



# Courtside *Newsletter*

## California Association of REALTORS®

### December New & Revised Forms Release



**BY: KELLY A. NEAVEL, ATTORNEY AT LAW**  
**ASHLEY A. RICHARDSON, LAW CLERK**  
**CASEY MCINTOSH, PARALEGAL**

The week of December 11, 2017, the California Association of REALTORS® (“C.A.R.”) has scheduled the release of three (3) new forms and twelve (12) revised forms for REALTOR® use. Three (3) forms will also be discontinued. Below we discuss these additions and changes in greater detail, delving into how they may affect your practice.

#### New Forms

##### 1. Amendment of Existing Agreement Terms (AEA)\*

Per C.A.R., the AEA is to be used by a party to an existing contract to change the terms. The form can be used to amend a Purchase Agreement, Lease or Month-to-Month Rental Agreement, or other contract, and contains specific parameters surrounding the time frame for accepting and automatic revocation of the amendment. Following the space in which the proposed amendment is to be written, the Buyer/Tenant or Seller/Landlord indicates that the proposal can be revoked at any time, but will be deemed revoked if not accepted by 5 p.m. on the third day from which the initiator signed the AEA, or another specified date and time. The form also contains separate sections for the receiving party to accept or reject the proposed terms. If the terms are rejected, the existing contract remains unchanged. As one might notice, the AEA works in much the same way as the Buyer and Seller Counter Offers.

##### 2. Property Images Agreement (PIA)\*

Earlier this year, C.A.R. issued a Legal Q&A entitled “Copyright Issues for REALTORS®,” bringing to light that REALTORS® could run into legal hot water in their use of certain marketing materials. To that end, the PIA is entered into between a broker and a photographer to help REALTORS® avoid copyright infringement, and ensure that both the broker and creator of the work (aka the owner of the copyright) are in agreement. The PIA applies to photographs, videos or other creative works. The form indicates what work is being done, the compensation and payment the photographer is receiving, and specifications for the final images (e.g. format and quality). There is also a section regarding the granting of the photographer’s rights over the images to the broker, either through an assignment agreement, wherein the photographer assigns and transfers all of his or her rights to the images to the broker, or exclusive license agreement, wherein the photographer retains the title and ownership of the images. The photographer must also indicate that he or she has the right to enter the PIA, meaning he or she “owns all right, title and interest in and to the images [and] no third party has any rights in, to, or arising out of the Images.” The photographer can indemnify the broker, and the form acknowledges that the photographer is an independent contractor. Both parties must also acknowledge receipt and understanding of the PIA.

##### 3. Team Agreement (TEAM)

The TEAM is to be entered into between a Team Leader (“TL”) and Team Member (“TM”). Both the TL and TM must be licensed salespersons or broker-associates, working under a responsible broker, who is specified in paragraph 15 of the TEAM. Paragraph 1(D) states that both TL and TM “must remain licensed during the term of [the] Agreement” and must tell the other if his or her license is revoked, suspended, or forfeited, or if the party is no longer working under the responsible broker. The form also defines the duration of the agreement, the scope of the agreement and covered transactions, how pre-existing client relationships will be handled, and compensation. The TEAM contains language to split compensation based on all covered transactions, or based on who generated the transaction, and either as a flat fee or percentage. There is also an option to attach an addendum with different instructions. Paragraph 8 goes on to discuss “Compensation and Other Rights and Obligations Upon Termination.” Should a TM leave the team, specific protocol is laid out for him or her regarding pending transactions or business, future transaction with preexisting clients and team clients, expenses, DBAs and Team Names, and the potential need for a referral agreement if the TM or TL begins working under a new broker.

Other topics that are covered by the TEAM include:

- Expenses;
- Team Name;
- Team Guidelines and Policies;
- Broker Agreement to compensate parties based on the parties’ agreement;
- Legal Relationship, including the potential to create an employment status depending on the “actions and intents of the parties and any control extended by one party over the other;”
- Dispute Resolution;
- Additional Provisions;
- Definitions;
- Attorney Fees; and,
- Incorporation of any prior agreements.

TEAM attempts to be as all-encompassing as possible, while making it clear that all licensed activity goes through the responsible broker. C.A.R. believes that one of the most important aspects of the form is how it “addresses what happens to ‘clients’ and compensation if the agreement between the team leader and team member is dissolved.” Given some agents’ propensities for seeking out the team with the best fit, and the often-asked question of “who a client belongs to,” this is an important topic indeed.

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**Revised Forms**1. Buyer Representation Agreement – Exclusive (BRE)2. Buyer Representation Agreement – Non-Exclusive (BRNE)

The language in the BRE and BRNE has been revised to clarify that agency compliance is not exclusive to 1-4 residential units, and applies to more than just 1-4 residential units. The Dispute Resolution paragraph has also been updated in keeping with the June updates to the Residential Listing Agreement (RLA), and the arbitration advisory directs parties to the C.A.R. Form ARB. It is acceptable to use prior versions of these forms.

3. Back-Up Offer Addendum (BUO)\*

There is now a “Notice of Cancellation of Prior Contracts” section on the BUO to advise back-up buyers that prior contracts have been cancelled and they are now in the primary position. Included in the new section is a signature line for the back-up buyer(s) to acknowledge receipt and agreement of the BUO. It is acceptable to use prior versions of this form after the December release.

4. Contingency for Sale of Buyer’s Property (COP)\*

The changes on the COP seem to come at a particularly relevant time, given the current market trend for buyers (and, oftentimes, sellers) to want to keep their homes until they find a new home. New language has been added to the COP indicating that the buyer will inform the seller upon the close of escrow (within two (2) days, or another agreed-upon amount of time). Paragraph 1(B) has also been added, which indicates that the buyer is not required to remove the contingency unless given notice, and the contingency must be removed in writing. Furthermore, even if the contingency is removed, all other contractual obligations on the COP remain in effect. Per C.A.R., this was added to clarify that the buyer cannot unilaterally remove the contingency to avoid other obligations. It is acceptable to use prior versions of this form.

5. Manufactured Home Purchase Agreement and Joint Escrow Instructions (MHPA)

Slight but significant modifications were made to the MHPA. Paragraph 1(F) was updated to include the designation that the property is subject to “annual registration and in lieu tax.” Under Paragraph 7, “Allocation of Costs,” subparagraph C, a line was added to indicate whether the buyer or seller would pay HDC fees for providing registration and documents. Lastly, Paragraph 12, “Residency Application,” indicates that the buyer is responsible for submitting a completed residency application and any other required information to the park, landlord, or HOA. It is acceptable to use prior versions of this form.

6. Notice to Buyer to Perform (NBP)\*

Per C.A.R., the language that was added to the NBP was to dispel the argument “that the NBP can only be used for contingencies or covenants but not both at the same time.” Revisions to the form include language for the seller to give the buyer notice to, “as applicable, remove the specified contingencies and take the specified contractual action.” (Emphasis added.) However, it is still acceptable to use prior versions of this form after the revision’s December release.

7. Parking and Storage Disclosure (PSD)\*

According to C.A.R.’s Forms Release Summary, the PSD has been revised to clarify previous confusion caused when the agreement does not include permit parking or storage. There was also a paragraph added for additional disclosures.

8. Receipt for Reports (RFR)\*

A paragraph has been added to the RFR stating, “Buyer has been advised that if Buyer receives any report that has not been ordered by Buyer (whether prepared by or for Seller or others), Buyer may have no recourse against the preparer of the report for any errors, inaccuracies or missing information.” Ultimately, this means the buyer may not have any legal recourse for errors in reports prepared by others on behalf of others. It is acceptable to use prior versions of this form.

9. Seller License to Remain in Possession Addendum (SIP)\*

The SIP is intended to allow the seller of a property to remain in possession and continue use of the property for a period of less than 30 days. Paragraph 2, “Consideration,” subparagraph A, has been amended to include the language: “If Seller vacates the Property prior to the end of the term in paragraph 1, no portion of the consideration will be returned to Seller unless otherwise agreed in writing.” Paragraph 7, “Insurance,” has also been revised to advise the seller to obtain insurance as his or her personal property is not insured by the buyer. Please note that it is not acceptable to use a prior version of this form.

10. Seller’s Purchase of Replacement Property (SPRP)\*

The SPRP has been updated with one addition, and a caveat from C.A.R. Under “Seller’s Purchase of Replacement Property,” subparagraph 1(B) has been added, allowing the seller to inform the buyer that seller has already entered into a contract to obtain another property. Per C.A.R., if this optional box is checked, the seller would want to review, and potentially mark, subparagraph 1(C), which indicates that the agreement is contingent on whether the seller closes escrow on a replacement property. It is acceptable to use prior versions of SPRP.

11. Septic Inspection, Well Inspection, Property Monument and Allocation of Cost Addendum (SWPI)\*

The SWPI has been revised to make it clear that a “qualified septic professional” is conducting any inspections, and issuing any certifications. Paragraph 1(D) also now has the language that if an agreement is not reached “within the time for removing the Buyer investigation contingency or the loan contingency” or another agreed-up contingency, then either the buyer or seller can cancel the agreement. Paragraph 2, “Well Inspection and Allocation of Cost,” now has language about where parties can obtain more information regarding well standards, well completion reports and well basics. Prior versions of this form are acceptable to use following its December release.

12. Wire Fraud and Electronic Funds Transfer Advisory (WFA)\*

Previously known as simply the “Wire Fraud Advisory,” the WFA has been updated to indicate that not only wire transfers are subject to fraudulent activity. The WFA now warns that fraudulent activity can happen to all forms of electronic payments, including rent payments. The signature lines of the WFA have also been revised to allow for its use with lease agreements. It is acceptable to use prior versions of WFA.

**Discontinued Forms**

The following forms will no longer be in use after the December forms release:

1. Natural Hazard Disclosure (NHD)
2. Notice of Your “Supplemental” Tax Bill (SPT)
3. Mortgage Loan Disclosure Statement (Borrower) (MS)

Per C.A.R., these forms are either duplicative, or have been superseded by other, more well-known forms. As a result, they may serve to cause confusion and their removal seemed appropriate.

\*According to C.A.R., these forms will only be available through zipForm®Plus or from the following Associations: Beverly Hills/Greater Los Angeles Association of REALTORS®, Newport Beach Association of REALTORS®, North San Diego County Association of REALTORS® and Sacramento Association of REALTORS®.

As always, should you have any questions about the new forms or revisions to the older forms, we urge you to reach out to your local REALTOR® association, or consult qualified legal counsel.

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