



Courtside *Newsletter*

C.A.R. New and Revised Forms

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Recently, the California Association of REALTORS® (C.A.R.) released eight new forms, whilst revising six others. In this *Courtside Newsletter*, we will delve into these forms and what real estate practitioners should be on the lookout for in future transactions.

New Forms

Agent Commission Sharing Agreement (ACS)

The Agent Commission Sharing Agreement is optional and was created for the purpose of documenting a contractual relationship between associate-licensees who agree to share commissions on transactions. Some of the more important aspects of this form include listing the involved parties, the terms and scope of the agreement, the handling of compensation, and dispute resolution. This form can be used as a method of enforcement and protection for agents. It should not be used for referral fee agreements.

Water-Conserving Plumbing Fixtures and Carbon Monoxide Detector Notice (WCMD)

As of January 1, 2017, California Civil Code (CC) § 1101.4(b) requires all noncompliant plumbing fixtures in any single-family residential home to be replaced with water-conserving fixtures. Additionally, CC § 1101.4(c) requires the seller or transferor of a single-family residential real property to disclose in writing to the prospective purchasers or transferees that all fixtures are required to be water-conserving, and whether any fixtures are noncompliant.

The WCMD modifies the existing Carbon Monoxide Detector Notice to include the requirement language about water-conserving devices. The notice points out that the installation of water-conserving plumbing fixtures is not a point-of-sale requirement, but disclosure of whether the property contains noncompliant fixtures is. Proper disclosures can be made to prospective purchasers through C.A.R. forms, two of which are amongst the recent C.A.R. revisions:

- **Transfer Disclosure Statement:** The TDS indicates that “installation of a listed appliance, device, or amenity is not a precondition of sale or transfer of the dwelling.”
- **Revised Form:** Seller Property Questionnaire: The SPQ has been revised to include under Section II disclosure regarding knowledge of noncompliant fixtures, and provide a disclaimer stating that such disclosures do not create a warranty by the Seller as to the fixtures. Prior versions of this

form cannot be used. Additional updates to this form include:

- Paragraph V(A)(11) has been added to the questionnaire regarding “Seller Awareness” asking if the seller is aware of any non-compliant plumbing fixtures as defined by Civil Code § 1101.3.
- Paragraph L(9) has been added asking whether the seller is aware of “any water surcharges or penalties being imposed by a public or private water supplier, agency or utility; or restrictions or prohibitions on wells or other ground water supplies.”
- **Revised Form:** Exempt Seller Disclosure: For use when properties are TDS-exempt, the ESD has been revised to include language regarding water-conserving plumbing fixture requirements under Paragraph 2(B)

The WCMD also contains language regarding what constitutes a noncompliant water fixture (per CC § 1011.3) and advises the buyer and seller to consult with their home inspector to determine compliance. A noncompliant fixture would be:

- 1) A toilet that uses more than 1.6 gallons of water per flush.
- 2) A urinal that uses more than one (1) gallon of water per flush.
- 3) A showerhead that has a flow capacity of more than 2.5 gallons of water per minute.
- 4) An interior faucet that emits more than 2.2 gallons of water per minute.

Buyer Early Occupancy Addendum (BEO)

The BEO is an addendum to the Purchase Agreement, and creates a contract between buyer and seller for use when the buyer moves into the seller’s property prior to the close of escrow. The form defines the how long the buyer may have possession, which will terminate at the close of escrow. It also covers what buyer will pay seller to remain on the property, payment of utilities for the term of possession, maintenance, disallowance of subletting, and insurance. Additionally, there is language that brokers do not recommend early occupancy, and that the broker has advised the buyer and seller to seek qualified legal counsel regarding this agreement.

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Commercial Lease Construction Accessibility (CLCA)

The CLCA is an addendum to a Commercial Lease Agreement, replacing paragraph 34 with the text of this form. Specifically, it covers construction-related accessibility standards and whether the property has been inspected by a Certified Access Specialist (CASp). The landlord should indicate whether the property was inspected by a CASp and found to meet all construction-related accessibility standards pursuant to Civil Code § 55.53. The landlord shall also provide a copy of the report and any certificates, such as the disability access inspection certificate, within at least 48 hours of the execution of the lease. If the report is not provided or the tenant rejects the contents of the report, the tenant can rescind execution of the lease based upon the timelines stated in form.

Representative Capacity Signature Disclosure (For Landlord Representatives) (RCSD-LL)**Representative Capacity Signature Disclosure (For Tenant Representatives) (RCSD-T)**

Per C.A.R., these forms accommodate signatures for when the landlord or the tenant is an entity. The forms serve as disclosures to a lease, listing agreement, property management agreement or other agreement. The landlord or tenant may be:

- A trust, in which case the landlord or tenant will be listed as the trustee of the trust.
- Corporation/Limited Liability Company (LLC)/Partnership/“Other” in which case the authorized officer will sign the form.
- Power of Attorney (It is important to note that this form does not create a Power of Attorney.)
- Conservatorship/Guardianship, and the signatory is the court-approved representative.
- Estate is also an option, but it is only listed on the RCSD-LL.

These entities should already be created/entered into at the time the form is signed.

Summary of Offer (RPA) (SUM-RPA)

The SUM-RPA is a chart that can be included at the listing broker’s request. It includes the terms of the purchase, such as:

- Price (and whether the offer is all cash)
- Initial deposit
- Increased deposit
- Loan amount(s)
- Close of escrow
- Possession date
- Loan contingency removal
- Appraisal contingency removal
- Buyer investigation contingency
- Sale of Buyer’s property contingency
- Items included with sale (e.g. stove, refrigerator, washer/dryer)
- Items to be manually entered on the purchase agreement.

The chart also indicates where on the Residential Purchase Agreement the terms can be found. It also contains the caveat that the buyer and seller should review the actual offer in detail.

Summary of Multiple Offers (SUM-MO)

The SUM-MO allows sellers to track up to five (5) offers on a chart, for purposes of comparison. It follows the same format and terms of the Summary of Offer (above). This form is something that a listing agent can complete for the seller, adding any terms that might be significant. There is also a disclaimer on the form, stating that it does not contain the material terms of the offers, and each offer should be reviewed by the seller in detail.

Revised Forms**Option (To Buy) Agreement (OA)**

Per C.A.R., language has been added indicating that the lease stays in effect even if the option to buy is not exercised. Paragraph 2(C) has been added, stating “If the Option is not exercised, the Lease shall remain in full force and effect.” An additional line has been added to Paragraph 7 to indicate that the optionee has already been provided with the forms listed in 7(1), except what the optionee specifies in the blank space provided.

Notice to Perform Covenant (Cure) or Quit (PCQ)**Notice to Pay Rent or Quit (PRQ)**

Language has been added to the PCQ and PRQ to specify to whom the check, money order, draft or instrument should be made payable, and to whom rent should be delivered. It is not ok to use previous versions of this form.

Seller License to Remain in Possession Addendum (SIP)

The SIP is an addendum to the Purchase Agreement or Counter Offer and is “intended to grant Seller a license to remain possession of, and use, the Property after the Close of Escrow.” This language has been added to clarify that the buyer is not granting a tenancy and indicates protections for the buyer in the event the property is not delivered in the condition specified in the agreement. Paragraph 2, “Consideration,” subparagraph A now states that Seller agrees to pay Buyer a “License Fee” in order to remain in possession after the close of escrow. Paragraph 3, “Seller’s Obligations for Condition of Property,” subparagraph C states, “in addition to the license fee..., Seller agrees to deposit with escrow holder, or such fund shall be withheld from Seller’s proceeds, a Delivery of Possession fee.” At the close of escrow, that fee would go to the buyer to be returned to the seller if/when the property is delivered to the buyer pursuant to the terms of the agreement.

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.