood. It also references resources the tenant can consult for additional information, such as the Office of Emergency Services' "My Hazards Tool" online.

REVISED FORMS

4. Cancellation of Listing (COL)

The Cancellation of Listing (COL) form has been revised to allow a broker additional means of compensation should a listing be cancelled. With this revision, the broker now has the option to state that the principal will pay the broker the amount in the Listing Agreement either if the principal contracts to transfer the property prior to the end of the listing period and/or if within a certain amount of time after the cancellation or the listing period, the principal enters into a contract to transfer the property to a person named in the subsequent lines. (The "listing period" is specified in the Listing Agreement.) It is ok to use prior versions of this form.

Continued ...

5. Lease/Rental Commission Agreement (LCA)

The Lease/Rental Commission Agreement now allows for either the landlord or the tenant to pay the broker's commission. It has likewise been updated to reflect either the landlord or the tenant's signature(s) on the form. It is ok to use prior versions of this form.

6. Lease Listing Agreement (LL)

Paragraph F has been added to the Lease Listing Agreement, advising the owner of the rental property of the broker policy regarding cooperation with other brokers and the amount of compensation offered to cooperating brokers. Subparagraph 2 indicates that the broker is authorized to cooperate with and compensate brokers operating outside of the MLS. Paragraph K, "Water Conserving Plumbing Fixtures," has been revised to indicate whether the property was built on or after January 1, 1994 and, if it was built after, whether the owner has installed water conserving plumbing fixtures pursuant to CC Section 1101.1, et seq. It is ok to use prior versions of this form.

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

Paragraph 11, "Maintenance Use and Reporting," of the Residential Lease or Month-to-Month Rental Agreement has been revised to indicate that the tenant will be responsible for replacing any burned out or malfunctioning lightbulbs. Paragraph 38, "Statutory Disclosures," has also been added for the landlord/owner to indicate where there are any disclosures the tenant should be aware of. Included in those are:

- Lead-based paint notification, if the property was constructed prior to 1978;
- Whether the landlord has a contract for periodic pest control, or if the tenant is responsible for pest control;
- Methamphetamine contamination;
- Landlord's acknowledgement that he has no knowledge of any bed bug infestations on the premises;
- Megan's Law database disclosure;
- Tenant's receipt of the environmental hazards booklet;
- Whether the premises are within one mile of an area once used for military training; and,
- Whether the premises are subject to flooding. Landlord will provide the above-referenced C.A.R. Form Tenant Flood Hazard Disclosure (TFHD) with further information, if so.

Please note that it is not ok to use prior versions of this form.

8. Residential Lease After Sale (RLAS)

Much like C.A.R. Form LR, the Residential Lease After Sale (RLAS) has been revised to reflect that the tenant is responsible for replacing burned out or malfunctioning lightbulbs, as well as for checking the carbon monoxide detectors (Paragraph 11A). The section for "Statutory Disclosures" has also been added as Paragraph 22. It is not ok to use prior versions of this form.

9. Application to Rent/Screening Fee (LRA)

The Application to Rent/Screening Fee (LRA) has been revised to distinguish pets from service animals (Paragraph 3G) and adds a parenthetical in Paragraph M regarding felony convictions that, after a credit review, the landlord may consider the nature of the conviction and the amount of time since it occurred. Section II, "Screening Fee," now also provides a section under Paragraph 2 for the applicant to submit the screening information and fee to the landlord's screening service. It is not ok to use prior versions of this form.

10. Statewide Buyer and Seller Advisory (SBSA)

According to C.A.R., the Statewide Buyer and Seller Advisory (SBSA) has been "extensively reorganized to present the information in a more orderly and cohesive format and includes a table of contents." It now contains paragraphs advising the seller to seek "legal, tax, and other assistance from appropriate professionals to fully understand the implications of any documents or actions during the transaction." Additionally, SBSA supplies the disclaimer that the broker has not and will not verify any information in the reports or other documents provided unless otherwise specified.

Under Section A, "Investigation of Physical Conditions," Paragraph 2 notifies the seller regarding the potential for additional requirements for underground storage tanks, including inspections or abatement. Paragraph 10, "Square Footage, Lot Size, Boundaries and Surveys," states that the buyer should conduct his own investigation regarding the exact square footage or lot size through appropriate professionals, as brokers do not have that expertise and standard title insurance does not insure the boundaries of the property.

Section B, "Property Use and Ownership," now contains a paragraph regarding Accessory Dwelling Units (ADUs). Paragraph 3, "Buyer Intended Future Use," has also been added regarding changing the use of the property and the need for the buyer to confer with the appropriate government agencies to do so. Paragraph 10, "Marijuana Cannabis and Methamphetamine Labs," has been updated to include a sentence on the legal recreational use of marijuana for adults. Additionally, Paragraph 14 has also been added regarding "Short Term Rentals and Restrictions," which states that some cities, counties and HOAs may impose restrictions on short-term rentals. It also advises the buyer and seller to seek assistance to ensure compliance with fair housing laws and regulation.

Under Section F, "Other Factors Affecting Property," Paragraph 6 regarding marketing has been revised to indicate that the broker may use a staging company to prepare the property for sale, but that those furnishings are not included in the sale unless otherwise noted in the purchase contract. It is ok to use prior versions of this form.

11. Seller Property Questionnaire (SPQ)

The Seller Property Questionnaire (SPQ) has been updated to clarify the lead-based paint disclosure is under "Seller Awareness; Repairs and Alterations" (Section V, Paragraph B). It is ok to use prior versions of this form.

The above-referenced forms, as well as the entire C.A.R. Form Library, are also updating any reference to the California Bureau of Real Estate (CalBRE) to the California Department of Real Estate (DRE). Effective July 1, 2018, CalBRE will once again be known as the DRE.

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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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