



Courtside *Newsletter*

California Association of REALTORS® to Release New Forms in December



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The California Association of REALTORS® (C.A.R.) will release eight (8) new and twenty-one (21) revised forms during the week of **December 14, 2015**. It will also discontinue the use of one form. In this month's *Courtside Newsletter*, we are going to explore the new forms that C.A.R. will be issuing in December.

New Forms

1. Agricultural Addendum (AGAD) This form was created with the sale of agricultural property with an improved residence in mind. The form outlines disclosures that are specific to agricultural property, including whether the property:

- is “in, or adjacent to, an area with Right to Farm rights” (Paragraph 1.A.4);
- is landlocked (Paragraph 1.A.8);
- has any soil problems, such as slippage sliding, flooding, drainage, grading or other problems (Paragraph 1.A.11); or,
- is subject to any restrictions for agricultural use pursuant to the Williamson Act (Paragraph 1.A.2).

The form goes on to outline other disclosures that may interest a buyer, as well as advises the buyer to consider:

- Size, lines, access and boundaries;
- Zoning and land use;
- Utilities and service;
- Environmental hazards;
- Geologic conditions;
- Natural hazard zoning;
- Property damage;
- Neighborhood, area and other property conditions;
- Common interest subdivisions;
- Special taxes;
 - Rental property restrictions; and,
 - Manufactured home placement.

Both the buyer and seller sign this form.

2. Arbitration Agreement (ARB) The Arbitration Agreement is a form that the buyer, seller, and brokers may sign, agreeing “that any dispute or claim in Law or equity arising between them out of the Purchase Agreement, Listing Agreement, Buyer Representation Agreement, Other [agreement], or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration.” The form goes on to list such exclusions as:

- (i) “a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985;
- (ii) “an unlawful detainer action; and
- (iii) “any matter that is within the jurisdiction of a probate, small claims or bankruptcy court.”

Brokers who do not sign the Arbitration Agreement may participate in arbitration should they, “in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker.” The Agreement also explains the requirements for the arbitrator and the right to discovery pursuant to California law.

3. Condominium Conversion Subdivision Purchase Agreement and Joint Escrow Instructions (CCSPA) The CCSPA “satisfies [California Bureau of Real Estate (CalBRE)] subdivision requirements for a unit that was formerly an apartment but converted to a condominium.” According to CalBRE, “Subdivision laws enforced by the CalBRE help ensure that subdividers deliver to buyers what was agreed to at the time of sale.” Specifically, the CCSPA includes disclosures regarding Public Reports, Airport Zones, the type of subdivision to be conveyed (in this case, a condominium), and other disclosures and reports, as outlined in the CalBRE “California Homebuyers ‘Bill of Rights.’” This “Bill of Rights” can be found on CalBRE’s website: www.dre.ca.gov. The CCSPA form is for use upon first sale following the conversion; subsequent sales will use the Residential Purchase Agreement (RPA).

4. Completed Residence Subdivision Purchase Agreement and Joint Escrow Instructions (CRSPA) The CRSPA is another form that was created to satisfy CalBRE subdivision requirements, similar to the CCSPA. This form is for the first sale of a new property with an already built home and includes disclosures regarding Public Reports, and paragraphs regarding “Builder Limited Contractual Warranties” and “Procedures for Action on Construction Defects,” amongst others that will concern purchasers of the property. Any resale of the property will use the RPA.

5. Delivery of Notices Addendum (DNA) The DNA is a new form that allows buyer(s) and seller(s) to agree upon terms of delivery of notifications, once a contract has been entered into. While it cannot be used prior to entering into a contract (“Agreement,” such as the RPA), once a contract has been signed between buyer and seller, the DNA establishes the following:

- “Deliver,” “Delivered” or “Delivery,” regardless of the method used (i.e. mail, e-mail, other), means and shall be effective upon the earliest of (i) personal receipt by the person(s) or as specified in the Agreement, or (ii) deemed receipt as specified below:
- Mail Delivery: Notice sent by email shall be deemed received three (or ___) Days After proof of mailing, if sent by first class mail or better to the address indicated below.
- [If Checked] E-mail Delivery: Notice sent by email to email address #1 below, shall be deemed received (i) One (or ___) Day(s) After the email was sent PROVIDED THAT (iii) A Copy of the Notice is sent, on the same date, to e-mail #2, the text number, or fax number specified below.

The form defines “notice” as “any notice, disclosure, demand, document, information or other item that Buyer or Seller may or is required to give the other pursuant to the Agreement.” The form also contains spaces for emails, fax numbers, and numbers at which text messages can be received. This form should be attached to the Agreement that buyer and seller enter into, and serves to establish delivery dates when the other side to a transaction is non-responsive.

6. & 7. Representative Capacity Signature Disclosure (For Buyer Representatives) (RCSD-B) & Representative Capacity Signature Disclosure (For Seller Representatives) (RCSD-S) The RCSD-B and RCSD-S will be replacing the Representative Capacity Signature Disclosure form, which will be discontinued officially in December. As their titles indicate, the forms are specific to buyers and sellers. The RCSD-B differs from the RCSD-S in that it does not include Estates, since rarely is an Estate a buyer.

8. Salesperson Owned Fictitious Business Name Agreement (SOFBN) Fictitious Business Names (FBNs) can only be owned by a real estate broker, not a salesperson. As such,

the SOFBN was created to notify CalBRE that the salesperson retains ownership of the FBN. The form indicates that the broker and salesperson have entered into an Independent Contractor Agreement, and that the salesperson is authorized to apply for a FBN in the county in which he or she is doing business and deliver to CalBRE an application for use of the SOFBN associated with the broker’s license number. The form further states:

“Salesperson, while maintaining ownership of the SOFBN, agrees to use the name only as permitted by Broker. At a minimum, Salesperson understands that California Real Estate Law requires that advertising and solicitation materials including business cards, print or electronic media, and “for sale” signs containing the SOFBN shall also include:

- a. Broker’s name in a manner equally as prominent as the SOFBN, and Broker’s CalBRE license number AND
- b. Salesperson’s name and CalBRE license number.”

The broker further agrees that he or she shall release any rights to the SOFBN upon termination of the Independent Contractor Agreement with the salesperson, and will remove the SOFBN from the broker’s CalBRE license number.

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As noted above, C.A.R. will also be releasing numerous revised forms in mid-December. A subsequent *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.

Calendar

RPA

Date: December 3, 2015
 Time: 9:00 a.m. – 1:00 p.m.
 Location: Tri-Counties Association of REALTORS®
 Contact Tri-Counties for more info!
www.tricorealtors.com

TRID

Date: December 15, 2015
 Time: 2:00 p.m. – 4:00 p.m.
 Location: Pacific West Association of REALTORS® -
 Anaheim
 Contact PWR for more info!
www.pwr.net

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