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LAWYERS & ADVISORS

## Courtside *Real Estate*

### Courtside Real Estate Newsletter: June 2019 New and Revised Forms



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Recently, the California Association of REALTORS® (C.A.R.) released its list of proposed new and revised forms scheduled for release in June 2019. This list includes three new forms and thirteen revised forms. This *Courtside Newsletter* will discuss what real estate practitioners should be aware of in using the forms for future transactions. Much of the information relating to these forms was obtained from C.A.R.

#### New Forms:

##### Purchase Agreement Probate Addendum (PAPA)

The new PAPA Form incorporates the Representative Capacity Signature Disclosure (RCSD-S Form) and provides the determination of the type of probate attached to the property and describes when court confirmation is necessary. It also explains when the sale is contingent upon court confirmation and provides notice requirements. The PAPA form states that the purchase price of the offer must be at least 90% of the probate referees' appraised or reappraised value of the property. This requirement withstands unless the property is exempt and allows for the removal of contingencies. The PAPA form can be used as an addendum to any purchase agreement for any type of property being sold through probate.

##### Photo and Video Release (PVR)

This form provides a general release for use of photos, videos, likeness, audio, graphics, electric recordings, or other images ("images") related to a listing and offers protection to a real estate licensee's use of images for marketing of property, as well as promotion of real estate licensees and their business. By signing the release, the signatory releases all rights, claims, demands, and causes of actions that they may have related to the ownership of those images. C.A.R. highly recommends the use of this form to protect real estate licensees from copyright infringement claims.

##### Wild Fire Advisory (WDEA)

Following California's recent and devastating wildfires, the new WDEA Form addresses major concerns and issues relating to the buying or renting of property in wild fire areas. The major concerns and issues addressed include: lot clearing costs; toxic material analysis; debris removal requirements; regulatory cleanup and building approvals; air quality; timelines for obtaining permits and costs; utilities installation; insurance related issues; availability and access to electricity, gas, sewer and other public and private utility services; water delivery; septic/sewer design; redesign of streets and infrastructure; inconvenience and delays due to road

construction; unavailability of various goods, systems or services; and impact federal, state or local disaster declarations may have on material costs. A buyer or lessee is advised to investigate all concerns surrounding the property. The form provides information for further resources. In signing this form, buyer(s)/lessee(s) acknowledge that the real estate agents and brokers involved have no authority or expertise to provide guidance relating to the concerns provided above.

#### Proposed Revised Forms:

##### Seller's Affidavit of Nonforeign Status (AS)

The revised Seller's Affidavit of Nonforeign Status form (also referred to as FIRPTA) accommodates and clarifies the procedure where a qualified substitute can obtain a seller's tax information without also having to put that information into the AS Form provided to buyer. It also better protects the seller's personal information, such as the social security number. C.A.R. does not recommend using the prior version of this form in future real estate transactions.

##### Agent Visual Inspection Disclosure (AVID)

A minor change has been added to the AVID form that allows for a new optional checkbox to reference an addendum, if needed.

##### Buyer's Inspection Elections (BIE)

New language added to the BIE explains that the intended use of this form is between the buyer and the broker. The BIE is not a contractual document between a buyer and seller. New language has also been added to the BIE allowing a buyer to select to change inspection elections during the buyer's investigation period. A buyer should be instructed that he or she could lose inspection rights if the BIE form is not completed in a timely manner. The BIE states that a buyer has an affirmative duty to exercise reasonable care to investigate and verify information relating to the property. This form can be a valuable tool for agents by documenting a buyer's ability and option to conduct additional inspections on a property within the contractual investigation period.

##### Buyer's Inspection Waiver (BIW)

Similar to the BIE, language has been added to the BIW explaining that the intended use of the form is between the buyer and the broker. The BIW should be used when the buyer chooses not to conduct additional inspections despite the recommendation of the brokers. The BIW is not

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a contractual document between a buyer and seller. Further, language has been added to clarify that the buyer has the ability to waive additional investigation that may have been recommended by other reports. This form can also be a valuable tool for agents and brokers in managing potential risks.

#### Buyer (or Tenants) Non-Agency Agreement (BNA)

The BNA form is used to notify a buyer that the listing broker is not the buyer's agent even where listing broker performs services to facilitate the transaction. This form contains language which allows the form to be used by tenants as well as buyers. The new form removed the language that limited the statutory agency compliance of one year, to properties with five or more residential dwelling units.

#### Modification of Listing, Buyer Representation or Other Agreement Between Principal and Broker (MT)

The MT is used to modify the terms of a listing agreement. C.A.R. has revised the title of the MT form to make it easier to locate the form in zipForms®. Additionally, the form added a notice stating that “the amount or rate of the real estate commission is not fixed by law.” It reinforces that commissions are set by each broker individually and may be negotiated between the seller and the buyer. The provision regarding commission negotiability is to assure enforceability of an increase in compensation. C.A.R. does not recommend using the prior version of this form in future real estate transactions.

#### Notice of Termination of Tenancy (NTT)

The NTT gives month-to-month tenants notice that tenancy is coming to an end. It further indicates that while a landlord is obligated to give 60 days' notice to terminate a periodic tenancy, if a tenant has resided in the property for less than a year, or if the buyer intends to live in the property, 30 days' notice may be given to a tenant. The language of the NTT Form has been modified to clarify the distinction between the use of a 30, 60, or 90 days' notice. The “delivery” section was also modified to assure that required steps for substituted service and post/mail service are complied with. C.A.R. does not recommend using the prior version of this form in future real estate transactions.

#### Buyer Pre-Occupancy Storage Addendum (POSA)

The POSA form is an addendum to the purchase agreement, counter-offer, and another form of agreement between the parties. It is intended for short-term pre-occupancy storage, by the buyer, of the buyer's personal property, on the purchase property, prior to the close of escrow. Due to the increased liability that may be involved with this type of situation, language has been added to the POSA Form making a buyer obligated to pay for damages caused to both the seller's real and personal property. C.A.R. does not recommend using the prior version of this form in future real estate transactions.

#### Representative Capacity Signature Disclosure (for Buyer Representatives (RCSD-B))

The RCSD-B is used to identify who the principal is in the transaction and who has authority to sign documents on behalf of the principal. The RCSD-B now contains added language allowing for when a buyer is a representative of the probate court. The form now includes whether the buyer is a conservatorship or guardianship identified by a Superior Court case.

Additionally, the form has been reformatted so that it only requires one signature from the representative. This reformatting has also been made to:

- Representative Capacity Signature Disclosure (for Landlord Representatives (RCSD-LL));
- Representative Capacity Signature Disclosure (for Seller Representatives (RCSD-S)); and
- Representative Capacity Signature Disclosure (for Tenant Representatives (RCSD-T)).

#### Receipt for Reports (RFR)

The RFR form is used to document the receipt of certain reports that are generated as a result of the transaction, and is used to document a receipt of certain reports that may have been in seller's possession before the transaction began. A paragraph added to the RFR allows for tenant estoppel certificates.

#### Seller (or Landlord) Non-Agency Agreement (SNA)

The SNA form is used to notify a seller that the selling broker is not the seller's agent even when the selling broker performs services to facilitate the transaction. This form assists in protecting the selling broker from implied agency. The SNA form has been revised so that the form applies to landlords as well as sellers.

#### Trust Advisory (TA)

The TA Form has been reformatted so that the trustee need only sign once even if the form is used for listing and purchase agreement. Language has also been added for Carbon Monoxide devices, stating that the sale of the property is not exempt from the state requirement that mandates: on or before July 1, 2011, for all existing single family dwelling units, and on or before January 1, 2013, for all other existing dwelling units, the owner must install a carbon monoxide device approved and listed by the State Fire Marshall if a dwelling unit has a fossil fuel burning heater or appliance, fireplace, or attached garage.

#### Tenant in Possession Addendum (TIP)

The TIP form is an addendum to a purchase agreement or counter offer and can be used when a buyer purchases a property subject to the rights of existing tenants. New language has been added to the TIP Form which provides a buyer with the right to prevent a seller from making proposed changes to leases or tenancies. The form now states that the seller shall give the buyer written notice of any changes to the status of the condition of the property, at least seven days prior to any proposed changes. Further, the buyer will now, within five days (unless otherwise modified) after receipt of notice of proposed changes, give seller notice of buyer's objection to those changes. If the buyer objects to those changes, then the seller shall not make them.

#### Forms Not Pursued

C.A.R. has announced that it will no longer pursue revisions to the Seller Common Interest Questionnaire (SCIQ) and the Seller Manufactured/Mobile Home Park Questionnaire (SMHPQ).

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