

# CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT

## Your Guide (Course Manual)

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# INTRODUCTION

The C.A.R. California Residential Purchase Agreement and Joint Escrow Instructions (C.A.R. Form RPA), dated 12/21, is the document which details the buyer's offer for a seller's California real property. It is the most commonly used document of its kind in California. It can be used everywhere between the Oregon and Mexico borders and from the Pacific to Nevada or Arizona. It is truly a document for all of California.

Once the buyer's offer is accepted, the RPA becomes the primary document specifying the terms of the parties' agreement. But it is more than a sterile legal document, it is a practical and pragmatic road map to a California real property transaction, from beginning to end. This course manual will discuss the entire 2021 revised C.A.R. RPA, and related addenda. It is just as relevant to a flawless and trouble-free short sojourn up a path to a home's threshold as it is to a long and winding transactional road to home ownership.

The 2021 RPA is 16 pages but with two exceptions all paragraphs that require some affirmative decision or action on the part of the buyer or seller to complete the form are found in the first 4 pages. Still, one cannot ignore the other 3/4ths of the RPA or think of the balance as inconsequential boiler plate. Every paragraph has been drafted to address a situation that can have a consequential impact on the buyer or seller or both, and thus a material impact on the transaction. As a real estate licensee, you should become familiar with the entire RPA so you can help guide your buyer or seller client through what is typically the largest financial transaction that most people ever enter into in their life.

By attending this course and reading this "Guide to" the RPA you will learn about how the 2021 RPA is different from previous versions of the Purchase Agreement, what forms are bundled with (automatically attached to) the RPA, and how and when to use the various ancillary forms that are referenced in the RPA or commonly used in association with it. The goal of the course and this Guide is not to turn you into a lawyer who can explain and interpret legal implications of the RPA or draft extensive additional terms and conditions but rather to prepare you for questions that might be asked of you and assist you in ushering a real property transaction from inception to completion, or as the case may be, termination.

In your real estate business, you may encounter others with little knowledge and experience and others who have attended more lengthy training or have experiences that exceed those of your own. Whether you are the one looking to, or who by necessity must, take the lead in the transaction or you are the one looking to another for assistance, understanding the terms and conditions expressed in the RPA will necessarily make you a better instructor, or "student" depending on the circumstances of the transaction.

Every instructor will provide their own insights into the RPA, but all instructors will cover the most essential elements. Given the scope of material to be covered, this Guide should prove to be a welcome supplement to any live-lecture or online training as it will discuss the entire RPA, paragraph by paragraph, and the referenced and most common forms used in conjunction with the C.A.R. California Residential Purchase Agreement.



# I

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA, PAGE 1)

### Title



CALIFORNIA  
ASSOCIATION  
OF REALTORS®

**CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT  
AND JOINT ESCROW INSTRUCTIONS**  
(C.A.R. FORM RPA, 12/21)

**California:** The RPA can be used anywhere in California. Users should be aware of any additional local (county or city) requirements that apply as they may impact completion of the form (such as paragraphs 3Q(5) and (6)); the need to add addenda or advisories (See paragraph 4); and an understanding of the form's requirements (See paragraph 10B(2)). Further, local custom and practice, although not binding, may set the expectations for the parties and, as a result, have the practical effect of determining how certain paragraphs are used (such as paragraphs 3P and Q) in order to facilitate coming to an agreement.

**Residential:** The form is written to satisfy legal and practical considerations for the sale of property built and zoned for single-family residential use, even if a rental. The RPA is the appropriate form for condominiums as well as "stand-alone" dwellings. It is also the form to be used for the sale of a mobile home but with the applicable addendum (Manufactured Home Purchase Addendum, C.A.R. Form MH-PA). Even if a personal property mobile home has been converted to real property, use of the MH-PA is still advised. The RPA is sometimes used by real estate licensees for the sale of residential property with two to four units. However, another form, the Residential Income Property Purchase Agreement and Joint Escrow Instructions (C.A.R. Form RIPA), is better suited for those properties, as they are generally used for income generating purposes, thereby making them more commercial in nature. The RIPA is written for multi-unit properties but has specific paragraphs to cover laws and requirements that apply for the sale of residential properties with one-to-four units.

There are other forms for residential properties in specialty situations. If the property is being sold through the Probate Court, for example by a decedent's estate, a conservator, a receiver or a guardian, then the RPA should be used in conjunction with a Probate Agreement Purchase Addendum (C.A.R.

Form PA-PA). If there are existing tenants in the property, even if they are expected to vacate prior to close of escrow, then the Tenant Occupied Property Addendum (C.A.R. Form TOPA) should be added to the RPA. If ownership of the property is through a tenancy in common or stock cooperative, then the Tenancy in Common Purchase Addendum (C.A.R. Form TIC-PA) or Stock Cooperative Purchase Addendum (C.A.R. Form COOP-PA), respectively, should be added. If a buyer is purchasing a home in a subdivision which is not yet built but will be constructed during escrow, then the New Construction Purchase Agreement (C.A.R. Form NCPA) is the appropriate form. If the seller lives in the property and is facing foreclosure, and the buyer is an investor purchaser, the Notice of Default Purchase Agreement (C.A.R. Form NODPA) should be used. If the buyer intends to build a home on vacant land being purchased from the seller, but the seller will not be the builder, then the sale is not of improved residential property and the Vacant Land Purchase Agreement (C.A.R. Form VLPA) would be the correct form to use.

**Purchase:** The purpose of the form is to effectuate the transfer of title to the real property from the seller to the buyer. Temporary possession situations, such as a seller remaining in possession beyond the close of escrow, may be accomplished by addendum (See paragraphs 3M(2) and 7C).

**Agreement:** Once signed by all parties and delivered in accordance with its terms, the RPA is not a mere expression of desire but is intended to be binding on both buyer and seller.

**Joint Escrow Instructions:** A fully executed RPA is to be delivered to the mutually agreed escrow company (A title company regulated by the Department of Insurance, or a so-called independent escrow regulated by the Department of Financial Protection and Innovation, or a broker-escrow regulated by the Department of Real Estate) and operate as binding instructions. Most escrow companies will provide their own general instructions to the buyer and seller principals to supplement, not supplant, the terms of the RPA.

**C.A.R. Form RPA, 12/21:** Every C.A.R. form has a designated code, usually consisting of three to four letters. The date shows when this version of the RPA was first released for use in the field. Previous versions of the RPA should not be used after that but continue to be effective for transactions entered-into before this date's version. If the RPA is changed after its initial release, but the change does not fundamentally alter the overwhelming terms of the agreement, a new date will be inserted below the form title, and the new referenced date will be preceded by the word "Revised."

## Date Prepared:

  
 Date Prepared: \_\_\_\_\_

The blank line should be completed with the date the form is prepared by the real estate licensee. The purpose of the line is to make it easy to refer back to the RPA when inserting an addendum, counter offer or any other form into the transaction.

Since it is not possible to know for sure at the time of preparation when the buyer and seller will sign, if at all, the date prepared is a more certain date for reference purposes than the date signed or the date the contract is entered into. Problems associated with identifying the contract by a signing date arise if multiple parties sign on different dates. Trying to identify the RPA by the date it becomes binding on both parties is problematic as well if there is a counter offer. In that case, the contract formation date is not always evident from the RPA itself. As discussed in paragraphs 25A and 32A, contract formation does not occur until the final signature indicating acceptance has been delivered to the other party.

### Paragraph 1, Offer, A-D:

1. **OFFER:**  
**A. THIS IS AN OFFER FROM** \_\_\_\_\_ (“Buyer”).  
**B. THE PROPERTY** to be acquired is \_\_\_\_\_, situated  
 in \_\_\_\_\_ (City), \_\_\_\_\_ (County), California, \_\_\_\_\_ (Zip Code),  
 Assessor’s Parcel No(s) \_\_\_\_\_ (“Property”).  
 (Postal/Mailing address may be different from city jurisdiction. Buyer is advised to investigate.)  
**C. THE TERMS OF THE PURCHASE ARE SPECIFIED BELOW AND ON THE FOLLOWING PAGES.**  
**D.** Buyer and Seller are referred to herein as the “Parties.” Brokers and Agents are **not** Parties to this Agreement.

### Offer:

Typically, a buyer submits the completed RPA, signed by the buyer, to a seller seeking the seller’s approval of the terms the buyer is making to purchase the property. Until the RPA has been signed by both buyer and seller and the final signature delivered back to the last party to sign, it is not a binding agreement but only an offer. Offers may be accepted, rejected, ignored, or the terms of the offer countered. While seller’s brokers have a duty to present to the seller all offers received, unless instructed otherwise, a seller has no legal obligation to respond, although it certainly is courteous to do so (See, Offer Not Accepted box, at bottom of page 15).

#### 1A. This Is An Offer From \_\_\_:

Here is where the identity of the buyers is revealed. All buyers should be named. In the electronic version of the RPA, the names of the buyers will “double-stack” allowing more room to write in names than what appears in the blank line. If there is not enough room to write the names of all buyers then indicate that additional buyers will be named in an Addendum or by using the Additional Signature Addendum (C.A.R. Form ASA) (See, paragraph 32). If one or more of the buyers is an entity, such as a corporation or LLC, or a trustee of a trust, then identify the buyer in this paragraph. Using a shortened version of the name of a trust or trustee is acceptable provided the full name of the buyer and the legally authorized signer for the buyer is included in the “Entity Buyer” paragraph in paragraph 32 or a Representative

Capacity Signature Disclosure (C.A.R. Form RCSD-B) is attached to the RPA and completed.

If there is going to be seller financing involved in the sale, it is essential that all buyers be properly identified so the seller has the ability to perform due diligence before agreeing to the financing.

The RPA does not permit the contract to be assigned to a third party who is not the buyer's own trust or wholly owned entity without the prior consent of the seller (See paragraph 23). Merely inserting the words "or assignee" into paragraph 1A. is not necessarily enough to signal the seller's consent.

Adding the language "or nominee" is an old practice that some long-practicing real estate licensees may remember. That practice has fallen out of favor because a nominee, unlike an assignee, is not bound to the agreement. Thus when a buyer uses this language, whether or not the buyer appoints a nominee to take the buyer's place, there is a question as to whether an enforceable contract has been entered into in the first place since there may be no obligation to perform. The use of "or nominee" is not recommended.

Do not identify the buyers with anything that looks like a manner of taking title (e.g., husband and wife, an unmarried man etc.). There is no place in the agreement to designate vesting so that you will not be tempted to give tax or legal advice. This may also avoid any claim of discrimination based upon familial status under the Federal Fair Housing laws.

### **1B. The Property to be acquired ...:**

The best and most common way to describe the property is by its address. There is also a space for the assessor's parcel number. Sometimes the city specified in the mailing (postal) address and the city within which the property is located are different.

### **1C. The Terms Of The Purchase Are Specified Below ...:**

The purchase price and the timing of the expected close of escrow, terms that used to be identified in paragraph 1 in previous versions of the RPA, and duplicated elsewhere in those contracts, are identified only once, and easily visible on page 1 of the RPA in the first two paragraphs of the grid located in paragraph 3. The grid identifies these two critical terms, along with other material terms that require completion or insertion of material by the buyer in making the offer.

### **1D. Buyer and Seller are referred to as the "Parties." ...:**

The RPA is an agreement between buyer and seller, not the brokers. Whether representing buyer or seller or both, a broker is not responsible for parties' compliance with the terms of the RPA, or the refusal or failure of either party to meet one or more of their contractual or statutory responsibilities.

Brokers are referenced for purpose of confirming agency (See, paragraph 2B, and paragraph 2 of the Real Estate Brokers Section on page 16) but this does not make the broker a responsible party under the RPA for any other purpose.

Brokers are limited parties to the escrow, not the underlying contract, for the limited purpose of addressing compensation issues (See, paragraph 19D). Broker rights and duties are also mentioned in other parts of the RPA (See, paragraph 11A(2), 30 and 31) but such a mention merely (i) reiterates certain statutory obligations and establishes rights as between buyer and seller if those legal duties have not been satisfied or (ii) establishes the ground rules for resolving disputes in the event a disagreement arises.

## Paragraph 2, Agency:

- 2. AGENCY:**
- A. DISCLOSURE:** The Parties each acknowledge receipt of a "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD) if represented by a real estate licensee. Buyer's Agent is not legally required to give to Seller's Agent the AD form Signed by Buyer. Seller's Agent is not legally obligated to give to Buyer's Agent the AD form Signed by Seller.
- B. CONFIRMATION:** The following agency relationships are hereby confirmed for this transaction.
- Seller's Brokerage Firm** \_\_\_\_\_ License Number \_\_\_\_\_  
Is the broker of (check one):  the Seller; or  both the Buyer and Seller (Dual Agent).
- Seller's Agent \_\_\_\_\_ License Number \_\_\_\_\_  
Is (check one):  the Seller's Agent (Salesperson or broker associate); or  both the Buyer's and Seller's Agent (Dual Agent).
- Buyer's Brokerage Firm** \_\_\_\_\_ License Number \_\_\_\_\_  
Is the broker of (check one):  the Buyer; or  both the Buyer and Seller (Dual Agent).
- Buyer's Agent \_\_\_\_\_ License Number \_\_\_\_\_  
Is (check one):  the Buyer's Agent (Salesperson or broker associate); or  both the Buyer's and Seller's Agent (Dual Agent).
- C.**  More than one Brokerage represents  Seller,  Buyer. See, Additional Broker Acknowledgement (C.A.R. Form ABA).
- D. POTENTIALLY COMPETING BUYERS AND SELLERS:** The Parties each acknowledge receipt of a  "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

### 2A. Disclosure:

California Civil Code §§ 2079.13 – 2079.24 create a statutory obligation to disclose to principals the types of agency possible with a broker in the sale of residential property with one to four units and to confirm, either in the contract or a separate document, the actual agency relationship for that transaction.

The disclosure requirement is satisfied by delivering a statutorily mandated form (C.A.R. Form AD, Disclosure Regarding Real Estate Agency Relationship) to the broker's principal in the transaction. The seller's agent, if any, shall provide the disclosure form to the seller before entering into the listing agreement. The buyer's agent shall provide the disclosure form to the buyer as soon as practicable before execution of the buyer's offer to purchase. If the offer to purchase is not prepared by the buyer's agent, the buyer's agent shall present the disclosure form to the buyer not later than the next business day after receiving the offer to purchase from the buyer. The agent providing the disclosure form shall obtain a signed acknowledgment of receipt from the buyer or seller.

There are two versions of the AD in the electronic forms platform for C.A.R. forms. Both versions have the exact same content but version 1 auto-fills with information about the seller, and attaches to the listing agreement, while version 2 auto-fills with information about the buyer and attaches to the RPA and the buyer representation agreements. Version 2 is attached to the RPA because most licensees do not use the buyer representation agreements and therefore the first opportunity to satisfy the disclosure requirement with the buyer occurs when preparing an offer.

The AD form lists the three types of agency possible: Seller's agent, Buyer's agent, or Agent representing both seller and buyer. The form also lists the responsibilities that buyers and sellers have in a transaction.

An acknowledgment of receipt and signature block can be found at the bottom of the first page of the form. Page 2 consists of a reprint of the statute.

### **2B. Confirmation:**

A confirmation of the agency relationships applicable to the transaction needs to be signed concurrent with the execution of the RPA. The confirmation can be in the body of the RPA, as in paragraph 2B. or on a separate form, the Confirmation of Real Estate Agency Relationships (C.A.R. Form AC) which should be attached as an addendum to the RPA.

The confirmation of agency should clearly state the names and license numbers for each brokerage firm and sales agents and also identify who the brokerage firm and salesperson represent in the transaction. Under the law, a salesperson must have the same agency relationship with the buyer or seller client as the brokerage firm. If two salespersons work through the same brokerage, even if one works primarily with the seller and the other works primarily with the buyer, the brokerages is a dual agent representing both buyer and seller and so does each salesperson. Electronic forms platforms offered as a C.A.R. member benefit will not permit a salesperson's agency relationship to be different from that of the brokerage firm. Once a box is checked for the brokerage firm, the software will automatically check the necessary boxes for the salesperson. Once checked in one spot, zipForms will auto check in the others.

If the confirmation paragraph is left completely or partially blank, or is filled-out incorrectly, then a counter offer will need to be written and the AC form must be attached that counter offer.

Since 2B. is part of the contract between the buyer and seller, and since the brokers are not parties to the contract, the brokers' agreement to the confirmation of agency is found in paragraph 2 of the Real Estate Brokers Section on page 16.

### **2C. Additional Brokers:**

On occasion, more than one brokerage firm represents a buyer or seller client. Since the Agency Confirmation paragraph is set up to list only one brokerage firm for a principal, it is necessary to inform the buyer or seller client of the name and license number of the other brokerage firm. C.A.R. form ABA will automatically attach if paragraph 2C is checked.

### **2D. Potentially Competing Buyers and Sellers:**

Paragraphs 2A. and 2B. establish the possible and actual agency relationship between the brokers and the particular parties to the transaction contemplated by the RPA. There are, however, agency relationships that exist outside of the transaction that may impact the decisions made by buyer and seller. The Possible Representation of More than One Buyer or Seller (C.A.R. Form



PRBS) form advises the principals of the fact that either broker may represent other principals who might compete with buyer and seller for the property being purchased. For example, an office representing the buyer may also represent other buyers who are or may be making offers on the same property. Similarly, the office representing the seller may have listings from other sellers whose properties are similar to seller’s property, and therefore may appeal to the same types of buyers interested in the seller’s property. By attaching the PRBS form to the RPA, there leaves little room for misunderstanding on these points.

**Paragraph 3, Terms of Purchase and Allocation of Costs (A-F):**

3. **TERMS OF PURCHASE AND ALLOCATION OF COSTS:** The items in this paragraph are contractual terms of the Agreement. Referenced paragraphs provide further explanation. This form is 16 pages. The Parties are advised to read all 16 pages.

	Paragraph #	Paragraph Title or Contract Term	Terms and Conditions	Additional Terms
<b>A</b>	5	<b>Purchase Price</b>	\$ _____	<input type="checkbox"/> All Cash
<b>B</b>		<b>Close Of Escrow (COE)</b>	_____ Days after Acceptance OR on _____ (date) (mm/dd/yyyy)	
<b>C</b>	32A	<b>Expiration of Offer</b>	3 calendar days after all Buyer Signature(s) or _____ (date) at 5PM or <input type="checkbox"/> AM/ <input type="checkbox"/> PM	
<b>D(1)</b>	5A(1)	<b>Initial Deposit Amount</b>	\$ _____ (____% of purchase price) (% number above is for calculation purposes and is not a contractual term)	within 3 (or _____) business days after Acceptance by wire transfer OR <input type="checkbox"/> _____
<b>D(2)</b>	5A(2)	<input type="checkbox"/> <b>Increased Deposit (Money placed into escrow after the initial deposit. Use form DID at time increased deposit is made.)</b>	\$ _____ (____% of purchase price) (% number above is for calculation purposes and is not a contractual term)	Upon removal of all contingencies OR <input type="checkbox"/> _____ (date) OR <input type="checkbox"/> _____
<b>E(1)</b>	5C(1)	<b>Loan Amount(s):</b> First Interest Rate Points If FHA or VA checked, Deliver list of lender required repairs	\$ _____ (____% of purchase price) Fixed rate or <input type="checkbox"/> Initial adjustable rate not to exceed _____% Buyer to pay zero points or up to _____% of the loan amount 17 (or _____) Days after Acceptance	Conventional or, if checked, <input type="checkbox"/> FHA <input type="checkbox"/> VA (CAR Forms FVAC, HID attached) <input type="checkbox"/> Seller Financing <input type="checkbox"/> Other: _____
<b>E(2)</b>	5C(2)	<b>Additional Financed Amount</b> Interest Rate Points	\$ _____ (____% of purchase price) Fixed rate or <input type="checkbox"/> Initial adjustable rate not to exceed _____% Buyer to pay zero points or up to _____% of the loan amount	Conventional or, if checked, <input type="checkbox"/> Seller Financing <input type="checkbox"/> Other: _____
<b>E(3)</b>	7A	<b>Occupancy Type</b>	Primary, or if checked, <input type="checkbox"/> Secondary <input type="checkbox"/> Investment	
<b>F</b>	5D	<b>Balance of Down Payment</b>	\$ _____	
		<b>PURCHASE PRICE TOTAL</b>	\$ _____	

**3. Paragraph Title:**

The next two and a half pages of the RPA are in a grid format. The information placed into the blank lines in the grid are not for summary purposes but instead form the contractual agreement of the parties. Each row in the grid references the paragraph later in the RPA that contains additional language that provides further explanation of the grid terms and contractual agreements that bind both buyer and seller. Those paragraphs are all important and buyers and sellers should read them in their entirety.

**3A. Purchase Price:**

This is the price the buyer offers to pay the seller. It does not include closing costs, insurance premiums or funding fees that the buyer may also be required to pay. If the “All Cash” box is checked in the last column then the buyer is representing that the buyer does not need to borrow money to purchase the property and the following paragraphs will not apply: 3E(1) and (2), 3L(1), 5C(1) and (2), and 8A(1) will not apply.

**3B. Close of Escrow:**

Close of Escrow means the date the grant deed, or other evidence of transfer of title, is recorded for any real property, or the date of delivery of a document evidencing the transfer of title for any non-real property transaction (See, paragraph 25G). In short, it is the day the seller transfers ownership of the property to the buyer.

Two choices exist for setting the close of escrow date, it can be a set number of days after an accepted contract has been formed, or it can be scheduled for a specific date. If the former, and the scheduled close of escrow day lands on a Saturday, Sunday, or holiday it automatically carries over until the following day (See, paragraph 25I). Some buyers or sellers may have to close by a certain date for tax reasons (such as a tax deferred exchange or transfer of property tax base), employment transfers, or other personal reasons. If either party requires a “date specific” COE, be sure to write the date in the fourth column and make sure to check a calendar to confirm that the date is not a Saturday, Sunday, or legal holiday.

The close of escrow date is not necessarily the date the buyer is entitled to move into the property. Possibly the seller will remain, if agreed, or an existing tenant may lawfully be allowed to remain (See, paragraph 3M) or refuse to move out.

**3C. Expiration of Offer:**

The buyer’s offer must be accepted by the seller within the allotted time. An attempted acceptance after the allotted time does not automatically create a binding contract but the buyer has the right to waive the seller’s late response and agree to be bound. In such a case, it is preferable to document the mutual agreement to proceed regardless of the untimely attempted acceptance. If the expiration period is for a certain number of days, as opposed to a date certain, then the time starts only after all buyers have signed, not the first buyer to sign.

**3D(1). Initial Deposit Amount:**

Although a buyer does not need to make an initial deposit with the offer to create a binding contract, most sellers expect a buyer to do so as evidence of the buyer’s intent to move forward with the transaction. The buyer’s deposit acts as a sort of insurance policy that the buyer will take its obligation under the contract seriously because if the buyer cancels the contract without a legal or contractual right, the seller may be able to keep the buyer’s deposit as

damages. The parenthetical in the fourth column showing the deposit as a percentage of the purchase price is for information only but does not establish a contractual requirement that the deposit will remain at that percentage if the purchase price changes through negotiation. The percentage amount is important for determining the amount a seller may be able to keep pursuant to a liquidated damage clause if the buyer breaches the RPA (See, paragraph 29). Real estate law requires the deposit given to an agent needs to be placed into a neutral escrow within 3 business days after acceptance of the offer.

### **3D(2). Increased Deposit:**

A buyer may be asked to place more money into escrow after the initial deposit or may offer to increase the amount either because the initial deposit amount is not large enough to provide incentive to complete the purchase or to demonstrate good faith toward the purchase of the property. In either case or for other reasons, the entire amount may be at risk if the buyer breaches the contract. However, if the parties agree to liquidate damages (See, paragraph 29), the additional deposit amount will only be at risk if the buyer signs a separate form when the increased deposit is made liquidating damages to the seller (See C.A.R. form DID).

### **3E(1). Loan Amount(s):**

Many buyers do not have enough cash on hand to buy a property and need a loan to pay for part (or most) of the purchase price. The RPA requires specific details of the financing terms be identified or the contract could be considered unenforceable for failure to agree on a material term. 3E(1) addresses a loan which will be secured by a first lien. Necessary terms include the amount of the loan. The percentage of the loan to the purchase price is important because if the purchase price changes through the counter offer process the loan amount shall be in the same percentage to the final purchase price as was specified in the RPA.

A buyer should specify the maximum fixed or adjustable rate the buyer is willing to pay. If the buyer's chosen lender will not offer the buyer a rate at or below that specified, the buyer will have the contractual right to cancel during the loan contingency period. By default, the buyer is not willing to pay any points at the inception of the loan to get the specified interest rate but that can be changed. If the buyer plans to seek a loan through the FHA or VA program, or seller financing, or something different (such as a loan from the United States Department of Agricultural) that should be specified in the last column.

If buyer is seeking a FHA or VA loan, before a lender is authorized to loan funds pursuant to those programs the property must be in a certain condition and therefore it may be necessary that certain repairs to the property must be made. Buyers must deliver a list of those lender required repairs to the seller within 17 days after acceptance. Two lender required forms must also be included. These are FHA/VA Amendatory Clause (C.A.R. Form FVAC) and the HUD Notice to Purchasers: For Your Protection Get a Home Inspection

(C.A.R. Form HID). The FVAC is an addendum to the contract and acts as an appraisal contingency – if the property does not appraise at the specified purchase price the lender cannot make the loan and the buyer is contractually excused from buying the property and is entitled to a return of any initial and increased deposit that was made. This is true even if there is no appraisal contingency in the body of the RPA or that contractual appraisal contingency has been removed (See, paragraph 3L(2)). The HID is just what the title indicates, an advisory to the buyer to get a home inspection and a warning that FHA and VA do guarantee the home's value or condition.

### **3E(2). Additional Financed Amount(s):**

If a buyer needs more than one loan to purchase the property, whether the second loan is secured by a lien on the property or not, the additional financing amount and terms should be specified here. As with the first loan identified in 3.E(1) the interest rate on the loan and amount of points the buyer is willing to pay to get the loan are material elements of the additional financing and failing to identify those terms can possibly render the contract unenforceable. FHA and VA financing are only available for loans secured by a first lien which is why they there is no option to add those types of loans here.

### **3E(3). Occupancy Type:**

The buyer's use of the property will determine the type of loan and interest rate that a lender is willing to offer. Usually, the most advantageous rates and terms are available on property that is going to be occupied by the purchaser as a primary residence. Other uses may be as a second, or vacation, home or as an investment, for example if the buyer intends to use the property for income-producing purposes by leasing or renting it and then using the proceeds to pay off the loan. A lender will typically want to see the RPA to confirm the buyer's intended use of the property is consistent with the loan application submitted to the lender before making a loan. Sellers may also want to consider the buyer's intended use to compare one buyer's offer versus another or others, in the event of multiple offers. Use of the property may also impact the amount of the buyer's deposit that is at risk if the liquidated damage clause has been incorporated into the contract.

### **3F. Balance of Down Payment:**

The difference between the total purchase price, and the sum of the loan amounts (if any) and initial and increased deposits is the amount of money a buyer will have to deposit with the escrow in order to complete the purchase. The buyer will usually need to have cash available for the down payment but there are programs that provide down payment assistance.

### **Purchase Price Total:**

The amount placed in this row should be the same as that specified in 3A. The dollar amounts specified in paragraphs 3D, 3E, and 3F should add up to the total purchase price.

# II

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA, PAGE 2)

### Property Address

At the top of each page 2 through 16 there is a line for property address and date. The address of the property being purchased should be placed in the first blank line. The date prepared at the top of page 1 should be put into the second blank line. The purpose of this information is to identify which offer the page belongs to in case it is printed out and misplaced.

### Paragraph 3, (G-H(3)):

	Paragraph #	Paragraph Title or Contract Term	Terms and Conditions	Additional Terms
G(1)	5E	Seller Credit, if any, to Buyer	<input type="checkbox"/> \$ _____ (_____% of purchase price) (% number above is for calculation purposes and is not a contractual term)	Seller credit to be applied to closing costs OR <input type="checkbox"/> Other: _____
G(2)	ADDITIONAL FINANCE TERMS: _____			
H(1)	5B	Verification of All Cash (sufficient funds)	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
H(2)	6A	Verification of Down Payment and Closing Costs	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
H(3)	6B	Verification of Loan Application	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
				<input type="checkbox"/> Prequalification <input type="checkbox"/> Preapproval <input type="checkbox"/> Fully underwritten preapproval

#### 3G(1). Seller Credit:

Because some buyers have limited funds, those buyers often ask the seller to give the buyer a credit toward the purchase price. Sellers will sometimes agree to pay for those costs. The advantage to the buyer is that the loan remains unchanged, enabling the buyer to purchase, and the buyer gets help in paying expenses of the purchase that would otherwise require out-of-pocket or cash funds. In this paragraph the amount the seller agrees to pay should be a dollar amount. The percentage calculation in the fourth column is for informational purposes. The amount the seller agrees to pay will not vary if the purchase price changes during negotiations. The credit must be applied to the buyer's closing costs only, unless otherwise specified in the last column.

#### 3G(2). Additional Finance Terms:

Any other term that potentially affects the financing of the purchase, but not the price, would be specified here.

#### 3H(1). Verification of All Cash:

When the buyer checks in paragraph 3.A that the purchase will be paid in cash, sellers will want to verify that the buyer actually has the cash available

and is not merely checking that box to make the offer look attractive with no ability to perform as contractually promised. The proof of sufficient funds must be attached to the offer unless the box is checked for the proof to be provided after the offer has been accepted. The danger to the seller in not getting the proof up front, is that if the buyer's proof is insufficient then the seller has to go through the formal process to terminate the contract for the buyer's breach (See paragraph 14C(2)), which could be time consuming or even contested. If the seller is not satisfied with the proof offered with the offer, then the seller can decide not to enter into contract with that buyer or to counter with other terms.

### **3H(2). Verification of Down Payment and Closing Costs:**

If the buyer does not have the down payment and closing costs, the buyer will either be unable to get approved for a loan to purchase the property or the buyer will need to source those funds elsewhere which may also impact the buyer's ability to get a loan. Verifying the availability of the necessary funds at time of offer prevents a seller from entering into contract with a buyer who may not have the ability to perform. Delaying the proof of these funds until after acceptance exposes the seller to having to go through the formal process to terminate the contract for the buyer's breach, which could be time consuming or even contested (See paragraph 14C(2)). If the seller is not satisfied with the proof offered with the offer, then the seller can decide not to enter into contract with that buyer or to counter with other terms.

### **3H(3). Verification of Loan Application:**

A seller would want to know if a buyer who needs a loan to purchase has already applied to a lender or through a loan broker. If the buyer has not taken that preliminary step, the seller will lack confidence in the buyer. The buyer's initial contact with the lender or loan broker can reveal that the buyer has been prequalified, preapproved or has received fully underwritten preapproval. A prequalification means the lender has not verified any of the buyer's representations but if the buyer's statements to the lender regarding income, down payment and other criteria prove to be true, the lender should be willing to make the stated loan to the buyer. Preapproval means the lender or loan broker has verified some but not all of the buyer's representations and increases the chances of the buyer being able to obtain the specified loan. A fully underwritten preapproval means the lender has verified all the information concerning the buyer's qualifications for the stated loan but has not approved the property's value, so the seller can be confident that the buyer qualification aspect of loan approval will unlikely present a problem.

None of these letters are guarantees that the buyer will be given the loan that was applied for. Instead, these letters provide the seller with some assurance that the buyer has started the process of getting a loan and that a third party has made at least a preliminary assessment of the buyer's ability to actually qualify for the loan. The advantage of finding out the buyer's status in applying for and starting the loan process before accepting an offer is the seller can evaluate different buyers, in the case of multiple offers, and

use that criterion as one consideration in comparing different offers. Also, waiting until after acceptance may put the seller in the position of having to try cancel a binding agreement if the buyer cannot subsequently provide the loan application status promised in this paragraph.

**Paragraph 3, (I - L(8)):**

I	Intentionally Left Blank		
J	16	<b>Final Verification of Condition</b>	5 (or _____) Days prior to COE
K	23	<b>Assignment Request</b>	17 (or _____) Days after Acceptance
L	8	<b>CONTINGENCIES</b>	<b>TIME TO REMOVE CONTINGENCIES</b>
L(1)	8A	<b>Loan(s)</b>	17 (or _____) Days after Acceptance
L(2)	8B	<b>Appraisal:</b> Appraisal contingency based upon appraised value at a minimum of purchase price or <input type="checkbox"/> \$ _____	17 (or _____) Days after Acceptance
L(3)	8C, 12	<b>Investigation of Property</b> <b>Informational Access to Property</b> Buyer's right to access the Property for informational purposes only is <b>NOT</b> a contingency and does <b>NOT</b> create additional cancellation rights for Buyer.	17 (or _____) Days after Acceptance
L(4)	8D, 14A	<b>Review of Seller Documents</b>	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later
L(5)	8E, 13A	<b>Preliminary ("Title") Report</b>	17 (or _____) Days after Acceptance or 5 Days after receipt, whichever is later
L(6)	8F, 11K	<b>Common Interest Disclosures</b> required by Civil Code § 4525 or this Agreement	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later
L(7)	8G, 9B(6)	<b>Review of leased or liened items</b> (Such as for solar panels or propane tanks or PACE or HERO liens)	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later
L(8)	8J	<b>Sale of Buyer's Property</b> Sale of Buyer's property is not a contingency, UNLESS checked here: <input type="checkbox"/> <b>C.A.R. Form COP attached</b>	

**3I. Intentionally Left Blank:**

When printed the letter "I" looks like a number "1" and thus it is easy to confuse paragraph 3 letter-I with potential paragraph 31 (thirty-one). Rather than have a potential misunderstanding, it was decided to skip letter I.

**3J. Final Verification of Condition:**

The RPA allows a buyer some time prior to close of escrow to examine the property and to make sure (i) that the seller has made all agreed-upon repairs or requests and other contractual responsibilities and (ii) that the property is otherwise in the same condition it was in on the date of acceptance. This contractual right exists even if the buyer has made an offer without an inspection contingency or has not asked for any repairs or other items during an inspection contingency. The buyer is given the right to make this verification within 5 days prior to close of escrow unless a different time is stated.

**3K. Assignment Request:**

The buyer is given a right to assign the contract to a third party with the seller's consent. However, that right must be exercised with the first 17 days

after acceptance, unless a different time is stated. Seller is under no obligation to consider an assignment request made after the stated time.

### **3L. Contingencies:**

Paragraphs L(1)–(7) identify preprinted contractual contingencies and the time those contingencies must be removed in writing by the buyer. Only two of those contingencies (loan and appraisal) may be removed/waived at time of the offer by simply checking a box in the RPA. All contingencies, including loan and appraisal, may be waived at the time of the offer by attaching a Contingency Removal (C.A.R. Form CR) as an addendum to the RPA. If the box is checked in the last column, the CR form will auto-attach to the RPA. The CR form must be completed and signed in order to be effective. Unlike the previous version of the RPA, the default time to remove all these contingencies is the same, 17 days. The default time may be changed as is necessary to adapt to market conditions or buyer or seller desires.

This contingency may be removed/waived at time of offer by checking the box in the last column.

#### **3L(2). Appraisal Contingency:**

The appraisal contingency applies whether the buyer is making an all-cash offer for the property or needs a loan to complete the purchase. This contingency may be removed/waived at time of offer by checking the box in the last column. The default position is that the property must appraise at the value of the purchase price but that can be changed by checking the box and inserting a different value into the third column.

Sometimes in a rapidly rising market the buyer may realize that appraisal values do not keep up with the market and the buyer may consider establishing a lower appraisal value to give the seller confidence that the buyer will purchase as long as the minimum appraised value is met. However, if the buyer is getting a loan and making a down payment of no more than 20% of the purchase price, it is unlikely a lender will make the stated loan if the property does not appraise at the purchase price. For those buyers who are paying all cash or making more sizable down payments, changing the appraisal contingency amount may not interfere with the buyer's ability to perform.

If the buyer is making an offer with the intent to finance through a FHA or VA loan, regardless of when the appraisal contingency is removed the buyer's offer is contingent upon providing the FHA or VA lender with an appraisal at the purchase price.

#### **3L(3). Investigation of Property Contingency:**

This contingency allows the buyer to conduct and hire others to perform inspections and investigations both on-site and off the property. In some markets, buyers make offers without contingencies. Even in those circumstances the buyer has the right to access the property for the specified period of time. Buyer may decide to do so, for example, to measure the property's dimensions to aid the buyer in preparation for moving in or conducting post-closing



renovations. This right of entry is not a contingency and does not give the buyer any rights to cancel based upon information discovered during the entry.

**3L(4). Review of Seller Documents Contingency:**

This contingency allows the buyer to review all materials, disclosures and documents provided by seller and based upon the review cancel the contract if not satisfied with what the documentation reveals about the property. Buyer's review of seller documents is its own contingency and is separate from the investigation contingency. If seller does not deliver all documents on time, buyer has 5 days to review late-delivered documents.

**3L(5). Preliminary (Title) Report Contingency:**

Knowing the condition of title has always been important in a buyer's evaluation of the property. This contingency is not based upon a review of the recorded title but instead a review of a preliminary report prepared by a title company. The preliminary report shows the conditions on which the title company is prepared to issue a title policy. If the true state of the title is different from that set out in the title policy the buyer can pursue a claim based on the issued policy. Title companies therefore have an incentive to list title deficiencies to minimize their own coverage risk. If the buyer is not satisfied with conditions the title company won't insure around, the buyer has an opportunity to cancel during the preliminary report contingency. If preliminary report is not delivered on time, buyer has 5 days to review late-delivered document. Delivery of the preliminary report can be either buyer or seller responsibility, depending on who is paying for the report.

**3L(6). Common Interest Disclosure Contingency:**

California law requires sellers to identify certain information about a common interest development, such as the monthly dues, account balances, and total reserves. By contract, the seller has to provide additional information to the buyer about the development, such as copies of minutes of homeowners' association meetings. These documents may reveal deficiencies or risks of buying into a property with common interests with other owners, such as an impending dues increase or assessment that may make the property unaffordable to the buyer. If the buyer is not satisfied with information revealed in these disclosures, the buyer has an opportunity to cancel during the common interest disclosure contingency. If the disclosures are not delivered on time, buyer has 5 days to review late-delivered documents.

**3L(7). Review of Leased or Liened Items Contingency:**

Some items that are transferred with the property, such as solar panels or propane tanks, may not be owned by the seller but instead leased, or if owned may be subject to a specific lien to ensure the purchaser of the item pays back the loaned amount under threat of foreclosure or removal or repossession of the item itself. Accordingly, the seller must provide the buyer with documentation showing the terms of the lease or lien. If the buyer is not satisfied with information revealed in these documents, the buyer has an opportunity to cancel during the review of leased or liened items contingency.

If the documents are not delivered on time, buyer has 5 days to review late-delivered documents.

**3L(8). Sale of Buyer’s Property Contingency:**

The purchase contract is not contingent on the buyer’s ability to sell the buyer’s existing property unless the box is checked in the third column in this paragraph. If the box is checked, the separate form for the sale of buyer’s property contingency (C.A.R. Form COP) will be added to the transaction and its terms will govern the respective rights of both buyer and seller to the primary transaction.

**Paragraph 3, (M - O):**

M		Possession	Time for Performance	Additional Terms
M(1)		<b>Time of Possession</b>	Upon notice of recordation, OR <input type="checkbox"/> 6 PM or <input type="checkbox"/> AM <input type="checkbox"/> PM on date specified, as applicable, in 3M(2) or attached TOPA.	
M(2)	7C	<b>Seller Occupied or Vacant units</b>	COE date or, if checked below, <input type="checkbox"/> ___ days after COE (29 or fewer days) <input type="checkbox"/> ___ days after COE (30 or more days)	C.A.R. Form SIP attached if 29 or fewer days. C.A.R. Form RLAS attached if 30 or more days.
M(3)	4A	<input type="checkbox"/> <b>Tenant Occupied units</b>	If checked, see Tenant Occupied Property Addendum (C.A.R. form TOPA) attached	
N		Documents/Fees/Compliance	Time for Performance	
N(1)	14A	Seller Delivery of Documents	7 (or ___) Days after Acceptance	
N(2)	19B	Sign and return Escrow Holder General Provisions, Supplemental Instructions	5 (or ___) Days after receipt	
N(3)	11K(2)	Time to pay fees for ordering HOA Documents	3 (or ___) Days after Acceptance	
N(4)	10B(1)	Install smoke alarm(s), CO detector(s), water heater bracing	7 (or ___) Days after Acceptance	
O	<b>Intentionally Left Blank</b>			

**3M(1). Time of Possession:**

Seller shall deliver possession to the buyer, including keys and means to access all areas of the property when notified that the deed from seller to buyer has been recorded. The timing can be made more specific by checking the applicable boxes in the fourth column, which defaults to 6:00 p.m. and the applicable date depends on whether the property is seller occupied, vacant or tenant occupied.

**3M(2). Seller Occupied or Vacant Units:**

Possession shall be delivered at the specified time specified in 3M(1) on the date escrow closes. The date can be change if the seller is going to remain in the property beyond the scheduled close of escrow. If the seller is to remain for 29 or fewer days the applicable box in the fourth column needs to be checked and C.A.R. Form SIP (Seller License to Remain in Possession) will be attached and govern that new relationship between the parties. If the seller is to remain for 30 or more days the alternate box in the fourth column needs to be checked and C.A.R. Form RLAS (Residential Lease After Sale) will govern that more long-term relationship between the parties.

**3M(3). Tenant Occupied Units:**

If the property is tenant occupied, even if the tenant is expected to vacate prior to the close of escrow, the box in the third column needs to be checked and the Tenant Occupied Property Addendum (C.A.R. Form TOPA) will be inserted into the transaction. That form obligates the seller to notify the buyer of essential elements of the existing tenancy.

**3N(1). Seller Delivery of Documents:**

Paragraph 3.L(4) gives buyer a contingency for review of seller documents. This paragraph sets the time for seller to deliver the required documents to buyer.

**3N(2). Sign and Return Escrow Holder Instructions:**

The title to the RPA indicates that the RPA is more than an expression of the terms of sale, it is also escrow instructions. Escrow companies will have their own sets of instructions and general provisions to supplement, and in rare cases, supersede, those found in the RPA. Both buyer and seller are contractually bound to sign those escrow instructions or general provision and return them to the escrow holder within 5 days of receipt. The purpose of making this a contractual requirement is to facilitate both sides working with escrow toward the completion of the transaction.

**3N(3). Time to Pay HOA Document Fees:**

Paragraph 3.L(6) gives buyer a contingency for review of common interest disclosures, but the seller will need to get those from the homeowners' association governing the property. HOAs, in most cases, charge a fee for providing the documents. This paragraph provides for the fee to be timely paid, within 3 days after acceptance, to facilitate the ability of seller to provide the documents in a timely way.

**3N(4). Installation of smoke alarms, carbon monoxide detectors and water heating bracing:**

The obligation to take care of smoke alarms, carbon monoxide detectors and water heating is both a state and local mandate. Fulfilling the duty to address these issues during the escrow period, the work needs to be accomplished within 7 days after acceptance. If done within that time period, the buyer has adequate time to review the work and make sure it satisfies any lender requirement as well as the buyer's expectation. If not to buyer's satisfaction, the buyer has the ability to cancel during the applicable contingency period.

**3O. Intentionally Left Blank:**

When printed the letter "O" looks like the number "0" and thus it is easy to confuse paragraph 3 letter-O with potential paragraph 30 (thirty). Rather than have a potential misunderstanding, it was decided to skip letter O.

**Buyer and Seller initials:**

All pages in the RPA have space for buyer and seller initials, or signatures. By placing initials in the applicable spot, the Parties are acknowledging receipt of that page.



# III

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA, PAGE 3)

### Paragraph 3, (P) Items Included and Excluded:

P	Items Included and Excluded
P(1)	9 <b>Items Included - All items specified in Paragraph 9B are included and the following, if checked:</b> <input type="checkbox"/> Stove(s), oven(s), stove/oven combo(s); <input type="checkbox"/> Refrigerator(s); <input type="checkbox"/> Wine Refrigerator(s); <input type="checkbox"/> Washer(s); <input type="checkbox"/> Dryer(s); <input type="checkbox"/> Dishwasher(s); <input type="checkbox"/> Microwave(s); <b>Additional Items Included:</b> <input type="checkbox"/> _____ <input type="checkbox"/> _____
	<input type="checkbox"/> Video doorbell(s); <input type="checkbox"/> Security camera equipment; <input type="checkbox"/> Security system(s)/alarm(s), other than separate video doorbell and camera equipment; <input type="checkbox"/> Smart home control devices; <input type="checkbox"/> Wall mounted brackets for video or audio equipment; <input type="checkbox"/> _____ <input type="checkbox"/> _____
	<input type="checkbox"/> Above-ground pool(s) / <input type="checkbox"/> spa(s); <input checked="" type="checkbox"/> Bathroom mirrors, unless excluded below; <input type="checkbox"/> Electric car charging systems and stations; <input type="checkbox"/> Potted trees/shrubs; <input type="checkbox"/> _____ <input type="checkbox"/> _____
P(2)	9 <b>Excluded Items:</b> <input type="checkbox"/> _____; <input type="checkbox"/> _____; <input type="checkbox"/> _____;

#### 3P(1). Items Included:

Fixtures become part of real property and are transferred with it. Whether an item that is to some degree affixed or attached to the property or is so integral to the functioning of the property, that it becomes part of the real estate or remains personal property can be confusing, and disputes often arise whether certain items can be taken by the seller or are to remain with the buyer. This paragraph lists many such items. If checked, then the intention is that the item will remain with the property and a dispute avoided. Previous versions of the RPA had checkboxes for only three items; stove(s), refrigerator(s), and washer(s)/dryer(s). Sixteen pre-printed items are addressed in the current version of the RPA with an optional checkbox. Only one of those items, bathroom mirror(s) has a pre-checked box indicating any such item will transfer to the buyer. While mentioning bathroom mirror(s) could have been placed in the list of included items in paragraph 9, the decision was made to include it in paragraph 3P to draw attention to it.

#### 3P(2). Items Excluded:

If there are items that would automatically be included pursuant to paragraph 9 and either the buyer does not want the item, or the seller has indicated in marketing material that the seller intends to keep them, listing such items in this paragraph makes the intention of the parties clear. By having a separately numbered paragraph for explicitly excluded items, it is easy to reference in a subsequent buyer or seller counter offer.

### Paragraph 3, (Q) Allocation of Costs:

Q Allocation of Costs				
	Paragraph #	Item Description	Who Pays (if Both is checked, cost to be split equally unless Otherwise Agreed)	Additional Terms
Q(1)	10A, 11A	Natural Hazard Zone Disclosure Report, including tax information	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____ _____	<input type="checkbox"/> Environmental <input type="checkbox"/> Other _____ <input type="checkbox"/> Provided by: _____
Q(2)		_____ Report	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(3)		_____ Report	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(4)	10B(1)	Smoke alarms, CO detectors, water heater bracing	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(5)	10A 10B(2)(A)	Government Required Point of Sale inspections, reports	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(6)	10B(2)(A)	Government Required Point of Sale corrective/remedial actions	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(7)	19B	Escrow Fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____ <input type="checkbox"/> Each to pay their own fees	Escrow Holder: _____
Q(8)	13	Owner's title insurance policy	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	Title Company (if different from Escrow Holder): _____
Q(9)		Buyer's Lender title insurance policy	Buyer	Unless Otherwise Agreed, Buyer shall purchase any title insurance policy insuring Buyer's lender.
Q(10)		County transfer tax, fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(11)		City transfer tax, fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(12)	11K(2)	HOA fee for preparing disclosures	Seller	
Q(13)		HOA certification fee	Buyer	
Q(14)		HOA transfer fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(15)		Private transfer fees	Seller, or if checked, <input type="checkbox"/> Buyer, <input type="checkbox"/> Both _____	
Q(16)		_____ fees or costs	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(17)		_____ fees or costs	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(18)	10C	Home warranty plan: _____ _____	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____ <input type="checkbox"/> Buyer waives home warranty plan	Cost not to exceed \$ _____. Issued by: _____
R	OTHER TERMS: _____ _____ _____			

All of the items described in this paragraph involve common costs in a typical residential real estate sale. Because California is so diverse, the practice of who pays for any item may have become standard in different geographic areas of the State. However, cost items are always negotiable unless there is a law mandating that one party or the other pay. The subparagraphs in 3Q allows the parties to choose whether buyer, seller or both will pay for the item(s) listed unless the law requires one party to pay, or a practice has developed that is so consistent throughout California that it is only necessary to identify one party as the paying buyer or seller. If the box for both buyer and seller to pay is checked, the cost is to be split evenly unless a different percentage or dollar split is written into the paragraph.

**3Q(1). Natural Hazard Reports:**

California law requires that sellers disclose if property is located in either or both of two fire zones, either or both of two flood zones, and either or both of two earthquake zones. A form called the Natural Hazard Disclosure Statement (NHDS) is required to be used to make the disclosure. It may be possible to determine the applicability of any of those zones by examining public records, but the common practice is to hire a third-party company with expertise in mapping to do so. These companies prepare a report that not only includes the NHDS but also other information about these zones and other matters that may affect a property. The RPA requires the third-party report to address one non-natural hazard item: taxes. This part of the report will typically identify the property taxes, and related costs of ownership such as payment obligations due to local bond or similar obligations. An optional covered zone that is made available covers environmental concerns affecting the property and can be selected in the last column. If the principal wants to know about the presence of another type of hazard, the "Other" box should be checked, in the last column, and the requested item written into the blank line. The RPA allows the parties to identify the name of the company to prepare the report. Doing so prevents disputes since many companies exist which prepare these hazard disclosure reports. When preparing the RPA using a C.A.R. member benefit electronic forms software the names of companies having an affiliate relationship with C.A.R. are listed in a drop-down menu.

**3Q(2) and (3). Other Reports:**

These are the paragraphs to list other reports that the buyer or seller wants provided as part of the transaction and to make clear who is going to pay for such reports.

**3Q(4). Smoke Alarms, Carbon Monoxide Detectors, Water Heater Bracing:**

California law requires that properties be equipped with smoke alarm(s) and carbon monoxide detector(s) and that tank water heaters be properly strapped, anchored or braced. This paragraph determines who is to pay for the necessary costs to install or properly equip such items. Paragraph 3.N(4) identified when such items need to be addressed.

**3Q(5). Government Required Inspections and Reports:**

Local governments may require that certain inspections or reports be prepared upon the sale of a home. This paragraph determines who pays for the reports and inspections only. The next paragraph determines who is to pay for any corrective work necessary.

**3Q(6). Government Required (Retrofit) Corrective Actions:**

Local governments may require that certain repairs or improvements be made upon the sale of a home. Examples include weatherstripping, installation of

automatic gas shut off valves, and chimney grate covers. This paragraph determines who pays for any corrective work necessary. The party paying for the corrective work may be different from the party paying for the inspection or report as determined by the previous paragraph.

**3Q(7). Escrow Fees:**

If escrow charges separate fees for buyer and seller, that option is available in the fourth column.

**3Q(8). Owner's Title Policy:**

A title policy assures the buyer that if the title is not as promised by the title company, the company will defend challenges to title by others and compensate the owner, up to the value of the policy. A separate policy protects the lenders interests. Many title companies also serve as the escrow company in the transaction. If the title company and escrow company are the same, the name only has to be listed in paragraph 3Q(7). If different, the title company should be named in 3Q(8).

**3Q(9). Buyer's Lender Title Policy:**

While an owner's policy protects the buyer from title issues, it does not protect the buyer's lender from title issues that affect the lender's interest. So, lenders insist that buyers pay for a title policy to specifically protect the lender's interest. The RPA allocates this cost to the buyer.

**3Q(10) and (11). County and City transfer taxes:**

The county transfer tax is \$.55 per \$500. Half of that fee goes to the county and the other half goes to the city, unless the city has a separate transfer fee, in which case the county keeps the entire amount. The city transfer tax or fee is set by the city. It is a fee charged upon sale (transfer) of property in addition to the county transfer fee.

**3Q(12). HOA disclosure preparation fees:**

Since the seller is required to make these disclosures and is the party to whom the HOA has an obligation to, and thus, in theory has leverage over the homeowners' association, the legislature has required that the seller pay for the HOA disclosure preparation fee.

**3Q(13). HOA certification fees:**

A buyer's lender may require that the HOA certify information about the property, such as the number or percentage or rental units in the common interest development, before the lender will make the loan. Since this requirement is only necessary because of the buyer's choice of lender or the buyer's choice of financing for the purchase, the buyer is the one to pay for the cost.

**3Q(14). HOA Transfer Fees:**

If the HOA separates bills for move-out and move-in fees, the seller shall pay the move-out fees and the buyer the move-in fees unless otherwise stated. Move-out fees are for the purpose of purging seller's information from the



HOA records and assuring that common area access items, such as keys or key cards are returned. Move-in fees are usually for the purpose of the HOA updating its records to reflect the buyer's contact information and arranging for the transfer of access documents to common areas. HOAs may charge these fees for other items as well.

### **3Q(15). Private Transfer fees:**

A private transfer fee is a charge that often is forwarded to some kind of non-profit organization or other entity that does not necessarily benefit the property or the HOA. These fees must be recorded in a separate document, not just inserted into lengthy CC&Rs, in order to be enforceable. Many HOAs charge additional fees and call those fees by different names. An example is a Community Enhancement Fee. These types of additional HOA fees can be written into paragraphs (16) and (17).

### **3Q(16) and (17). Other fees and costs:**

Since not all items that result in a charge to a buyer or seller can be covered in a standard agreement, additional paragraphs have been provided for those transactions that have additional costs unique to the property or location. If the cost is for the preparation of reports on the property not otherwise specified in 3.Q then those items can be listed in 3.Q(2) or (3) instead.

### **3Q(18). Home Warranty fees:**

Many buyers purchase a home warranty plan to protect the buyer from costly repairs to property systems and components, such as the heating/air conditioning system, plumbing problems, and appliance breakdowns. Although not a mandatory element to a purchase, a home warranty is such a standard purchase that if a buyer does not want to have one provided, it is advisable to expressly waive the right to receive a home warranty plan, which can be accomplished in the fourth column. Since the costs of such plans vary by company, a maximum fee to be paid by the designated person is included in the fifth column. Many plans have a basic coverage package and optional upgrades. Buyers are advised to determine how much coverage is available up to the maximum provided in the fifth column. To avoid disputes, the company that will be issuing the home warranty should be specified in the fifth column. When preparing the RPA using a C.A.R. member benefit electronic forms software the names or companies having an affiliate relationship with C.A.R. are listed in a drop-down menu.

### **3R(1) and (2). Additional Terms:**

Terms related to financing, but which do not alter the purchase price should be listed in paragraph 3G(2). However, if the term is for a seller credit to cover buyer closing costs, then that should be addressed in paragraph 3G(1). Any other term should be specified in 3R. If there is not enough room for these other terms in the three lines in paragraph 3R, and if the member benefit electronic forms software platform is used to create the offer then an addendum (C.A.R. Form TOA) will automatically attach that includes the entire language inserted.



# IV

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA, PAGE 4)

### Paragraph 4, Property Addenda and Advisories:

4. **PROPERTY ADDENDA AND ADVISORIES:** (check all that apply)
- A. PROPERTY TYPE ADDENDA:** This Agreement is subject to the terms contained in the Addenda checked below:
- Probate Agreement Purchase Addendum (C.A.R. Form PA-PA)
  - Manufactured Home Purchase Addendum (C.A.R. Form MH-PA)
  - Tenant Occupied Property Addendum (C.A.R. Form TOPA) (Should be checked whether current tenants will remain or not.)
  - Tenancy in Common Purchase Addendum (C.A.R. Form TIC-PA)
  - Stock Cooperative Purchase Addendum (C.A.R. Form COOP-PA)
  - Other \_\_\_\_\_
- B. OTHER ADDENDA:** This Agreement is subject to the terms contained in the Addenda checked below:
- |  |   |
|--|---|
| <input type="checkbox"/> Addendum # _____ (C.A.R. Form ADM)                                      | <input type="checkbox"/> Short Sale Addendum (C.A.R. Form SSA)                |
| <input type="checkbox"/> Back Up Offer Addendum (C.A.R. Form BUO)                                | <input type="checkbox"/> Court Confirmation Addendum (C.A.R. Form CCA)        |
| <input type="checkbox"/> Septic, Well, Property Monument and Propane Addendum (C.A.R. Form SWPI) | <input type="checkbox"/> Buyer Intent to Exchange Addendum (C.A.R. Form BXA)  |
| <input type="checkbox"/> Other _____   | <input type="checkbox"/> Seller Intent to Exchange Addendum (C.A.R. Form SXA) |
- C. BUYER AND SELLER ADVISORIES:** (Note: All Advisories below are provided for reference purposes only and are not intended to be incorporated into this Agreement.)
- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Buyer's Inspection Advisory (C.A.R. Form BIA) | <input checked="" type="checkbox"/> Fair Housing and Discrimination Advisory (C.A.R. Form FHDA) |
| <input checked="" type="checkbox"/> Wire Fraud Advisory (C.A.R. Form WFA)         | <input checked="" type="checkbox"/> Cal. Consumer Privacy Act Advisory (C.A.R. Form CCPA)       |
| <input type="checkbox"/> Wildfire Disaster Advisory (C.A.R. Form WDFDA)           | (Parties may also receive a privacy disclosure from their own Agent.)                           |
| <input type="checkbox"/> Trust Advisory (C.A.R. Form TA)                          | <input type="checkbox"/> Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)                 |
| <input type="checkbox"/> REO Advisory (C.A.R. Form REO)                           | <input type="checkbox"/> Short Sale Information and Advisory (C.A.R. Form SSIA)                 |
| <input type="checkbox"/> Other: _____   | <input type="checkbox"/> Probate Advisory (C.A.R. Form PA)                                      |
|   | <input type="checkbox"/> Other _____  |

#### 4A. Property Type Addenda:

The RPA can be used for the purchase and sale of residential properties even in some specialty situations with the use of an Addendum to address unique aspects of the sale instead of having a completely separate purchase agreement for those situations which would mostly duplicate the terms of the RPA. In the following situations, the applicable box should be checked, and the addendum attached to the RPA.

If the residence is sold through the probate court or pursuant to a probate estate, conservatorship, guardianship or receivership, add the Probate Agreement Purchase Addendum (C.A.R. Form PA-PA).

If the residence is a personal property manufactured (mobile) home or was a personal property manufactured home that was converted to real property, add the Manufactured Home Purchase Addendum (C.A.R. Form MH-PA).

If the residence is currently occupied by tenants, add the Tenant Occupied Property Addendum (C.A.R. Form TOPA). The TOPA applies whether the tenants will remain after close of escrow or are scheduled to leave before the close of escrow but the default position in the TOPA is that the buyer is taking title subject to the tenants remaining in possession.

If ownership of the property is through a tenancy in common, add the Tenancy in Common Purchase Addendum (C.A.R. Form TIC-PA). Additional forms will be required as mentioned in the TIC-PA.

If ownership of the property is through a stock cooperative, add the Stock Cooperative Purchase Addendum (C.A.R. Form COOP-PA). Additional forms will be required as mentioned in the COOP-PA.

#### **4B. Other Addenda:**

While the RPA is intended as a comprehensive document, it cannot cover all situations, especially those that are not likely to be present in most transactions. Still, there are some situations which occur often enough that it helps to reference those situations in the body of the contract even if the terms are spelled out in another form. Many such situations are identified in this paragraph. Paragraph A lists these oft-used addenda.

Addendum # \_\_ (C.A.R. Form ADM), is the first item listed. Here the parties can write out terms unique to their specific situation. As more than one addendum form may be used in a particular transaction, it is essentially important to complete the blank line so different addenda do not get confused with one another. When the RPA is completed in an electronic form software platform if there is too much information to be placed into many blank fields the software will automatically generate a paragraph-specific addendum that will auto-attach to the RPA. Extensive drafting by real estate agents is not recommended. In such situations, an alternate practice would be to use standard paragraphs that may be available in a broker custom form or clause library or recommend the parties seek the services of an attorney to draft the language.

When a seller is already in contract with another buyer, the Back Up Offer Addendum (C.A.R. Form BUO) should be used to make the contract contingent on the cancellation of that other contract so seller is not obligated to sell the property to different buyers and the second buyer understands their true position.

In rural areas and many suburban communities, properties are not connected to a public sewer system or generate their own water. In such cases the Septic Inspection, Well Inspection, Property Monument and Allocation of Cost Addendum (C.A.R. Form SWPI) is advisable as it addresses many concerns specific to those types of properties. Propane tanks and propane are also addressed by the SWPI form.

Market conditions will dictate if short sales are the norm or the exception but in any case where the property is sold subject to the seller's lender approval, the Short Sale Addendum (C.A.R. Form SSA) should be added to the transaction.

The Court Confirmation Addendum (C.A.R. Form CCA) should be used when either of the parties has to go to court to get approval of the sale or purchase. Examples might include divorcing sellers who need family law court approval or a buyer or seller who is going through bankruptcy and cannot complete

the transaction without approval of the bankruptcy court. If the property is being sold by a former owner's estate, or the current owner's conservator or guardian, or through a receiver, then the better practice would be to use the Probate Agreement Purchase Addendum.

If the property is being purchased for investment purposes, the buyer may only want to purchase if the property qualifies as replacement property for the purposes of a Revenue and Tax Code exchange in order to avoid or minimize taxes on the gain in value of existing property that the buyer has to sell or already sold. When this applies, the Buyer Intent to Exchange Addendum (C.A.R. Form BXA) should be added.

If the property is being used for investment purposes, the seller may want to sell only if the seller is able to find replacement property for the purposes of a Revenue and Tax Code exchange in order to avoid or minimize taxes on the gain in value of the property. When this applies, the Seller Intent to Exchange Addendum (C.A.R. Form SXA) should be added.

#### **4C. Buyer and Seller Advisories:**

Advisory forms do not create contractual duties or obligations but instead provide important information that one or both of the parties should consider in the transaction.

Of the ten advisories listed, four are pre-checked meaning that they are bundled automatically with the RPA. The first is the Buyer's Inspection Advisory (C.A.R. Form BIA). This form identifies 12 categories of items that a buyer should consider during the buyer's investigation contingency period. It follows the RPA. The Fair Housing and Discrimination Advisory (C.A.R. Form FHDA) appears before the RPA in order, and after the Disclosure Regarding Real Estate Agency Relationship (C.A.R. Form AD). The FHDA informs the parties of the danger of making decisions based on the fact that the other party is a member of a protected class or has characteristics that are protected under the law. Twenty-one different protected classes/categories that apply in California are listed. An unfortunate side-effect of technology is that unscrupulous persons can commit theft remotely. The Wire Fraud Advisory (C.A.R. Form WFA) advises the parties of the danger of transferring money electronically without first verifying the account number that the funds will be delivered to and directions of how to complete the transfer. California has enacted privacy laws that are broad-based but also have exceptions. The California Consumer Privacy Act Advisory (C.A.R. Form CCPA) informs the parties that real estate transactions may expose information about themselves to other.

The Statewide Buyer and Seller Advisory (C.A.R. Form SBSA) is an extensive document that can be thought of as both an expanded version of the BIA and which also includes items that could impact a seller's decision about the property or make the seller aware of items impacting the transaction. The SBSA is not pre-checked as some brokers provide this form separately to their

clients and do not want to unnecessarily add already-included documents to the long package of forms that are part of the RPA. The box allows the form to be included when desired. Five other optional advisories are pre-printed and their relevance is indicated by the names of the forms: Wildfire Disaster Advisory (C.A.R. Form W DFA) applies when the location of the property is in or near a forest or other area where wildfires are possible; Trust Advisory (C.A.R. Form TA) applies when the seller hold title in trust; Short Sale Information and Advisory (C.A.R. Form SSIA) applies when the seller needs lender approval to sell the property because the value of the property is less than the amount of loans secured by the property; REO Advisory (C.A.R. Form REO) applies when the property is being sold by a lender who acquired the property through the foreclosure process; and the Probate Advisory (C.A.R. Form PA) is relevant when the property is being sold through the probate courts or related process.

The form itself should be gone over thoroughly with the buyer and seller and signatures obtained. The Statewide Buyer and Seller Advisory (C.A.R. Form SBSA) is more comprehensive than the BIA form. It contains information not only about items the buyer should consider or potentially have inspected but clauses in the contract. Other advisories include the Trust Advisory (C.A.R. Form TA), Probate Advisory (C.A.R. Form PA), and REO Advisory (C.A.R. Form REO) which, as applicable, disclose the common requirements and exemptions from statutory duties that apply to those types of sales.

## Paragraph 5, Additional Terms Affecting Purchase Price:

- 5. ADDITIONAL TERMS AFFECTING PURCHASE PRICE:** Buyer represents that funds will be good when deposited with Escrow Holder.
- A. DEPOSIT:**
- (1) **INITIAL DEPOSIT:** Buyer shall deliver deposit directly to Escrow Holder. If a method other than wire transfer is specified in **paragraph 3D(1)** and such method is unacceptable to Escrow Holder, then upon notice from Escrow Holder, delivery shall be by wire transfer.
  - (2) **INCREASED DEPOSIT:** Increased deposit to be delivered to Escrow Holder in the same manner as the Initial Deposit. If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount by signing a new liquidated damages clause (C.A.R. Form DID) at the time the increased deposit is delivered to Escrow Holder.
  - (3) **RETENTION OF DEPOSIT:** Paragraph 29, if initialed by all Parties or otherwise incorporated into this Agreement, specifies a remedy for Buyer's default. Buyer and Seller are advised to consult with a qualified California real estate attorney before adding any other clause specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase. Any such clause shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.
- B. ALL CASH OFFER:** If an all cash offer is specified in **paragraph 3A**, no loan is needed to purchase the Property. This Agreement is NOT contingent on Buyer obtaining a loan. Buyer shall, within the time specified in **paragraph 3H(1)**, Deliver written verification of funds sufficient for the purchase price and closing costs.
- C. LOAN(S):**
- (1) **FIRST LOAN:** This loan will provide for conventional financing **UNLESS** FHA, VA, Seller Financing (C.A.R. Form SFA), or Other is checked in **paragraph 3E(1)**.
  - (2) **ADDITIONAL FINANCED AMOUNT:** If an additional financed amount is specified in **paragraph 3E(2)**, that amount will provide for conventional financing **UNLESS** Seller Financing (C.A.R. Form SFA), or Other is checked in **paragraph 3E(2)**.
  - (3) **BUYER'S LOAN STATUS:** Buyer authorizes Seller and Seller's Authorized Agent to contact Buyer's lender(s) to determine the status of any Buyer's loan specified in **paragraph 3E**, or any alternate loan Buyer pursues, whether or not a contingency of this Agreement. If the contact information for Buyer's lender(s) is different from that provided under the terms of **paragraph 6B**, Buyer shall Deliver the updated contact information within 1 Day of Seller's request.
  - (4) **FHA/VA:** If **FHA** or **VA** is checked in **paragraph 3E(1)**, a **FHA/VA** amendatory clause (C.A.R. Form FVAC) shall be incorporated and Signed by all Parties. Buyer shall, within the time specified in **paragraph 3E(1)**, Deliver to Seller written notice (C.A.R. Form RR or AEA) (i) of any lender requirements that Buyer requests Seller to pay for or otherwise correct or (ii) that there are no lender requirements. Notwithstanding Seller's agreement that Buyer may obtain FHA or VA financing, Seller has no obligation to pay or satisfy any or all lender requirements unless agreed in writing.
- D. BALANCE OF PURCHASE PRICE (DOWN PAYMENT) (including all-cash funds)** to be deposited with Escrow Holder pursuant to Escrow Holder instructions.
- E. LIMITS ON CREDITS TO BUYER:** Any credit to Buyer, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender, if any, and made at Close Of Escrow. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit from Seller shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.

**5. Title:**

There are many different elements to financing the purchase price, some of which come direct from the buyer, such as the initial deposit, an increased deposit and down payment or balance of purchase price. The Buyer represents that the funds will be good when deposited with escrow. This representation is a promise by the buyer, not a contingency. If there is not enough money in an account to cover funds given to escrow, the buyer could be in breach of the contract and the Seller may be entitled to cancel the sale pursuant to paragraph 14C(2). The joint escrow instruction paragraph, 19F, obligates escrow to notify the brokers immediately if the deposit is not made or there are insufficient funds.

**5A(1). Initial Deposit:**

Paragraph 3.D(1) requires the buyer to make an initial deposit within three business days after acceptance. The buyer is instructed to make the deposit directly into escrow by wire transfer. Another method of delivery (i.e. personal check or cashier's check) can be specified but the method must be acceptable to the escrow company.

**5A(2). Increased Deposit:**

Paragraph 3D(2) is an optional paragraph that if checked obligates the buyer to increase the deposit money sometime after the initial deposit is made. The method of making the deposit shall be the same as the initial deposit. As with the initial deposit, if the increased deposit is not made on time, seller is entitled to cancel the sale after first giving the buyer a Notice to Buyer to Perform (C.A.R. Form NBP). If the parties agreed to liquidated damages in the contract (See paragraph 29), the increased deposit will not be counted toward the amount of liquidated damages unless a separate liquidated damage clause is signed or initialed at the time of the increased deposit (See, C.A.R. Form DID). In the event the new liquidated damage clause is not included with the increased deposit, the seller's remedy for the buyer's breach will be limited to the initial deposit amount only.

**5A(3). Retention of Deposit:**

California law has specific requirements that must be met if a seller is to keep all or part of a buyer's deposit after a buyer has breached. Paragraph 29 satisfies the legal requirements. There are times though when a seller wants to try to insert a clause in the contract that the seller believes is more effective. One such insertion provides for an early release of the deposit from escrow direct to a seller before close or a breach. Another such clause attempts to make the deposit nonrefundable. An early release of deposit to the seller is not illegal, in and of itself, but does not entitle the seller to keep the deposit. It does however make getting the deposit back more difficult for the buyer and may put the buyer at a disadvantage if the buyer cancels the contract for the failure of a contingency or if seller cancels the contract after giving the buyer a notice to perform (see paragraph 14). A nonrefundable deposit clause is often not thought through before being inserted into a contract. Such a clause may be

considered a forfeiture, and therefore unenforceable, or may be considered an unlawful attempt to create liquidated damages without following the statutory requirements. If the nonrefundable clause has no limitations, then arguably it applies even if the seller breaches the contract. Similarly, if there are no limitations, the deposit takes on the character of an option payment without the necessary attributes of an option. If it only applies in case the buyer breaches, then it fits within the definition of liquidated damages and is unnecessary if 29 is included as part of the contract. This paragraph warns the parties that clauses of the type discussed above are invalid unless independently satisfying legal requirements. Accordingly, if they are to be inserted, the party insisting on the clause should first discuss the issue with a lawyer.

### **5B. All Cash Offer:**

What was once a financing method limited to investors and the ultra-wealthy has spread to include many property types in many price ranges. If the all-cash box is checked in paragraph 3A, the loan paragraphs in 3E are not applicable. Paragraph 3H(1) requires the all-cash buyer to give written verification of funds necessary to close at the time the offer is made but a box can be checked delaying the verification for 3 or some other specified calendar days following acceptance. If the buyer does not provide the verification in time, or the seller disapproves the verification, then the seller may cancel after first giving the buyer a Notice to Buyer to Perform (See paragraph 14C(2)).

Sometimes in a competitive market a buyer makes an all-cash offer to make the offer appear stronger than it really is. If a buyer does not really have the ability to purchase the property with cash on hand, another way to write the offer would be to fill-in the loan amount necessary in paragraph 3E but to then check the No Loan Contingency paragraph (3L(1)). This way, the buyer is accurately representing his/her intentions but informing the seller that the buyer will take the risk of not being able to get a loan. Essentially, the buyer will be removing the loan contingency simultaneously with making the offer.

Sometimes a buyer has sufficient cash to purchase the property but for financial reasons prefers to get a loan. If this type of buyer applies for and receives a loan in time to close escrow as specified in the agreement, the seller's legal remedies are limited at best. If the all-cash buyer decides not to purchase if a loan cannot be obtained, the seller may pursue that buyer for breach of contract. Because some all-cash buyers are less than forthcoming with their intentions, it is important for the seller to review the buyer's verification of funds. There is however no guarantee that a person entering into a contract will perform even if the verifications are sufficient.

### **5C(1) and (2). First Loan and Additional Financed Amount:**

The most common way buyers purchase residential property is to make a deposit and down payment and finance the balance of the purchase price. More often than not, a single lender will provide the financing. There are times when two loans are needed. The default position in the RPA is that



the contract is contingent upon obtaining the designated loan(s) specified in paragraph 3E (See, Paragraph 8A).

The default position is that the buyer will obtain a fixed rate loan using conventional financing. The default provisions may be altered to provide for FHA financing, VA financing, or seller financing and the fixed rate default may be changed to an adjustable. If a loan will be FHA or VA financing, then the applicable box needs be checked in the last column in paragraph 3E(1).

Whether fixed or adjustable, the rate should be specified.

In the event of seller financing the applicable addendum (C.A.R. Form SFA) should be attached to the offer, completed, and signed. When completing the space for interest rate, it is preferable not to use the phrase “best available rate and terms or market rate.” Allow for market fluctuations by using the upper limits of what the buyer will pay. If the market is lower, the lender will use the current market rate and the buyer will not complain! If the seller feels the buyer’s proposed maximum rate is unrealistically low, the seller can counter with a higher specified rate. While California has adopted legal limitations on the lender’s ability to hold a seller personally liable following a foreclosure, those limitations do not apply to VA loans. The VA can hold the veteran borrowers liable for the loan unless there has been a substitution of eligibility and release of liability.

### **5C(3). Buyer’s Loan Status:**

The buyer’s progress in the loan process is material to a seller in deciding how to proceed at various points in the transaction. For example, if a buyer’s lender is not proceeding timely in processing the buyer’s loan application, or has turned down the buyer, the seller would want to know that information before deciding whether to honor the buyer’s requests for repairs, or requests for extensions of time or whether the seller should initiate a Notice to Buyer to Perform. This paragraph gives the seller or seller’s agent the right to contact the buyer’s lender for purposes of getting an update on the status of the buyer’s loan but does not give the seller the right to find out personal information about the buyer that may be contained in the lender’s file. The presumption is the lender who provides the verification of the buyer’s loan application will be the lender the buyer uses to obtain financing, but if not, then the buyer needs to inform the seller of the buyer’s chosen lender within one day of a request.

### **5C(4). FHA/VA:**

Lenders under these programs may require the property to be in a particular condition prior to the loan being made and the buyer acquiring title. Seller’s agreement that the buyer will be financing the purchase through the use of a FHA or VA loan is not an agreement by the seller to pay for any repairs or corrections required by the lender to make the loan.

The buyer has a set period of time, defaulted to 17 days, to identify those conditions that must be met before the loan will be issued. Within that time, buyer shall provide notice to the seller of these lender requirements. This can

be done on the Request for Repairs (C.A.R. Form RR) or the Amendment to Existing Agreement (C.A.R. Form AEA). Once on notice, the seller can decide whether to agree to these additional requirements. If the seller does not agree, and the buyer does not have the ability or willingness to pay, the buyer will not be able to get the FHA or VA loan specified. In that case, if alternative financing cannot be arranged to allow the buyer to close escrow and if the buyer has already removed the loan contingency, then the buyer will be in breach of contract. However, if the buyer has not yet removed the loan contingency, the buyer may exercise the right to cancel or use the right to cancel as potential leverage to get the seller to agree to make some or all of the FHA or VA lender required repairs of conditions.

Lenders making VA or FHA loans have a regulatory obligation to include a clause allowing the buyer to cancel without penalty if the property does not appraise at the purchase price. The FHA/VA Amendatory Clause (C.A.R. Form FVAC) incorporates that regulatory requirement into the contract when attached to the RPA.

#### **5D. Balance of Purchase Price:**

The down payment is the remaining amount of cash the buyer needs to deposit with escrow after making an initial and any increased deposit. The down payment must be deposited with the escrow holder within the time specified by the escrow holder. Usually, escrow holders will require the down payment to be made by wire transfer or some other electronic means. Before making any such payments, it is wise to confirm the instructions directly with the escrow holder.

#### **5E. Limits on Credits to Buyer:**

It is not uncommon for buyers to ask sellers to pay for some costs that a buyer may otherwise be responsible for in the transaction. The advantage for doing so for the buyer is that the buyer will not have to come up with money “out-of-pocket” to pay those costs and can effectively finance the cost. The seller’s incentive for doing so is that it may enable a sale to come together and the seller is satisfied with the net amount received after deducting these seller-paid buyer’s costs from the purchase price.

Lenders can consider a buyer’s inability to pay buyer costs as a negative factor in qualifying a buyer for a loan. Nonetheless, many lenders allow a seller to pay certain buyer costs without affecting the buyer’s qualification. Lenders will often set limits on how much the seller can pay. In order to avoid lender fraud, the lender needs to be informed of the amount of the credit that the seller is willing to give to the buyer. If the lender-imposed limit is less than the amount the seller agreed to credit to the buyer, then the differential can affect the buyer’s ability to qualify for the loan. The RPA predetermines what will happen in such an event. The seller credit is reduced to that amount approved by the lender. However, the purchase price is not adjusted to make up the difference. The buyer will be responsible for paying their transaction costs and the purchase price remains the same. If the loan contingency has not yet

been removed, the buyer and seller may wish to negotiate a purchase price reduction that takes into consideration the fact that the lender will not allow the full credit that buyer and seller have agreed to but the contract will not do this automatically for them.

## Paragraph 6, Additional Financing Terms (A and B):

### 6. ADDITIONAL FINANCING TERMS:

- A. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS:** Written verification of Buyer's down payment and closing costs may be made by Buyer or Buyer's lender or loan broker pursuant to **paragraph 6B**.
- B. VERIFICATION OF LOAN APPLICATIONS:** Buyer shall Deliver to Seller, within the time specified in **paragraph 3H(3)** a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in **paragraph 3E**. If any loan specified in **paragraph 3E** is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate.

### 6A. Verification of Down Payment and Closing Costs:

If a buyer does not have, or is unable to obtain by close of escrow, the required down payment and closing costs, then the transaction is not likely to be completed. As a result, the seller's property will have been held off the market for a period of time and the process for the seller of finding another buyer, opening another escrow, and seeing a new transaction to completion will have to begin again. The buyer will have spent time and incurred costs unnecessarily and, in addition, could be forced to forfeit the buyer's deposit to the seller. While the buyer may be in breach of contract, and legal remedies are available to the seller, some sellers will prefer to avoid being put in that situation in the first place. One way to accomplish that goal is for the buyer (or buyer's lender or loan broker) to verify the down payment and closing costs early in the transaction. By default, the verification is to be made with the offer. If the buyer has such verification before the offer is made, the offer is strengthened by attaching the verification to the offer because the seller can have more confidence in the buyer from the inception.

### 6B. Verification of Loan Applications:

If a loan is needed to purchase the property, the buyer needs to show the seller that the buyer is diligently trying to obtain the necessary loan. If the buyer does not do so, the seller may reconsider the decision to sell to this buyer. The first step for the buyer is to apply for a loan. Paragraph 3H(3) obligates the buyer to prove to the seller that the buyer has fulfilled this requirement by attaching the verification to the offer. If the buyer does not provide a letter from a lender showing the buyer is either pre-qualified or pre-approved, the seller may decide not to accept the buyer's offer. If the offer provides the buyer may provide the letter after acceptance, and the buyer does not, the seller may cancel the agreement. These letters do not guarantee that the buyer will be given the loan that was applied for. Instead, these letters provide the seller with some assurance that the buyer has started the process of getting a loan and that a third party has made at least a preliminary assessment of the buyer's ability to actually qualify for the loan. Whether the buyer provides a pre-qualification or a pre-approval letter, it must be based upon a written application and credit report.



# V

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA, PAGE 5)

### Paragraph 6, Additional Financing Terms (continued.) C:

**C. BUYER STATED FINANCING:** Seller is relying on Buyer's representation of the type of financing specified (including, but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to a specific closing date, purchase price, and to sell to Buyer in reliance on Buyer's specified financing. Buyer shall pursue the financing specified in this Agreement, even if Buyer also elects to pursue an alternative form of financing. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in this Agreement but shall not interfere with closing at the purchase price on the COE date (**paragraph 3B**) even if based upon alternate financing. Buyer's inability to obtain alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

#### **6C. Buyer Stated Financing:**

This paragraph informs the parties that seller has relied on the type of financing the buyer specified in the offer. Sellers may have to choose among various offers and the financing specified can influence the seller's decision. A seller may believe that a buyer who writes an offer indicating the ability to pay all-cash or to make a certain down payment but who has no intention or ability to pursue that financing method has committed a material misrepresentation and obtained the seller's acceptance of the buyer's offer by way of fraud. Had the seller known the true situation, the seller may not have agreed to the particular price, closing date or other terms or even agreed to the offer at all. Nonetheless, if the buyer in fact closes the escrow on time by paying the full price agreed-to, even if by pursuing financing other than that specified in paragraph 3, there may be no legal consequence available to the seller to make up for the feeling of being taken advantage of or misled. Still, the seller has no contractual duty to make it easier for the buyer to pursue financing not specified in the RPA such as by cooperating with a buyer's efforts to seek alternate financing. Further, if the buyer seeks but is unable to obtain alternate financing, buyer may be in breach of contract for failing to try to get the financing specified in the Agreement.

## Paragraph 7, Closing and Possession:

- 7. CLOSING AND POSSESSION:**
- A. OCCUPANCY:** Buyer intends to occupy the Property as indicated in **paragraph 3E(3)**. Occupancy may impact available financing.
- B. CONDITION OF PROPERTY ON CLOSING:**
- (1) Unless Otherwise Agreed: (i) the Property shall be delivered “**As-Is**” in its PRESENT physical condition as of the date of Acceptance; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow or at the time possession is delivered to Buyer, if not on the same date. If items are not removed when possession is delivered to Buyer, all items shall be deemed abandoned. Buyer, after first Delivering to Seller written notice to remove the items within **3 Days**, may pay to have such items removed or disposed of and may bring legal action, as per this Agreement, to receive reasonable costs from Seller.
- (2) **Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller and Agents may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had all required permits issued and/or finalized.**
- C. SELLER REMAINING IN POSSESSION AFTER CLOSE OF ESCROW:** If Seller has the right to remain in possession after Close Of Escrow pursuant to **paragraph 3M(2)** or as Otherwise Agreed, (i) the Parties are advised to consult with their insurance and legal advisors for information about liability and damage or injury to persons and personal and real property; (ii) Buyer is advised to consult with Buyer’s lender about the impact of Seller’s occupancy on Buyer’s loan; and (iii) consult with a qualified California real estate attorney where the Property is located to determine the ongoing rights and responsibilities of both Buyer and Seller with regard to each other, including possible tenant rights, and what type of written agreement to use to document the relationship between the Parties.
- D. At Close Of Escrow:** (i) Seller assigns to Buyer any assignable warranty rights for items included in the sale; and (ii) Seller shall Deliver to Buyer available Copies of any such warranties. Agents cannot and will not determine the assignability of any warranties.
- E.** Seller shall, on Close Of Escrow unless Otherwise Agreed and even if Seller remains in possession, provide keys, passwords, codes and/or means to operate all locks, mailboxes, security systems, alarms, home automation systems, intranet and Internet-connected devices included in the purchase price, garage door openers, and all items included in either **paragraph 3P** or **paragraph 9**. If the Property is a condominium or located in a common interest development, Seller shall be responsible for securing or providing any such items for Association amenities, facilities, and access. Buyer may be required to pay a deposit to the Homeowners’ Association (“HOA”) to obtain keys to accessible HOA facilities.

### 7A. Occupancy:

Whether the buyer intends to occupy the property is important for matters such as liquidated damages, loan qualification, loan rate and terms, and, in the case of a distressed property sale, whether the RPA or alternate form such as the Notice of Default Purchase Agreement (C.A.R. Form NODPA) should be used. The default position is that the buyer intends to occupy as a primary residence. If this is not the case, it should be noted by checking the appropriate box in paragraph 3E(3).

### 7B. Condition of Property on Closing:

Property sold using the RPA is sold in an “as-is” condition. What this means is that at the close of escrow the property is to be in the same condition it was in at the date of acceptance. As-is does not mean the buyer takes the property as the buyer finds it on the date of close of escrow but rather as it was on the date of acceptance. The seller is not obligated to repair defects that exist on the date of acceptance, in the absence of specific language like what may be agreed to in a Request for Repair (C.A.R. Form RR) or government corrective action pursuant to 3Q(6). The seller, however, does have to disclose know material defects. The seller is also responsible for maintaining the property in the condition it was in on the date of acceptance. The buyer has the ability to determine that condition by reviewing the seller disclosures and making an independent investigation of the property to discover its true condition (See paragraph 8C). If the buyer is not satisfied with the condition, the buyer is allowed to ask the seller to make repairs. If the seller cannot or will not do so, the buyer has the right to cancel the sale as long as the inspection contingency remains in effect.

The property may not have been built according to code, may not be in compliance with current law and may not have had permits issued for all or some of the structural improvements. Some are under the mistaken belief that a seller cannot sell a property with health or safety defects. The seller can, provided the seller makes full disclosure of what is known and provided there are no local laws requiring certain defects to be cured upon sale.

Given the buyer is purchasing the property in an “as-is” condition, the buyer is strongly urged to exercise the right to investigate the property to discover its deficiencies during the investigation period.

The seller is obligated to remove debris and personal property not transferred to the buyer. If seller does not do so, buyer can give the seller a 3-day notice to remove the items and if seller still does not, buyer can pay to remove them and bring legal action against the seller to recover the cost.

### **7C. Seller Remaining In Possession After Close of Escrow:**

Paragraph 3M(2) may give the seller the right to remain in the property after close of escrow. This is important for insurance purposes. If the seller continues to occupy the property after COE, the buyer is not protected by the hazard insurance policy the seller held while owning the property and likewise since the seller’s former hazard insurance no longer will be in effect, the seller may need a renter’s policy to protect the seller’s personal property. Parties should consult their insurance advisors whenever title and occupancy do not transfer on the same date. Additionally, seller continued possession may affect the buyer’s loan. Lenders will usually require that a buyer who is getting an owner-occupied loan, and resulting favorable rates, move into the property within a set, and usually short, period of time. Failure to do that may jeopardize the buyer’s loan. Buyer should discuss how, or if, a seller remaining in possession will impact the buyer’s loan.

### **7D and E.:**

Third-party warranties are automatically assigned by the contract on close of escrow. Seller should give buyer any documentation concerning these warranties. The broker does not determine assignability of warranties.

Keys and means of opening all locks are to be delivered to the buyer at the time of possession. The buyer will pay for HOA key deposits.

## Paragraph 8, Contingencies and Removal of Contingencies (A and B):

### 8. CONTINGENCIES AND REMOVAL OF CONTINGENCIES:

#### A. LOAN(S):

- (1) This Agreement is, **unless otherwise specified in paragraph 3L(1) or an attached CR form**, contingent upon Buyer obtaining the loan(s) specified. If contingent, Buyer shall act diligently and in good faith to obtain the designated loan(s). **If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan and Buyer is able to satisfy lender's non-appraisal conditions for closing the loan.**
- (2) Buyer is advised to investigate the insurability of the Property as early as possible, as this may be a requirement for lending. Buyer's ability to obtain insurance for the Property, including fire insurance, is part of Buyer's Investigation of Property contingency. Failure of Buyer to obtain insurance may justify cancellation based on the Investigation contingency but not the loan contingency.
- (3) Buyer's contractual obligations regarding deposit, balance of down payment and closing costs **are not contingencies** of this Agreement, unless Otherwise Agreed.
- (4) If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.
- (5) **NO LOAN CONTINGENCY:** If "No loan contingency" is checked in **paragraph 3L(1)**, obtaining any loan specified is NOT a contingency of this Agreement. If Buyer does not obtain the loan specified, and as a result is unable to purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.

#### B. APPRAISAL:

- (1) This Agreement is, **unless otherwise specified in paragraph 3L(2) or an attached CR form**, contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the amount specified in **paragraph 3L(2)**, without requiring repairs or improvements to the Property. Appraisals are often a reliable source to verify square footage of the subject Property. However, the ability to cancel based on the measurements provided in an appraisal falls within the Investigation of Property contingency. The appraisal contingency is solely limited to the value determined by the appraisal. For any cancellation based upon this appraisal contingency, Buyer shall Deliver a Copy of the written appraisal to Seller, upon request by Seller.
- (2) **NO APPRAISAL CONTINGENCY:** If "No appraisal contingency" is checked in **paragraph 3L(2)**, then Buyer may not use the loan contingency specified in **paragraph 3L(1)** to cancel this Agreement if the sole reason for not obtaining the loan is that the appraisal relied upon by Buyer's lender values the property at an amount less than that specified in **paragraph 3L(2)**. If Buyer is unable to obtain the loan specified solely for this reason, Seller may be entitled to Buyer's deposit or other legal remedies.

#### C. INVESTIGATION OF PROPERTY:

This Agreement is, as specified in **paragraph 3L(3)**, contingent upon Buyer's acceptance of the condition of, and any other matter affecting, the Property.

#### D. REVIEW OF SELLER DOCUMENTS:

This Agreement is, as specified in **paragraph 3L(4)**, contingent upon Buyer's review of Seller's documents required in **paragraph 14A**.

#### E. TITLE:

- (1) This Agreement is, as specified in **paragraph 3L(5)**, contingent upon Buyer's ability to obtain the title policy provided for in **paragraph 13G** and on Buyer's review of a current Preliminary Report and items that are disclosed or observable even if not on record or not specified in the Preliminary Report, and satisfying Buyer regarding the current status of title. Buyer is advised to review all underlying documents and other matters affecting title, including, but not limited to, any documents or deeds referenced in the Preliminary Report and any plotted easements.
- (2) Buyer has **5 Days** after receipt to review a revised Preliminary Report, if any, furnished by the Title Company and cancel the transaction if the revised Preliminary Report reveals material or substantial deviations from a previously provided Preliminary Report.

### 8A(1) – (3). Loan Contingency:

The loan contingency is to be removed within 17 calendar days or an otherwise-specified time. Once the contingency is removed, the buyer has created a covenant to complete the transaction even if the lender does not fund the loan. If this happens, even if the buyer does not have the ability to complete the purchase without the loan, the buyer will be in breach of contract and the seller will have legal remedies including monetary damages if there are no independent reasons for the buyer not to complete the purchase. This is true even if the buyer is not "at fault" or the cause of the lender's decision not to loan.

Lenders may not loan if the property is not properly insured. Factors to be considered are past insurance claims history on the property and whether the property is in or near a fire zone which could expose the property to wildfires. Buyer should investigate not only the availability of insurance but its cost as well.



Buyers who need a loan also need to have the funds necessary to make a down payment (which includes the deposit) and be able to pay closing costs. If the buyer does not, the buyer is in breach of contract. If the reason a lender will not make a loan is because of the buyer's lack of funds for down payment and closing costs, the buyer cannot use the loan contingency as a valid excuse to cancel the contract because under the law a person cannot cause their own contingency to fail.

#### **8A(4):**

Loan Contingency (cont.): The loan and appraisal contingencies are separate, independent contingencies. The appraisal contingency remains until removed. Removal of the loan contingency does not remove the appraisal contingency.

#### **8A(5). Loan Contingency (continued.) (No loan contingency):**

If the No Loan Contingency box is checked in the last column in paragraph 3.L (1) it has the same effect on the transaction as if an existing loan contingency is removed. The buyer has created a covenant to complete the transaction even if the lender does not fund the loan. Even if the buyer may not have the ability to complete the purchase without the loan, the buyer will be in breach of contract and the seller will have legal remedies including monetary damages.

The appraisal contingency is a separate contingency from the loan contingency. Even if the buyer has removed the loan contingency, if the buyer has not separately removed the appraisal contingency, the buyer may still have a contractual excuse to get out of the contract if the property does not appraise. These two related contingencies should be carefully considered before any decision is made to remove one or the other.

#### **8B(1) and (2). Appraisal Contingency:**

The default position in the contract is that a licensed or certified appraiser must value the property at no less than the specified purchase price. Even if a lender is willing to lend the amount specified in paragraph 3E, the buyer is not obligated to purchase if the property appraises low. Only an opinion of value from a licensed or certified appraiser satisfies the requirement of this contingency.

If the box is checked in the last column of paragraph 3L(2), then obtaining a full price appraisal is not a contingency of the agreement. There may be circumstances where opting out of the appraisal contingency makes sense, such as a transfer between co-owners who are knowledgeable of the property's value, or in a fast-rising market where appraisal values are not keeping up with market values, but historically these situations have been rare.

When a buyer is getting a loan to purchase the property, not only must the buyer qualify for the loan by demonstrating an ability to pay back the lender, but the property must also qualify as it typically provides the security for the loan in the event the buyer defaults. The lender's only real or practical recourse

may be to foreclose on the property. This is why lenders get appraisals as part of the loan process. For buyers who are not obtaining a loan (See, last column in 3A(1) or 3L(1)) they may want to get an independent appraisal to justify the purchase price.

Where an appraisal contingency is in place and the appraisal comes in low during the contingency period, the buyer may cancel the agreement or try to renegotiate with the seller. The seller is under no obligation to agree to reduce the purchase price though.

The appraisal contingency must be removed or the buyer must cancel the contract within 17 calendar days after acceptance of the contract, the same time as for removal of the loan contingency. If the buyer removes the appraisal contingency before finding out if the property appraises and then the lender refuses to loan because of a low appraisal, the buyer cannot use the loan contingency as a legal excuse to cancel the contract. Essentially, the loan contingency becomes a buyer qualification contingency once the appraisal contingency is removed. Any other result would render the appraisal contingency's independence meaningless if the buyer has a loan contingency. Cautious buyers will not remove the appraisal contingency if the property's value is in doubt or be prepared to suffer the consequence by removing that contingency before the appraisal has been returned.

## **Paragraph 8, Contingencies and Removal of Contingencies (continued) (C - D):**

### **8C. Investigation of Property Contingency:**

This paragraph gives the buyer the right to investigate or inspect the property as a contingency of the agreement. Then, under paragraph 14, the buyer must either remove the contingency associated with this investigation or cancel the agreement. Specifics regarding the available investigations are discussed at paragraph 12.

### **8D. Review of Seller Documents Contingency:**

Seller is responsible for delivering leases, warranties, financing agreement and other documents addressing leased or liened items that are being transferred as part of the transaction; government reports that the seller is responsible for obtaining in paragraphs 3Q(6) and 10; statutory and supplemental disclosures such as the Real Estate Transfer Disclosure Statement (C.A.R. Form TDS) and Seller Property Questionnaire (C.A.R. Form SPQ), and Federal Lead-Based Paint Disclosure (C.A.R. Form LPD) and Natural Hazard Disclosure and Defensible Space Disclosure (C.A.R. Form FHDS) and Home Fire Hardening Disclosure (C.A.R. Form FHDS) and Condominium and Planned Development Disclosures, if not exempt; and Title Reports and Information

about authority of a legally authorized signer right to sign a contract, if applicable. Buyer has the right under paragraph 14 to review these documents and cancel during the contingency period if not satisfied with the information in any of the documents.

### **Paragraph 8, Contingencies and Removal of Contingencies (continued) (E):**

#### **8E. Title Contingency:**

This contingency has three parts: Buyer's purchase is contingent upon buyer receiving a title policy; Buyer's purchase is contingent upon buyer review of the Preliminary Report (See, paragraph 3L(5)); and Buyer's review of a revised Preliminary Report if the revision has material or substantial deviations from an originally provided Preliminary Report. If buyer is not satisfied with the terms of original Preliminary Report, buyer may cancel during the contingency period. If buyer is not satisfied with the terms of revised Preliminary Report that is materially or substantially different from the original Preliminary Report buyer may cancel within 5 days of receipt of the revised report.



# VI

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA, PAGE 6)

### Paragraph 8, Contingencies and Removal of Contingencies (continued) F - G:

- F. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES (IF APPLICABLE):** This Agreement is, as specified in **paragraph 3L(6)**, contingent upon Buyer's review of Common Interest Disclosures required by Civil Code § 4525 and under **paragraph 11K** ("CI Disclosures").
- G. BUYER REVIEW OF LEASED OR LIENED ITEMS CONTINGENCY:** Buyer's review of and ability and willingness to assume any lease, maintenance agreement or other ongoing financial obligation, or to accept the Property subject to any lien, disclosed pursuant to **paragraph 9B(6)**, is, as specified in **paragraph 3L(7)**, a contingency of this Agreement. Any assumption of the lease shall not require any financial obligation or contribution by Seller. Seller, after first Delivering a Notice to Buyer to Perform, may cancel this Agreement if Buyer, by the time specified in **paragraph 3L(7)**, refuses to enter into any necessary written agreements to accept responsibility for all obligations of Seller-disclosed leased or liened items.

#### **8F. Condominium/Planned Development Disclosures Contingency:**

This paragraph gives the buyer the right to receive statutorily required and contractual required disclosures about the homeowners' association for property that is in a planned development as a contingency of the agreement. Then, under paragraph 14, the buyer must either remove the contingency associated with this investigation or cancel the agreement. Specifics regarding the available investigations are discussed at paragraph 11K.

#### **8G. Leased or Liened Items Contingency:**

A seller is obligated to disclose to a buyer if items included in the sale are not owned by seller or if owned are subject to a lien. Seller is also obligated to provide documentation about the leased or liened item. A buyer then has the right to review the materials and cancel the contract during the contingency period if the buyer is not willing or able to assume the lease or afford the payments on the lien. More specifics on this right is discussed at paragraph 9B(6).

## Paragraph 8, Contingencies and Removal of Contingencies (continued) H - J:

- H. REMOVAL OR WAIVER OF CONTINGENCIES WITH OFFER:** Buyer shall have no obligation to remove a contractual contingency unless Seller has provided all required documents, reports, disclosures, and information pertaining to that contingency. If Buyer does remove a contingency without first receiving all required information from Seller, Buyer is relinquishing any contractual rights that apply to that contingency. **If Buyer removes or waives any contingencies without an adequate understanding of the Property's condition or Buyer's ability to purchase, Buyer is acting against the advice of Agent.**
- I. REMOVAL OF CONTINGENCY OR CANCELLATION:**
- (1) For any contingency specified in paragraph 3L or 8, Buyer shall, within the applicable period specified, remove the contingency or cancel this Agreement.
  - (2) For the contingencies for review of Seller Documents, Preliminary Report, and Condominium/Planned Development Disclosures, Buyer shall, within the time specified in paragraph 3L or 5 Days after receipt of Seller Documents or CI Disclosures, whichever occurs later, remove the applicable contingency in writing or cancel this Agreement.
  - (3) If Buyer does not remove a contingency within the time specified, Seller, after first giving Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), shall have the right to cancel this Agreement.
- J. SALE OF BUYER'S PROPERTY:** This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer unless the Sale of Buyer's Property (C.A.R. Form COP) is checked as a contingency of this Agreement in paragraph 3L(8).

### **8H. Removal or Waiver of Contingencies with Offer:**

A prerequisite to buyer's obligation to remove a contingency is seller's obligation to deliver all materials pertinent to that contingency. If seller has not, buyer may issue a Notice to Seller to Perform (C.A.R. Form NSP). However, once buyer does remove a contingency buyer is giving up the rights related to that contingency even if seller has not provided all necessary documents. Removing or waiving contingencies without an adequate understanding of the property or buyer's ability to purchase is not advised.

### **8I. Removal of Contingency or Cancellation:**

This paragraph informs the buyer that by the time the contingency period ends, buyer shall either remove the contingency or cancel the contract. Additional time is given the buyer to decide what to do if seller does not deliver documents or planned development disclosures on time. Before a seller can cancel for a buyer's failure to remove contingencies as specified, the seller must first issue the buyer a Notice to Buyer to Perform (C.A.R. Form NBP).

### **8J. Sale of Buyer's Property Contingency:**

Many buyers rely on the sale of their current residence in order to get funds necessary to meet the down payment requirement of the purchase of property specified in the RPA. Others need to sell their current residence because they are still making payments on a loan for the existing residence and cannot qualify for a loan on the purchase while having that obligation. In those types of situations, the buyer will likely make the purchase conditioned on the sale of the buyer's existing property. The default position in the RPA is that the sale of buyer's property is not a contingency unless box is checked in the third column in paragraph 3L(8). In that case, a separate addendum (Contingency for Sale of Buyer's Property, C.A.R. Form COP) needs to be attached, completed, and signed.

## Paragraph 9, Items Included In and Excluded from Sale:

- 9. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:**
- A. NOTE TO BUYER AND SELLER:** Items listed as included or excluded in the Multiple Listing Service (MLS), flyers, marketing materials, or disclosures are NOT included in the purchase price or excluded from the sale unless specified in this paragraph or **paragraph 3P** or as Otherwise Agreed. Any items included herein are components of the home and are not intended to affect the price. All items are transferred without Seller warranty.
- B. ITEMS INCLUDED IN SALE:**
- (1) All EXISTING fixtures and fittings that are attached to the Property;
  - (2) EXISTING electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar power systems, built-in appliances and appliances for which special openings or encasements have been made (whether or not checked in **paragraph 3P**), window and door screens, awnings, shutters, window coverings (which includes blinds, curtains, drapery, shutters or any other materials that cover any portion of the window), attached floor coverings, television antennas, satellite dishes, air coolers/conditioners, pool/spa equipment (including, but not limited to, any cleaning equipment such as motorized/automatic pool cleaners, pool nets, pool covers), garage door openers/remote controls, mailbox, in-ground landscaping, water features and fountains, water softeners, water purifiers, light bulbs (including smart bulbs) and all items specified as included in **paragraph 3P, if currently existing at the time of Acceptance.**  
**Note:** If Seller does not intend to include any item specified as being included above because it is not owned by Seller, whether placed on the Property by Agent, stager or other third party, the item should be listed as being excluded in **paragraph 3P** or excluded by Seller in a counter offer.
  - (3) Security System includes any devices, hardware, software, or control units used to monitor and secure the Property, including but not limited to, any motion detectors, door or window alarms, and any other equipment utilized for such purpose. If checked in **paragraph 3P**, all such items are included in the sale, whether hard wired or not.
  - (4) Home Automation (Smart Home Features) includes any electronic devices and features including, but not limited to, thermostat controls, kitchen appliances not otherwise excluded, and lighting systems, that are connected (hard wired or wirelessly) to a control unit, computer, tablet, phone, or other "smart" device. Any Smart Home devices and features that are physically affixed to the real property, and also existing light bulbs, are included in the sale. Buyer is advised to use **paragraph 3P(1)** or an addendum to address more directly specific items to be included. Seller is advised to use a counter offer to address more directly any items to be excluded.
  - (5) Non-Dedicated Devices: If checked in **paragraph 3P**, all smart home and security system control devices are included in the sale, except for any non-dedicated personal computer, tablet, or phone used to control such features. Buyer acknowledges that a separate device and access to wifi or Internet may be required to operate some smart home features and Buyer may have to obtain such device after Close Of Escrow. Buyer is advised to change all passwords and ensure the security of any smart home features.
  - (6) **LEASED OR LIENED ITEMS AND SYSTEMS:** Seller, within the time specified in **paragraph 3N(1)**, shall (i) disclose to Buyer if any item or system specified in **paragraph 3P** or **9B** or otherwise included in the sale is leased, or not owned by Seller, or is subject to any maintenance or other ongoing financial obligation, or specifically subject to a lien or other encumbrance or loan, and (ii) Deliver to Buyer all written materials (such as lease, warranty, financing, etc.) concerning any such item.
  - (7) Seller represents that all items included in the purchase price, unless Otherwise Agreed, (i) are owned by Seller and shall be transferred free and clear of liens and encumbrances, except the items and systems identified pursuant to **paragraph 9B(6)**, and (ii) are transferred without Seller warranty regardless of value. Seller shall cooperate with the identification of any software or applications and Buyer's efforts to transfer any services needed to operate any Smart Home Features or other items included in this Agreement, including, but not limited to, utilities or security systems.
- C. ITEMS EXCLUDED FROM SALE:** Unless Otherwise Agreed, the following items are excluded from sale: (i) All items specified in **paragraph 3P(2)**; (ii) audio and video components (such as flat screen TVs, speakers and other items) if any such item is not itself attached to the Property, even if a bracket or other mechanism attached to the component or item is attached to the Property; (iii) furniture and other items secured to the Property for earthquake or safety purposes. **Unless otherwise specified in paragraph 3P(1), brackets attached to walls, floors or ceilings for any such component, furniture or item will be removed and holes or other damage shall be repaired, but not painted.**

### 9A. Note to Buyer and Seller:

Information about the property from other sources, such as MLS or advertising, is not determinative but rather the contract is the final word on what is or is not included. Just because something is mentioned in the MLS or an ad does not mean it will be part of the actual sale. If there is any doubt about items to be included, they should be specifically written into the RPA.

### 9B. Items Included In Sale:

Paragraph B(1) refers to fixtures and fittings. There is no universal definition of fixtures that would apply in every case but fixtures are generally things that are physically attached to the real estate.

Paragraph B(2) addresses three categories of items: (1) Items that may already fall within the general definition of fixtures (such as electrical, mechanical and plumbing systems and in ground landscaping) (2) other items that may be more traditionally thought of as items of personal property (such as gas logs and grates and garage door openers and remote controls) and (3) other items that do not easily fit into either category (such as built in appliances,

window screens, mailbox, and water features and fountains and solar power systems). By contract, all of the items mentioned in paragraph 8B(2) remain with the property.

Certain items present what seems to be a perennial problem for buyers, sellers and brokers because it can be uncertain whether the items are to be considered fixtures by way of their attachment to the property. Those items are specifically addressed in paragraph 3P. If the box for that item is checked, it is included. This applies not just to the primary item but any secondary ones as well. An example could be a refrigerator kept in the garage for additional storage or a washer or dryer not in the primary place for doing laundry such as a laundry room or garage but nonetheless kept on the property. Should the buyer want the primary item but not the secondary one, the box should be checked and the undesired item should be listed in the blank line for excluded items.

Paragraph B(3) defines what is included in security systems if the box for that items is checked in 3P. The system includes hardware, software, control units, motion detectors and alarms, whether hard wired or not.

Paragraph B(4) defines Home Automation (or Smart Home) System for purposes of the contract since technology is changing and it is not always easy to tell what is part of the system and what is not.

Paragraph B(5) informs the parties that non-dedicated devices, such as personal mobile phones and tablets, that are used to control Smart Homes and Security Systems do not get transferred with the property.

Paragraph B(6) concerns some of the items that are included in the sale pursuant to B. (1) or (2) but may not be owned by seller but instead leased or, if owned may be subject to a lien. Common examples include solar panels and other component parts of a solar power system, propane tanks and water softeners, and sometimes home automation systems or components. It is also possible for items such as those mentioned to be owned by the seller but subject to lien rights by the seller of the systems. The contract explicitly (i) requires the seller to disclose leased or lien items to the buyer; (ii) obligates the seller to provide any documentation concerning such items, such as the lease itself, any warranty, any lien rights, payments, reversion rights or balloon payment requirements, and the transferability of or change in terms upon sale; and (iii) gives the buyer a contingency period to review the documentation and cancel the sale if not satisfied.

Paragraph B(7) is the seller's representation of ownership for all items included except those items specified pursuant to 9B(6).



**9C. Items Excluded From Sale:**

Some items are explicitly excluded. The mere attachment of an item to the property by way of a bracket does not in and of itself mean the item itself is included. This rule would apply to televisions, speakers and furniture secured for earthquake purposes. The brackets are to be removed, also, and any resulting holes need to be repaired (or patched) but painting is not required. This requirement is consistent with the Repairs paragraph that specifies that exact restoration may not be possible (See, paragraph 15). However, if the buyer wants the brackets to remain, the buyer can check the applicable box in paragraph 3P.



# VII

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA, PAGE 7)

### Paragraph 10, Allocation of Costs (A):

#### 10. ALLOCATION OF COSTS:

- A. **INSPECTIONS, REPORTS AND CERTIFICATES:** Paragraphs 3Q(1-3) and (5) only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; **it does not determine who is to pay for any work recommended or identified in the Report. Agreements for payment of required work should be specified elsewhere in paragraph 3Q, or 3R, or in a separate agreement (such as C.A.R. Forms RR, RRRR, ADM or AEA).**

#### 10A. Inspections, Reports and Certificates:

Paragraphs 3Q(1)-(3) allows the buyer and seller to determine who is going to pay for particular costs in the transaction and not any recommendations made by the report or inspection or service. Recommended repairs or services, unless written into this paragraph, are negotiable items and should be addressed elsewhere in the contract or separate addendum.

### Paragraph 10, Allocation of Costs (B):

#### 10. ALLOCATION OF COSTS:

- A. **INSPECTIONS, REPORTS AND CERTIFICATES:** Paragraphs 3Q(1-3) and (5) only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; **it does not determine who is to pay for any work recommended or identified in the Report. Agreements for payment of required work should be specified elsewhere in paragraph 3Q, or 3R, or in a separate agreement (such as C.A.R. Forms RR, RRRR, ADM or AEA).**
- B. **GOVERNMENT REQUIREMENTS AND CORRECTIVE OR REMEDIAL ACTIONS:**
- (1) **LEGALLY REQUIRED INSTALLATIONS AND PROPERTY IMPROVEMENTS:** Any required installation of smoke alarm or carbon monoxide device(s) or securing of water heater shall be completed within **the time specified in paragraph 3N(4)**. If Buyer is to pay for these items, Buyer, as instructed by Escrow Holder, shall deposit funds into escrow or directly to the vendor completing the repair or installation. Prior to Close Of Escrow, Seller shall Deliver to Buyer written statement(s) of compliance in accordance with any Law, unless Seller is exempt. If Seller is to pay for these items and does not fulfill Seller's obligation in the time specified, and Buyer incurs costs to comply with lender requirements concerning those items, Seller shall be responsible for Buyer's costs.
  - (2) **POINT OF SALE REQUIREMENTS:**
    - (A) Point of sale inspections, reports and repairs refer to any such actions required to be completed before or after Close Of Escrow that are required in order to close under any Law. Unless Parties Otherwise Agree to another time period, any such repair, shall be completed prior to final verification of Property. If Buyer agrees to pay for any portion of such repair, Buyer, shall (i) directly pay to the vendor completing the repair or (ii) provide an invoice to Escrow Holder, deposit funds into escrow sufficient to pay for Buyer's portion of such repair and request Escrow Holder pay the vendor completing the repair.
    - (B) Buyer shall be provided, within the time specified in **paragraph 3N(1)**, unless Parties Otherwise Agree to another time period, a Copy of any required government-conducted or point-of-sale inspection report prepared pursuant to this Agreement or in anticipation of this sale of the Property.
  - (3) **REINSPECTION FEES:** If any repair in **paragraph 10B(1)** is not completed within the time specified and the lender requires an additional inspection to be made, Seller shall be responsible for any corresponding reinspection fee. If Buyer incurs costs to comply with lender requirements concerning those items, Seller shall be responsible for those costs.
  - (4) **INFORMATION AND ADVICE ON REQUIREMENTS:** Buyer and Seller are advised to seek information from a knowledgeable source regarding local and State mandates and whether they are point of sale requirements or requirements of ownership. Agents do not have expertise in this area and cannot ascertain all of the requirements or costs of compliance.

#### 10B. Government Requirements and Correction or Remedial Actions:

10B(1) Legally Required Installations and Property Improvements: Smoke alarm installation, carbon monoxide device installations and water heater bracing requirements apply whether or not a property is for sale. However, the parties are

free to negotiate who will pay for compliance of these requirements as a condition of the sale. Regardless of who pays, unless exempt, a statement of compliance is required to be signed by the seller and delivered to the buyer indicating smoke alarm(s) and water heaters are properly installed. The statement of compliance can be found in Section IID of the Real Estate Transfer Disclosure Statement (C.A.R. Form TDS) or separately in the Water Heater and Smoke Detector Statement of Compliance (C.A.R. Form WHSD). There is no statement of compliance required for the proper installation of carbon monoxide detectors. As of July 1, 2014, new smoke alarms have been required to have non-removable, non-replaceable batteries with a ten-year life. Older smoke alarms that are operable may continue to be used. Local government may have imposed requirements concerning whether smoke alarms can be battery operated only or must be hard-wired to the property's electric system.

10B(2)(A) and (B). Point of Sale Requirements: Many communities require the property to be inspected and a report prepared indicating if the property has met retrofit standards, and if not then brought into compliance. The types of retrofits that are common include the installation of low flow toilets and shower heads, weather stripping, and tempered glass in showers or sliding doors. Check with your city or county for local mandatory retrofit.

In some communities the actual retrofit can be performed within a certain period of time after close of escrow. The obligation to make the retrofit is usually triggered by the sale itself and thus it is appropriate for the parties to determine in the contract for sale which one will incur that expense. If an inspection is required due to the sale, the buyer shall be provided with a copy of the report following the inspection. Even if the seller gets the report before the contract is sold, and even if the seller makes the required or recommended repairs or retrofit prior to the sale, the buyer must still be provided with a copy of the report.

10B(3) Reinspection Fees: Buyer's lenders may require the compliance work for smoke alarms, carbon monoxide devices and water heaters be completed before funding the loan. If the work is not completed on time, seller is responsible for the payment of any reinspection fee as well as for reimbursing buyer for any expense buyer incurs to bring the property into compliance before close of escrow.

10B(4) Information and Advice on Requirements: It is not often easy to determine which "requirements" are prerequisites to the transfer of title to buyer and which are requirements of ownership, even if the property is not being sold. Making those determinations is beyond the scope of real estate activity and the parties should seek advice from knowledgeable sources, such as building departments or local attorney.

## Paragraph 10, Allocation of Costs (C):

### C. HOME WARRANTY:

- (1) Buyer shall choose the coverages, regardless of any optional coverages indicated, of the home warranty plan and Buyer shall pay any cost of that plan, chosen by Buyer, that exceeds the amount allocated to Seller in **paragraph 3Q(18)**. Buyer is informed that home warranty plans have many optional coverages, including but not limited to, coverages for Air Conditioner and Pool/Spa. Buyer is advised to investigate these coverages to determine those that may be suitable for Buyer.
- (2) **If Buyer waives the purchase of a home warranty plan in paragraph 3Q(18), Buyer may still purchase a home warranty plan, at Buyer's expense, prior to Close Of Escrow.**

### 10C. Home Warranty:

Paragraph 3Q(18) identifies who, if anybody, is going to pay for a home warranty plan, how much that person will pay, and who will issue the plan. Some companies have upgraded plans that include coverage for items like air conditioner, pool and spa, or other designated items. No matter the plan coverage, the maximum amount to be paid by contract will be that specified in paragraph 3Q(18). If the buyer orders a plan that exceeds the amount the seller agrees to pay in 3Q(18), buyer will be charged for the additional cost. If the box is checked that the buyer waives the right to get a home warranty before close of escrow, buyer is not prohibited from paying for a home warranty plan on their own.

## Paragraph 11, Statutory and Other Disclosures (A)(1) – (4):

### 11. STATUTORY AND OTHER DISCLOSURES (INCLUDING LEAD-BASED PAINT HAZARD DISCLOSURES) AND CANCELLATION RIGHTS:

#### A. TDS, NHD, AND OTHER STATUTORY AND SUPPLEMENTAL DISCLOSURES:

- (1) Seller shall, within the time specified in **paragraph 3N(1)**, Deliver to Buyer: unless exempt, fully completed disclosures or notices required by §§ 1102 et. seq. and 1103 et. seq. of the Civil Code ("Statutory Disclosures"). Statutory Disclosures include, but are not limited to, a Real Estate Transfer Disclosure Statement (C.A.R. Form TDS), Natural Hazard Disclosure Statement ("NHD"), notice or actual knowledge of release of illegal controlled substance, notice of special tax and/or assessments (or, if allowed, substantially equivalent notice regarding the Mello-Roos Community Facilities Act of 1982 and Improvement Bond Act of 1915) and, if Seller has actual knowledge, of industrial use and military ordnance location (C.A.R. Form SPQ or ESD), and, if the Property is in a high or very high fire hazard severity area, the information, notices, documentation, and agreements required by §§ 1102.6(f) and 1102.19 of the Civil Code (C.A.R. Form FHDS).
- (2) The Real Estate Transfer Disclosure Statement required by this paragraph is considered fully completed if Seller has completed the section titled Coordination with Other Disclosure Forms by checking a box (Section I), and Seller has completed and answered all questions and Signed the Seller's Information section (Section II) and the Seller's Agent, if any, has completed and Signed the Seller's Agent's section (Section III), or, if applicable, an Agent Visual Inspection Disclosure (C.A.R. Form AVID). Section V acknowledgment of receipt of a Copy of the TDS shall be Signed after all previous sections, if applicable, have been completed. Nothing stated herein relieves a Buyer's Agent, if any, from the obligation to (i) conduct a reasonably competent and diligent visual inspection of the accessible areas of the Property and disclose, on Section IV of the TDS, or an AVID, material facts affecting the value or desirability of the Property that were or should have been revealed by such an inspection or (ii) complete any sections on all disclosures required to be completed by Buyer's Agent.
- (3) Seller shall, within the time specified in **paragraph 3N(1)**, provide "Supplemental Disclosures" as follows: (i) unless exempt from the obligation to provide a TDS, complete a Seller Property Questionnaire (C.A.R. Form SPQ) by answering all questions and Signing and Delivering a Copy to Buyer; (ii) if exempt from the obligation to provide a TDS, complete an Exempt Seller Disclosure (C.A.R. Form ESD) by answering all questions and Signing and Delivering a Copy to Buyer.
- (4) In the event Seller or Seller's Agent, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer under this paragraph, Seller shall, in writing, promptly provide a subsequent or amended TDS, Seller Property Questionnaire or other document, in writing, covering those items. Any such document shall be deemed an amendment to the TDS or SPQ. **However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies of which Buyer is otherwise aware, or which are discovered by Buyer or disclosed in reports or documents provided to or ordered and paid for by Buyer.**

### 11A. TDS, NHD, and Other Statutory and Supplemental Disclosures:

California law creates a requirement for all sellers of residential property improved with one-to-four units (including lease options), unless exempt, to deliver to a buyer two mandated forms created by the legislature: a Real Estate Transfer Disclosure Statement (C.A.R. Form TDS) and a Natural Hazards Disclosure Statement (NHD). If the property is in a Mello-Roos District, or subject to an assessment pursuant to the Improvement Bond Act of 1915, the seller must make a good faith effort to obtain a disclosure notice from the taxing authority and to deliver such notice to the buyer. Nothing in the law imposes a duty to discover a special tax or district not actually known to the agents. A Mello-Roos District is created under the Mello-Roos Community Facilities Act, which authorizes the district to issue bonds and levy special taxes to finance designated public facilities and services.

Additionally, if the seller has actual knowledge that there has been a release of illegal substances on the property or if the property is in or affected by an industrial use zone (a zone or district allowing manufacturing, commercial or airport use) or is located within one mile of a former military ordnance location which may contain potentially explosive munitions, this fact must be disclosed to the buyer.

Seller exemptions from the TDS and NHD forms and these other obligations include:

- Properties covered by a public report. (Resales cannot use this exemption.)
- Court Ordered Sales (i.e., probate, bankruptcy, etc.).
- Foreclosure, deed in lieu, REO Properties.
- Transfers between Co-Owners or Spouses.

Disclosures in the TDS do not eliminate the seller's obligations to disclose all known material facts.

If certain disclosures are provided after a buyer has made an offer, the buyer has a rescission right upon receiving the disclosures. The TDS form has sections to be completed by the seller, the listing broker and the buyer's broker.

A seller is required to deliver "fully completed" disclosure forms to the buyer and the RPA defines the quoted phrase as having the seller and listing broker's sections completed. The rationale is that the buyer will be in possession of disclosures prepared by those closest to the property, the seller and the listing broker, before having to make a decision about whether to continue with or cancel (rescind) the sale pursuant to the statutes. By leaving off the buyer's broker sections from the definition of "fully completed", the RPA takes away an incentive of the buyer's own broker to delay completing those forms in order to extend or stretch out the buyer's right to rescind until the latest possible time. The buyer should be responsible for the buyer's own agent's delays, not the seller. Just because the buyer's broker is not treated as being included in the definition of "fully completed" the contract does not in any way excuse the buyer's broker from fulfilling the statutory duties. The "fully completed" definition encourages full disclosure at the earliest practical time.

Seller's Agents should instruct sellers to carefully read and answer all questions in the disclosures. To this end, agents should provide sellers with the Disclosure Information Advisory (C.A.R. Form DIA). The DIA stresses the importance of disclosing what they know affecting the value and desirability of the property and taking the time to be thorough and complete when making required statutory and contractual disclosures.

The disclosures mentioned in 11A(1) are statutorily required. Other disclosures have been created that help provide a more complete picture of the condition of the property being transferred. Providing these additional disclosures, though not mandated by law, represents a good risk management practice. The buyer gets more information about the property early in the transaction. The seller minimizes the possibility of forgetting about an event or condition affecting the property or

having a dispute with the buyer over whether a disclosure was actually made thus reducing the risk of a buyer claim or lawsuit at a later point in time. Accordingly, the RPA provides in paragraph 11A(3) that when a seller is required to give the statutory disclosures, the seller must also give the voluntary disclosures specified in the Seller Property Questionnaire (C.A.R. Form SPQ). Sellers who are not required to provide a TDS are contractually obligated to provide the Exempt Seller Disclosure (C.A.R. Form ESD) because that form itemizes disclosures that are required to be made by the contract or for which the law imposes a disclosure obligation but for which the legislature never created a separate form on which to make the disclosures.

It is possible that in spite of the seller's best, good faith efforts to complete the disclosure forms in the first instance that the seller may later become aware of adverse material conditions or even a correction that needs to be made to the previously provided disclosure. If the buyer is otherwise unaware of the condition or true state of the property, paragraph 11.A(4) requires the seller to give the buyer a subsequent or amended written disclosure. There is an exception to this rule about seller subsequent disclosure if the condition is disclosed in a report provided to or obtained by the buyer, or ordered and paid for by the buyer. No separate seller disclosure is required in those two situations because the buyer is presumed to have knowledge of those reports.

### **Paragraph 11, Statutory and Other Disclosures, B (Lead Disclosures):**

**B. LEAD DISCLOSURES:**

- (1) Seller shall, within the time specified in **paragraph 3N(1)**, for any residential property built before January 1, 1978, unless exempted by Law, Deliver to Buyer a fully completed Federal Lead-Based Paint Disclosures (C.A.R. Form LPD) and pamphlet ("Lead Disclosures").
- (2) Buyer shall, within the time specified in **paragraph 3L(3)**, have the opportunity to conduct a risk assessment or to inspect for the presence of lead-based paint hazards.

#### **11B. Lead Disclosures:**

Federal law requires sellers of all residential properties constructed prior to 1978 to provide a buyer with a Lead-Based Paint notice as an attachment to the contract, a disclosure of known lead paint, a lead hazard reports, and a lead pamphlet (either the separate federal lead booklet or the state Combined Hazards Book). The buyer must also be given an opportunity to inspect for lead-based pain hazards.





# VIII

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA, PAGE 8)

### Paragraph 11, Statutory and Other Disclosures, C and D (Home Fire Hardening and Defensible Space):

- C. HOME FIRE HARDENING DISCLOSURE AND ADVISORY:** For any transaction where a TDS is required, the property is located in a high or very high fire hazard severity zone, and the home was constructed before January 1, 2010, Seller shall, within the time specified in **paragraph 3N(1)**, Deliver to Buyer: (i) a home hardening disclosure required by law; and (ii) a statement of features of which the Seller is aware that may make the home vulnerable to wildfire and flying embers; and (iii) a final inspection report regarding compliance with defensible space requirements if one was prepared pursuant to Government Code § 51182 (C.A.R. Form FHDS).
- D. DEFENSIBLE SPACE DISCLOSURE AND ADDENDUM:** For any transaction in which a TDS is required and the property is located in a high or very high fire hazard severity zone, Seller shall, within the time specified in **paragraph 3N(1)**, Deliver to Buyer (i) a disclosure of whether the Property is in compliance with any applicable defensible space laws designed to protect a structure on the Property from fire; and (ii) an addendum allocating responsibility for compliance with any such defensible space law (C.A.R. Form FHDS).

#### **11C. Home Fire Hardening Disclosure and Advisory:**

Up and down the State, California communities and individuals have been devastated by wildfires. Beginning in 2021, sellers of residential real property with one to four units and built before 2010, whose property is located in a high or very high fire hazard zone must (i) disclose to the buyer information about fire safety requirements, generally; (ii) specifically disclose if the property has any known home fire hardening vulnerabilities; and (iii) provide buyers with a copy of a report assessing the home's fire hardening status and compliance with defensible space requirements (See, next paragraph). The 2010 date is important as that is when home fire hardening building requirements became effective. The requirement is found in the same part of the law as the TDS requirement which means that if the required disclosures are provided after the buyer makes an offer the buyer has a cancellation right just the same as that which applies to the TDS. The statutory disclosure can be made on the Fire Hardening and Defensible Space Advisory, Disclosure and Addendum (C.A.R. Form FHDS). A seller or broker should consult with the third-party natural hazard reporting company to determine if the property is in a zone requiring the disclosure.

#### **11D. Defensible Space Disclosure and Addendum:**

Defensible space laws are created to minimize the risk of a home catching fire. These laws require a homeowner to clear brush, mow lawns, trim trees, remove vegetation, and create separation between growth surrounding the property, among other actions. For transaction closing on or after July 1, 2021 residential property owners whose property is located in a high or very high fire hazard zone must disclose to the buyer if the property is in compliance with defensible space laws and the buyer and seller must sign an addendum to the contract allocating responsibility for compliance. The law applies to all residential properties in

these zones, regardless of when the home was built. C.A.R. Form FHDS may be used to satisfy the requirements of the defensible space disclosure and addendum law. A seller or broker should consult with the third-party natural hazard reporting company to determine if the property is in a zone requiring compliance with the law.

## Paragraph 11, Statutory and Other Disclosures, E, F and G:

- E. WAIVER PROHIBITED:** Waiver of Statutory, Lead, and other Disclosures in **paragraphs 11A(1), 11B, 11C, and 11D** are prohibited by Law.
- F. RETURN OF SIGNED COPIES:** Buyer shall, within the time specified in **paragraph 3L(3)** OR **5 Days** after Delivery of any disclosures specified in **paragraphs 11 A, B, C or D**, and defensible space addendum in **paragraph 11D**, whichever is later, return Signed Copies of the disclosures, and if applicable, addendum, to Seller.
- G. TERMINATION RIGHTS:**
- (1) **Statutory and Other Disclosures:** If any disclosure specified in **paragraphs 11A, B, or C**, or subsequent or amended disclosure to those just specified, is Delivered to Buyer after the offer is Signed, Buyer shall have the right to terminate this Agreement within **3 Days** after Delivery in person, or **5 Days** after Delivery by deposit in the mail, or by an electronic record or email satisfying the Uniform Electronic Transactions Act (UETA), by giving written notice of rescission to Seller or Seller's Authorized Agent. If Buyer does not rescind within this time period, Buyer has been deemed to have approved the disclosure and shall not have the right to cancel.
  - (2) **Defensible Space Compliance:** If, by the time specified in **paragraph 11F**, Buyer does not agree to the terms regarding defensible space compliance Delivered by Seller, as indicated by mutual signatures on the FHDS, then Seller, after first Delivering a Notice to Buyer to Perform, may cancel this Agreement.

### 11E. Waiver Prohibited:

Sometimes buyers believe that they do not need the disclosures and the seller believes it is pointless to provide them. An example could be where the buyer intends to demolish the home and rebuild and is buying the property for land value only and in an as-is condition. By statute, buyers cannot give up their rights to receive these statutorily required disclosures and sellers cannot relinquish the obligations to provide those disclosures, regardless of the circumstances.

### 11F. Return of Signed Copies:

Because buyers have a limited-time statutory and contractual rescission right upon receiving these fully completed disclosures, the seller has an interest in knowing when the possibility of buyer rescission ends. One way to confirm the beginning and ending dates of the rescission rights is for the seller to know that the buyer has received the fully completed disclosures. Paragraph 11F requires buyer to return the disclosures to the seller providing proof buyer received the disclosures and when.

### 11G. Termination Rights:

If the Transfer Disclosure Statement (TDS), NHD, Lead-based Paint, Home Hardening, Defensible Space and other disclosures specified in 11A-D were not given to the buyer before the buyer made an offer, the RPA requires that they must be given after acceptance within the number of days specified in paragraph 14. Delivery of these disclosures after the buyer has signed the RPA triggers a cancellation period of three (3) days from personal receipt or five (5) days if delivery is by mail or email. If the buyer receives these disclosures before signing the RPA, there is no cancellation period. Although a completed transaction cannot be rescinded for failure of a seller to give these disclosures, the pre-sale cancellation right exists even if the seller never provides the buyer with them. That a buyer may cancel before the seller provides the disclosure makes sense as a rule to the contrary would give a seller an incentive not to make the required disclosures.

## Paragraph 11, Statutory and Other Disclosures, H, I and J:

- H. WITHHOLDING TAXES:** Buyer and Seller hereby instruct Escrow Holder to withhold the applicable required amounts to comply with federal and California withholding Laws and forward such amounts to the Internal Revenue Service and Franchise Tax Board, respectively. However, no federal withholding is required if, prior to Close Of Escrow, Seller Delivers **(i)** to Buyer and Escrow Holder a fully completed affidavit (C.A.R. Form AS) sufficient to avoid withholding pursuant to federal withholding Law (FIRPTA); **OR (ii)** to a qualified substitute (usually a title company or an independent escrow company) a fully completed affidavit (C.A.R. Form AS) sufficient to avoid withholding pursuant to federal withholding Law AND the qualified substitute Delivers to Buyer and Escrow Holder an affidavit signed under penalty of perjury (C.A.R. Form QS) that the qualified substitute has received the fully completed Seller's affidavit and the Seller states that no federal withholding is required; **OR (iii)** to Buyer other documentation satisfying the requirements under Internal Revenue Code § 1445 (FIRPTA). No withholding is required under California Law if, prior to Close Of Escrow, Escrow Holder has received sufficient documentation from Seller that no withholding is required, and Buyer has been informed by Escrow Holder.
- I. MEGAN'S LAW DATABASE DISCLOSURE:** Notice: Pursuant to § 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at [www.meganslaw.ca.gov](http://www.meganslaw.ca.gov). Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides. (Neither Seller nor Agent are required to check this website. If Buyer wants further information, Agent recommends that Buyer obtain information from this website during Buyer's investigation contingency period. Agents do not have expertise in this area.)
- J. NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES:** This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov/>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Website. (Neither Seller nor Agent are required to check this website. If Buyer wants further information, Agent recommends that Buyer obtain information from this website during Buyer's investigation contingency period. Agents do not have expertise in this area.)

### 11H. Withholding Taxes:

There are two tax withholding laws that affect the transfer of all real property in California: Federal law and California law.

Under Federal law, the buyer is responsible for withholding 15% of the seller's gross selling price (not of the "net proceeds") if the seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act (FIRPTA). If the property will be used as the Buyer's residence and does not cost more than \$1,000,000 then only 10% needs to be withheld if the Seller is a "Foreign Person."

Withholding is required unless an exemption applies. If an exemption from withholding applies, the seller needs to provide the buyer with documentation demonstrating the exemption. An exemption from withholding is not an exemption from documentation.

The Seller's Affidavit of Nonforeign Status and/or California Withholding Exemption (C.A.R. Form AS) can be used to demonstrate the seller is exempt from the Federal withholding laws. State withholding laws are addressed in a form provided by the escrow holder.

To satisfy the Federal withholding law, the buyer must be provided with a completed AS form. Because this form contains the seller's social security number or taxpayer identification number many sellers are reluctant to release that information to the buyer. If the number is crossed out, the buyer will not be receiving a completed AS form. Because of seller's legitimate concerns, Federal law allows a title or escrow company to receive the AS form and then notify the buyer that under that form, no withholding is required. The title or escrow company does not need to verify the seller's representations in the AS. When this is done, the buyer should receive a Qualified Substitute Declaration of Possession of Transferor's Affidavit of Nonforeign Status (C.A.R. Form QS), which will satisfy the federal requirement. Another exemption from the federal withholding law applies for properties sold for no more than \$300,000 that will be lived in

by the buyer. A Buyer's Affidavit (C.A.R. form AB) may be used to document this exemption. Either exemption must be documented, and the documentation retained by the buyer and the broker for five years in the event of an audit by the IRS or the Franchise Tax Board.

Under California law, 3 1/3% of the gross selling price must be withheld for out-of-state entities, such as corporations or trusts, or any individual sellers. However, for individual sellers no withholding is required if the property being sold is the seller's principal residence for tax purposes and the sales price does not exceed \$100,000; or the property is part of a 1031 tax deferred exchange.

Usually, the escrow holder handles the withholding provided it has been given appropriate documentation.

### **11I. Megan's Law Database Disclosure:**

This paragraph, required by statute, informs a buyer that information is available on the Internet regarding the location of registered sexual offenders.

### **11J. Notice Regarding Gas and Hazardous Liquid Transmission Pipelines:**

The California legislature required this paragraph be inserted into real property contracts so that concerned prospective homeowners can make their own determination of whether the property they are interested in buying is too close to a gas or hazardous liquid pipeline to be safe given that there is a possibility that such pipelines may leak or explode.

## **Paragraph 11, Statutory and Other Disclosures, K, L and M:**

### **K. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:**

(1) Seller shall, within the time specified in **paragraph 3N(1)**, disclose to Buyer whether the Property is a condominium or is located in a planned development, other common interest development, or otherwise subject to covenants, conditions, and restrictions (C.A.R. Form SPQ or ESD).

(2) If the Property is a condominium or is located in a planned development or other common interest development with a HOA, Seller shall, within the time specified in **paragraph 3N(3)**, order from, and pay any required fee for the following items to the HOA (C.A.R. Form HOA-IR): (i) Copies of any documents required by Law (C.A.R. Form HOA-RS); (ii) disclosure of any pending or anticipated claim or litigation by or against the HOA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of HOA minutes for regular and special meetings; (v) the names and contact information of all HOAs governing the Property; (vi) pet restrictions; and (vii) smoking restrictions ("CI Disclosures"). Seller shall itemize and Deliver to Buyer all CI Disclosures received from the HOA and any CI Disclosures in Seller's possession. Seller shall, as directed by Escrow Holder, deposit funds into escrow or direct to HOA or management company to pay for any of the above.

**L. NATURAL AND ENVIRONMENTAL HAZARDS:** Seller shall, within the time specified in **paragraph 3N(1)**, if required by Law: (i) Deliver to Buyer the earthquake guide and environmental hazards booklet, and for all residential property with 1-4 units and any manufactured or mobile home built before January 1, 1960, fully complete and Deliver the Residential Earthquake Risk Disclosure Statement; and (ii) even if exempt from the obligation to provide a NHD, disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.

**M. KNOWN MATERIAL FACTS:** Seller shall, within the time specified in **paragraph 3N(1)**, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including, but not limited to, known insurance claims within the past five years, or provide Buyer with permission to contact lender to get such information (C.A.R. Form ARC), and make any and all other disclosures required by Law.

### **11K. Condominium/Planned Development Disclosures:**

Sometimes a buyer may not be aware that the property is part of a development where property is shared in common with other owners or where the property is subject to certain rules along with other owners. This paragraph provides that the seller will make this information known to the buyer.

The seller must promptly request and provide the contractually required documents specified, including statements about age restrictions, preliminary list of defects, if any, or written notice of settlements involving common area defects and including the names and contact information for the Homeowners Association governing the property. This agreement requires the delivery of 12 months of Homeowners Association (HOA) minutes.

Many homeowners associations have their own forms for compliance with these legal requirements. C.A.R. has three forms that may be used. The first, the Homeowners Association Information Request, (C.A.R. Form HOA-IR) is used to request general information about the HOA. The Homeowner Association Request for Statutory Documents and Charges (C.A.R. Form HOA-RS) ask for document that the law requires a seller provide to the buyer. The Homeowner Association Request for Non-Statutory Documents, Other Information and Charges (C.A.R. Form HOA-RN) asks for items that the contract requires the seller to deliver to the buyer. Since the seller is not legally obligated to provide these documents, the buyer may want to pay to get them.

Other parts of the RPA (See, paragraph 3Q(12)) provides that the seller is responsible for paying costs associated with acquiring this information. The escrow holder may require payment from seller before placing or completing the order and instruct the seller how and to whom such payments should be made directly.

Buyer's agents should provide buyers with the Buyer Homeowner Association Advisory (C.A.R. form BHAA). The Advisory stresses the importance of a thorough review of HOA documents which will govern, affect and, in some cases, may limit their current and future use of the property.

### **11L. Natural and Environmental Disclosures:**

The seller must, within the time specified in paragraph 14, provide to the buyer the NHD form, unless an exemption applies. The NHD form covers six (6) natural hazard zone disclosures (Earthquake Fault Zone, Seismic Hazard Zone, State Fire Responsibility Area, Very High Fire Hazard Severity Zone, Flood Zone A and Inundation Zones). This paragraph informs the parties that even if the seller is exempt from providing a NHD form itself, the seller nonetheless has a statutory obligation to disclose if the property is in any of those 6 zones. The disclosure are usually made through a third party reporting company (See paragraph 3Q(1).

Earthquake and Seismic Hazard Zones Disclosures: The law requires a seller's agent, or a seller without an agent, to disclose to the buyer if the property is in an Earthquake Fault Zone (formerly called "Special Studies") or Seismic Hazard Zone when the seller's agent or seller has actual knowledge that the property is in an identified area or when maps or a notice of where to get the maps is posted at the County Assessor, Recorder or Planning Office. Construction or development may be restricted in these zones.

Special Flood Hazard Areas (Zone A) and Inundation Zones: Special Flood Hazard Areas are designated by the Federal Emergency Management Agency (FEMA). A seller's agent, or seller without an agent, must disclose if the property is in a Flood Zone A. Flood insurance coverage is generally required on these properties. The seller must also notify the buyer that the buyer must obtain and maintain flood insurance if the seller has received Federal Disaster Assistance on the property. The federal government has subsidized insurance rates for properties in these zones but such subsidies have been narrowed, cut back or eliminated. It is best to check with your insurance advisor or lender about the cost of insuring property located in these zones. Inundation zones are those areas subject to flooding in the event of a dam failure. A seller's agent, or seller without an agent, must disclose to a buyer if the property is located in an inundation zone.

State Fire Responsibility Areas (SRA) and Very High Fire Severity Zones: The law requires a seller to disclose to the buyer if the property is located in an SRA when the seller has actual knowledge that the property is in an SRA or when maps are available through the County Assessor. The seller must also inform the buyer that the state has no responsibility to provide fire protection services to any building or structure located within the SRA unless an agreement has been reached with a local firefighting agency, and that the buyer may have to maintain firebreaks and other maintenance requirements may have to be met. Properties located in a Very High Fire Severity Zone are subject to high fire risks. A seller must disclose to a buyer if the property is located in this fire zone and that the property may have maintenance requirements on it, such as maintaining firebreaks, or clearing brush, etc.

Earthquake Safety Booklet: Effective January 1, 1993, the Government Code requires a disclosure in the form of a booklet regarding the earthquake safety or seismic deficiencies of structures of certain types of construction, depending upon the year built. "The Homeowner's Guide to Earthquake Safety" (booklet) is used for conventional light frame construction structures built prior to 1960. The seller must also disclose any known seismic deficiencies (See page 47 of the booklet). It is the responsibility of the Seller's Agent to give the booklet to the seller. The seller is responsible for completing the questionnaire page and then giving the entire booklet to the buyer.

"The Commercial Property Guide to Earthquake Safety" is used for masonry or pre-cast concrete structures with wood frame floors and roofs built prior to 1975. Although the title says "commercial," this booklet is also used for residential structures that meet the construction material description. Exemptions to the delivery of the booklet are the same as for the TDS with an additional exemption if the buyer agrees in writing to demolish the property within one year. The broker or seller who delivers the booklet to the buyer, even on exempt properties, is not required to provide additional information regarding earthquake hazards in general.

The Environmental Hazard Booklet discusses common environmental hazards: asbestos; formaldehyde; hazardous waste; household hazardous waste; lead; mold; and radon. The broker and seller who delivers the booklet is not required to provide additional information regarding any of those items unless the broker or seller has specific knowledge about the presence of those items on the property being sold.

The Earthquake booklet and Environmental Hazard booklets are available online.

Home Energy Ratings Pamphlet: This pamphlet discusses the importance of making a home energy efficient as well as advantages of using solar power. The law does not mandate that the pamphlet be given in a transaction but there are benefits in doing so in that the seller and listing broker get legal protection for advising the buyer of these issues.

### **11M: Known Material Facts:**

California law has long-required sellers of residential real property to disclose to buyers known facts materially affecting the value or desirability of the property that are unknown to the buyer or not within the diligent attention or observation of the buyer. This paragraph makes the seller's disclosure obligation a contractual responsibility. The brokers in the transaction for the sale of residential property improved with one-to-four units have a responsibility to conduct a reasonably competent and diligent visual inspection of the accessible areas of the property and disclose to the prospective purchaser material defects that were or should have been discovered in such an inspection. The broker will make their disclosure along with the seller's completion of the TDS. The brokers may do this on the TDS itself or a separate form, the Agent Visual Inspection Disclosure (C.A.R. Form AVID).

One of the facts the seller is required to disclose is whether any insurance claims affecting the property have been filed within the past five years. Depending on the nature and types of such claims, the property may be uninsurable or insurance may be expensive or difficult to obtain. The buyer's lender is likely to obtain a document referred to as a CLUE report which identifies certain property insurance claims. Even if the buyer or lender gets a CLUE report, that report is not a substitute for the seller making his or her own disclosure.





# IX

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA, PAGE 9)

### Paragraph 12, Buyer's Investigation of Property and Matters Affecting Property:

#### 12. BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:

- A. Buyer shall, within the time specified in **paragraph 3L(3)**, have the right, at Buyer's expense unless Otherwise Agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations").
- B. Buyer Investigations include, but are not limited to:
  - (1) Inspections regarding any physical attributes of the Property or items connected to the Property, such as:
    - (A) A general home inspection.
    - (B) An inspection for lead-based paint and other lead-based paint hazards.
    - (C) An inspection specifically for wood destroying pests and organisms. Any inspection for wood destroying pests and organisms shall be prepared by a registered Structural Pest Control company; shall cover the main building and attached structures; may cover detached structures; shall NOT include water tests of shower pans on upper level units unless the owners of property below the shower consent; shall NOT include roof coverings; and, if the Property is a unit in a condominium or other common interest subdivision, the inspection shall include only the separate interest and any exclusive-use areas being transferred, and shall NOT include common areas; and shall include a report ("Pest Control Report") showing the findings of the company which shall be separated into sections for evident infestation or infections (Section 1) and for conditions likely to lead to infestation or infection (Section 2).
    - (D) Any other specific inspections of the physical condition of the land and improvements.
  - (2) All other Buyer Investigations, such as insurance, not specified above. See, Buyer's Inspection Advisory (C.A.R. Form BIA) for more.
  - (3) A review of reports, disclosures or information prepared by or for Seller and Delivered to Buyer pursuant to **paragraphs 3, 10, 11, and 14A**.
- C. Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations, except for minimally invasive testing required to prepare a Pest Control Report, which shall not include any holes or drilling through stucco or similar material; or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.
- D. Seller shall make the Property available for all Buyer Investigations. Seller is not obligated to move any existing personal property. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is delivered to Buyer. Buyer shall, (i) by the time specified in **paragraph 3L(3)**, complete Buyer Investigations and satisfy themselves as to the condition of the Property, and either remove the contingency or cancel this Agreement, and (ii) by the time specified in **paragraph 3L(3) or 3 Days** after receipt of any Investigation report, whichever is later, give Seller at no cost, complete Copies of all such reports obtained by Buyer, which obligation shall survive the termination of this Agreement. This Delivery of Investigation reports shall not include any appraisal, except an appraisal received in connection with an FHA or VA loan.
- E. **Buyer indemnity and Seller protection for entry upon the Property:** Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-Responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.

### 12: Buyer's Investigation of Property and Matters Affecting Property:

This paragraph gives the buyer the right to investigate and inspect the property as a contingency of the agreement. Paragraph 12B breaks down the investigation right into three categories: Inspections regarding the physical attributes of the property; All other buyer investigations; and Review of reports and disclosures prepared by or for the seller. The inspection of the physical attributes covers: General home inspections; inspections for lead-based paint hazards; inspections for wood destroying pests; and any other inspection of the physical condition of the land and improvements.

The right to inspect for wood destroying pests and organisms is very specific. Parameters of that inspection require the inspector to be a registered structural pest control company. Other parameters limit the inspection to separate interests and exclusive use common areas if the property is located in a common interest subdivision or condominium. (The buyer is not restricted from examining or viewing these areas that are off limits to the pest control company.)

If a wood destroying pests and organisms inspection is made, the inspection company shall issue a written report and separate its findings into areas of evident infestation or infection, commonly known as Section 1, and areas likely to lead to infestation or infection, commonly known as Section 2. There is no obligation in this paragraph requiring a seller to correct any section 1 or section 2 deficiencies identified in the report. If the buyer desires corrective work, the buyer will make the claim on the Request for Repair (C.A.R. Form RR) along with any other desired repair or accommodation. Language in the RR form to make it easy for the buyer to specify section 1 or section 2 requests.

If the seller does not agree, the buyer retains the right to cancel the contract as long as the inspection contingency has not been removed (See paragraph 14). Essentially, the wood destroying pests and organisms inspection operates as any other inspection the buyer wishes to obtain. If the buyer wants to negotiate for the seller to pay for the inspection (but not necessarily the repairs), that can be accommodated by writing a request using paragraph 3Q. Freedom to negotiate the inspection and the response to the report are benefits of the RPA.

12C lists a few other limitations on the buyer's inspection right. Inspections by government entities are not to be done without the seller's prior approval and invasive or destructive testing, other than minimally invasive testing necessary to perform a wood destroying pests and organisms inspection, is to be avoided.

Paragraph 12D requires the seller to have utilities turned on not just for the buyer's initial inspection but through the date buyer is given possession. Paragraph 12D also ties the inspection and request rights to those specified in paragraph 14, and assures that the seller is entitled to a copy of all reports obtained by the buyer, at no cost to the seller. However, the buyer has no obligation to give the seller an appraisal report obtained by or for the buyer, unless the appraisal is made in conjunction with a FHA or VA loan.

Lastly, paragraph 12E instructs that the buyer shall not damage the seller's property while performing inspections or repairs and shall take steps to assure that the seller will not be harmed, such as by hiring insured workers and indemnifying the seller. The seller is also cautioned that recording certain notices may help protect the seller's interest. Under paragraph 14, the buyer must either remove the contingency associated with this investigation or cancel the agreement.

## Paragraph 13, Title and Vesting:

### 13. TITLE AND VESTING:

- A. Buyer shall, within the time specified in **paragraph 3N(1)**, be provided a current Preliminary Report by the person responsible for paying for the title report in **paragraph 3Q(8)**. If Buyer is responsible for paying, Buyer shall act diligently and in good faith to obtain such Preliminary Report within the time specified. The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities.
- B. Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing. For any lien or matter not being transferred upon sale, Seller will take necessary action to deliver title free and clear of such lien or matter.
- C. Seller shall within **7 Days** after request, give Escrow Holder necessary information to clear title.
- D. Seller shall, within the time specified in **paragraph 3N(1)**, disclose to Buyer all matters known to Seller affecting title, whether of record or not.
- E. If Buyer is a legal entity and the Property purchase price is at least \$300,000 and the purchase price is made without a bank loan or similar form of external financing, a Geographic Targeting Order (GTO) issued by the Financial Crimes Enforcement Network, U.S. Department of the Treasury, requires title companies to collect and report certain information about the Buyer, depending on where the Property is located. Buyer agrees to cooperate with the title company's effort to comply with the GTO.
- F. Buyer shall, after Close Of Escrow, receive a recorded grant deed or any other conveyance document required to convey title (For example, for stock cooperative or tenancy in common, respectively, an assignment of stock certificate or assignment of seller's interest in the real property), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's vesting instructions. The recording document shall contain Buyer's post-closing mailing address to enable Buyer's receipt of the recorded conveyance document from the County Recorder. **THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.**
- G. Buyer shall receive a "ALTA/CLTA Homeowner's Policy of Title Insurance" or equivalent policy of title insurance, if applicable to the type of property and buyer. Escrow Holder shall request this policy. If a ALTA/CLTA Homeowner's Policy of Title Insurance is not offered, Buyer shall receive a CLTA Standard Coverage policy unless Buyer has chosen another policy and instructed Escrow Holder in writing of the policy chosen and agreed to pay any increase in cost. Buyer should consult with the Title Company about the availability, and difference in coverage, and cost, if any, between a ALTA/CLTA Homeowner's Policy and a CLTA Standard Coverage policy and other title policies and endorsements. Buyer should receive notice from the Title Company on its Preliminary (Title) Report of the type of coverage offered. If Buyer is not notified on the Preliminary (Title) Report or is not satisfied with the policy offered, and Buyer nonetheless removes the contingency for Review of the Preliminary Report, Buyer will receive the policy as specified in this paragraph.

### 13: Title and Vesting:

Paragraph 13A. The buyer has a specified amount of time to review the preliminary report (PR) and give the seller a written notice to take corrective action. The title company should search not just the property but the general index to determine if any liens affect the seller. The search of the general index should occur prior to issuing the PR. Getting the information up front in the transaction helps the buyer decide whether to continue with the transaction before incurring excess costs and expenses. In order to aid the ability of the title company to perform a general index search early in the transaction, the seller will have to provide specific information to the title company at the commencement of the transaction. The required information is contained in a document called a Statement of Information. A general index search will not be performed on all sellers, however, particularly those who are selling property they acquired through foreclosure, and corporations and governmental entities. The PR may not contain all items affecting title and is only an "inducement to purchase a title insurance policy." In the event an item of record is not disclosed in the PR, and the title policy is issued, the title company is liable only for the face amount of the policy.

Paragraph 13B and C. Unless otherwise specified by the buyer in writing, all matters on record will remain on the title, such as easements, CC&Rs, etc. These matters may be found in the PR or discovered prior to COE. However, existing monetary liens on the property must be removed from the title unless agreed to as part of the contract. Seller agrees to give escrow holder needed information to clear title.

Paragraph 13D. Because the property title is being conveyed in an as-is condition, there is another reminder to the seller to disclose all known title matters, even those not appearing on a preliminary report or otherwise of record.

Paragraph 13E. Federal law requires title companies to report all-cash purchases made by entity purchasers of property sold for over \$300,000 in an effort to minimize money laundering. The requirement applies to certain cities but list of cities has been expanded over the years. Buyer agrees to cooperate in title company efforts to comply with the law in any geographic location to which it applies.

Paragraph 13F. Buyer is entitled to receive title to the property by a grant deed if a fee interest is being transferred. A stock certificate or assignment of lease will instead be issued in other rare circumstances. Buyers should discuss with an attorney what type of ownership documentation is required if the transfer is of a tenancy-in-common or stock cooperative. The transfer will include oil, mineral, and water rights if currently owned by the seller. Sometimes these rights have been transferred long before the seller took title to the property. A title company can provide guidance if these are important issues to the buyer. Vesting shall be designated in the buyer's escrow instructions. The agent should never advise on how to take title.

Paragraph 13G. The buyer is to receive a "Homeowner's Policy of Title Insurance." This particular type of policy has been adopted by both the American Land Title Association (ALTA) and the California Land Title Association (CLTA). Whether an ALTA or CLTA policy, the Homeowner's Policy offers the same coverage and contains advantages over an ALTA or CLTA standard coverage policy in terms of certain post-policy issues, such as, forgeries, boundary disputes, transfers to trusts and permit and map act problems. However, the Homeowner's Policy is only available for buyers who are natural persons and may not be available for some properties, particularly in rural areas. If the property or buyer does not qualify for the Homeowner's Policy, then the buyer should discuss with the title company what other options are available and then notify the escrow company in writing of the buyer's replacement choice.

# X

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA, PAGE 10)

### Paragraph 14, Time Periods; Removal of Contingencies; Cancellation Rights. A and B:

- 14. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS:** The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).
- A. SELLER DELIVERY OF DOCUMENTS:** Seller shall, within the time specified in **paragraph 3N(1)**, Deliver to Buyer all reports, disclosures and information ("Reports") for which Seller is responsible as specified in **paragraphs 9B(6), 10, 11A, 11B, 11C, 11D, 11H, 11K, 11L, 11M, 13A, 13D and 28.**
- B. BUYER REVIEW OF DOCUMENTS; REPAIR REQUEST; CONTINGENCY REMOVAL OR CANCELLATION**
- (1) Buyer has the time specified in **paragraph 3** to: (i) perform Buyer Investigations; review all disclosures, reports, lease documents to be assumed by Buyer pursuant to **paragraph 9B(6)**, and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property; and (ii) Deliver to Seller Signed Copies of Statutory and Other Disclosures Delivered by Seller in accordance with **paragraph 11.**
  - (2) Buyer may, within the time specified in **paragraph 3L(3)**, request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to Buyer's requests (C.A.R. Form RR or RRRR). If Seller does not agree or does not respond, Buyer is not contractually entitled to have the repairs or other requests made and may only cancel based on contingencies in this Agreement.
  - (3) Buyer shall, by the end of the times specified in **paragraph 3L** (or as Otherwise Agreed), Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement (C.A.R. Form CR or CC). However, if any report, disclosure, or information for which Seller is responsible, other than those in **paragraphs 11A or 11B**, is not Delivered within the time specified in **paragraph 3N(1)**, then Buyer has **5 Days** after Delivery of any such items, or the times specified in **paragraph 3L**, whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement. If Delivery of any Report occurs after a contractual contingency pertaining to that Report has already been waived or removed, the Delivery of the Report does not revive the contingency but there may be a right to terminate for a subsequent or amended disclosure under **paragraph 11G.**
  - (4) **Continuation of Contingency:** Even after the end of the time specified in **paragraph 3L** and before Seller cancels, if at all, pursuant to **paragraph 14C**, Buyer retains the right, in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to **paragraph 14C(1).**

#### 14. Title Paragraph:

The RPA applies the "active" method of contingency removal, NOT the "passive" method. Silence does not make the contingency go away nor create a cancellation. Contingency removal must be in writing to be effective. Further, none of the time periods may be altered or changed except in writing. Any removal or cancellation must be done in good faith.

#### 14A. Seller Delivery of Documents:

Paragraph 3N(1) gives the seller seven (7) days (unless a different time is filled in the optional blank line) to provide the buyer with the items specified in 11 different paragraphs. Examples would be leased or liened items (See, paragraph 9B(6)); mandatory government reports (See, paragraph 10); TDS and SPQ (See, paragraph 11A); lead paint disclosures like LPD (See, paragraph 11B); natural hazard disclosure reports (See, paragraph 11A and L); Home hardening and defensible space disclosure and addendum (See, paragraphs 11C and D); Condominium/planned development disclosures (See, Paragraph 11K); the Preliminary Report (See, paragraph 13A); a Statement of Information for the title company to clear title (See, paragraph 13B); and proof of authority for a legally authorized signer to act in a representative capacity

(See paragraph 28). Certain items, such the Preliminary Report, government reports and Homeowners Association documents need to be requested from others and should be requested early on in order to provide them to the buyer within the required time. If buyer does not get the information the seller has contractually agreed to provide, buyer must notify the seller using the Notice to Seller to Perform (C.A.R. Form NSP). While this form cannot make the seller perform, it may provide a non-threatening manner to inform the seller of the contractual obligation. If the seller still does not provide the necessary documentation after the time provided in the NSP, the buyer has the contractual right to cancel.

### **14B. Buyer Review of Documents; Repair Request; Contingency Removal or Cancellation:**

This clause gives the buyer a default time of 17 days after acceptance to complete inspections, and investigations, and review reports and other information for which the buyer is responsible, and either remove contingencies and thereby continue with the transaction or cancel the agreement. The 17-day time period can be changed by checking the appropriate box and writing in a different number in the blank line. The buyer must complete all investigations and review of reports, such as getting a home inspection, reviewing the lead-based paint and hazard disclosures, and investigating the insurability of the buyer and the property within the specified time. Additionally, also within the specified time, the buyer must return copies of signed statutory disclosures to the seller.

The buyer may request that the seller make repairs or take other action regarding the property. The Request for Repair form (C.A.R. Form RR) may be used for this purpose. In section 1 of the RR, the buyer asks the seller to make repairs, take the action specified in a wood pest inspection report that is identified by date and provider, give buyer a credit toward the purchase price or reduce the purchase price. In section 2 of the RR, the seller responds to buyer's request by agreeing to all, some or none of what the buyer requested. In section 3 of the RR, the buyer responds by either accepting the seller's response or seeking to continue the negotiation. The seller is not obligated to make repairs. If no agreement is reached, and buyer has not already removed the investigation contingency, the buyer may cancel.

The buyer must, in writing, either remove their contingencies or cancel the agreement (Contingency Removal (C.A.R. Form CR) or Cancellation of Contract, Release of Deposit and Cancellation of Escrow (C.A.R. Form CC)). It is important to remember that the buyer must accomplish all of the following three things during the 17, or other defined number of days: (1) Make buyer's own investigation and review reports provided by buyer's inspectors and by the seller; (2) Make any request for repairs or otherwise negotiate over the property's condition with the seller; and (3) remove contingencies or cancel. The 17 or defined number of days is not the beginning of the process but the end.

There may be times when a buyer is contractually entitled to more time to take the designated action. If within the time in paragraph 14A, the seller is unable to deliver any of the contractually required documents, the buyer's obligation to remove the contingency associated with that item is not triggered until five days after the item is delivered to buyer (See, paragraph 14B(3)).

As stated in the opening caption, removal of contingencies or cancellation must be in writing to be effective. The RPA applies the "active" method of contingency removal, NOT the "passive" method. Silence does not make the contingency go away nor create a cancellation. Paragraph 14B(4) clarifies that if neither buyer nor seller has taken any action in writing, the buyer retains the right to make requests of the seller, remove contingencies or cancel the agreement even after the expiration of the time in paragraph 14B(1).

## Paragraph 14, Time Periods; Etc. C and D:

### C. SELLER RIGHT TO CANCEL:

- (1) **SELLER RIGHT TO CANCEL; BUYER CONTINGENCIES:** If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
- (2) **SELLER RIGHT TO CANCEL; BUYER CONTRACT OBLIGATIONS:** Seller, after first Delivering to Buyer a Notice to Buyer to Perform, may cancel this Agreement if, by the time specified in this Agreement, Buyer does not take the following action(s): (i) Deposit funds as required by **paragraph 3D(1)** or **3D(2)** or if the funds deposited pursuant to **paragraph 3D(1)** or **3D(2)** are not good when deposited; (ii) Deliver updated contact information for Buyer's lender(s) as required by **paragraph 5C(3)**; (iii) Deliver a notice of FHA or VA costs or terms, if any, as specified by **paragraph 5C(4)** (C.A.R. Form RR); (iv) Deliver verification, or a satisfactory verification if Seller reasonably disapproves of the verification already provided, as required by **paragraph 5B** or **6A**; (v) Deliver a letter as required by **paragraph 6B**; (vi) In writing assume or accept leases or liens specified in **paragraph 8G**; (vii) Return Statutory and Other Disclosures as required by **paragraph 11F**; (viii) Cooperate with the title company's effort to comply with the GTO as required by **paragraph 13E**; (ix) Sign or initial a separate liquidated damages form for an increased deposit as required by **paragraph 5A(2)** and **29**; (x) Provide evidence of authority to Sign in a representative capacity as specified in **paragraph 28**; or (xi) Perform any additional Buyer contractual obligation(s) included in this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees allocated to Seller in this Agreement and already paid by Escrow prior to cancellation of this Agreement and notification to Escrow.
- (3) **SELLER RIGHT TO CANCEL; SELLER CONTINGENCIES:** Seller may cancel this Agreement by good faith exercise of any Seller contingency included in this Agreement, or Otherwise Agreed, so long as that contingency has not already been removed or waived in writing.

### D. BUYER RIGHT TO CANCEL:

- (1) **BUYER RIGHT TO CANCEL; SELLER CONTINGENCIES:** If, by the time specified in this Agreement, Seller does not Deliver to Buyer a removal of the applicable contingency or cancellation of this Agreement, then Buyer, after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees allocated to Seller in the Agreement and already paid by Escrow prior to cancellation of this Agreement and notification to Escrow.
- (2) **BUYER RIGHT TO CANCEL; SELLER CONTRACT OBLIGATIONS:** If, by the time specified, Seller has not Delivered any item specified in **paragraph 3N(1)** or Seller has not performed any Seller contractual obligation included in this Agreement by the time specified, Buyer, after first Delivering to Seller a Notice to Seller to Perform, may cancel this Agreement.
- (3) **BUYER RIGHT TO CANCEL; BUYER CONTINGENCIES:** Buyer may cancel this Agreement by good faith exercise of any Buyer contingency included in **paragraph 8**, or Otherwise Agreed, so long as that contingency has not already been removed in writing.

## 14C. Seller Right to Cancel:

If buyer does not do what the buyer promised to do (either remove contingencies or cancel), since silence or no-action is not approval, the contract will remain in limbo unless seller takes affirmative action. Paragraph 14C gives the seller the opportunity to cancel after first giving the buyer a chance to comply with the contract. Before the seller can cancel, the seller must first have given the buyer a Notice to Buyer to Perform (C.A.R. Form NBP) (See, paragraph 14E).

Sometimes, the buyer does not remove contingencies as promised. Sometimes a buyer does not do what the buyer promised to do in the contract, other than contingencies. For example, the contract requires the buyer to make a deposit (See, paragraph 3D(1)) or sign a new liquidated damage clause upon making an increased deposit (See, paragraph 5A(2)) or provide verification of down

payment (See, paragraph 6A). Common law in California allows one party to cancel if the other party has committed a material breach. But are the buyer's obligations material or not?

The RPA solves this open question by creating a contractual right to cancel but only after the seller has delivered to buyer a Notice to Buyer to Perform (C.A.R. Form NBP). Paragraphs 14C(1) and (2) establish the seller's right to cancel after first giving the NBP to the buyer. Whether the seller cancels because the buyer failed to remove contingencies or because the buyer failed to take some other specified action, when the seller cancels after issuing a NBP to the buyer, both paragraph 14C(1) and 14C(2) require the seller to authorize the return of the buyer's deposit.

Paragraph 14C(3) gives the seller a contractual right to cancel if seller contingencies have not already been waived or removed in writing. Examples would be if seller has not found replacement property or closed escrow on replacement property.

#### **14D. Buyer Right to Cancel:**

Buyer has three rights to cancel in this paragraph. Paragraph 14D(1) allows the buyer to cancel, after first giving seller a Notice to Seller to Perform (C.A.R. Form NSP) if seller has not on time removed any seller contingencies. Paragraph 14D(2) allows the buyer to cancel, after first giving seller a Notice to Seller to Perform (C.A.R. Form NSP) if seller has not on time taken contractual actions required by the RPA, such as delivering required documents. Paragraph 14D(3) allows the buyer to unilaterally cancel, during a buyer's contingency period if not previously removed or waived, if, for example, in good faith the buyer is not satisfied with the condition of the property or the information provided by the seller concerning the property.

### **Paragraph 14, Time Periods; Etc. E and F:**

- E. NOTICE TO BUYER OR SELLER TO PERFORM:** The Notice to Buyer to Perform or Notice to Seller to Perform shall: (i) be in writing; (ii) be Signed by the applicable Buyer or Seller; and (iii) give the other Party at least **2 Days** after Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A Notice to Buyer to Perform or Notice to Seller to Perform may not be Delivered any earlier than **2 Days** prior to the Scheduled Performance Day to remove a contingency or cancel this Agreement or meet an obligation specified in **paragraph 14**, whether or not the Scheduled Performance Day falls on a Saturday, Sunday or legal holiday. If a Notice to Buyer to Perform or Notice to Seller to Perform is incorrectly Delivered or specifies a time less than the agreed time, the notice shall be deemed invalid and void and Seller or Buyer shall be required to Deliver a new Notice to Buyer to Perform or Notice to Seller to Perform with the specified timeframe.
- F. EFFECT OF REMOVAL OF CONTINGENCIES:**
- (1) **REMOVAL OF BUYER CONTINGENCIES:** If Buyer removes any contingency or cancellation rights, unless Otherwise Agreed, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for the non-delivery of any reports, disclosures or information outside of Seller's control and for any Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.
  - (2) **REMOVAL OF SELLER CONTINGENCIES:** If Seller removes any contingency or cancellation rights, unless Otherwise Agreed, Seller shall conclusively be deemed to have: (i) satisfied themselves regarding such contingency, (ii) elected to proceed with the transaction; and (iii) given up any right to cancel this Agreement based on such contingency.



**14E. Notice to Buyer or Seller to Perform:**

Whether a Notice to Buyer to Perform is issued pursuant to paragraph 14C or a Notice to Seller to Perform is issued pursuant to 14D, the party issuing the notice must give the other party at least 2 days, to either take the action specified in the agreement (remove contingencies or cancel) or take the identified contractual action (for example, deliver the required document to buyer or seller). The purpose of the NBP is to prevent the buyer from being surprised by seller's attempt to cancel and the purpose of the NSP is to prevent a seller from being surprised that the buyer did not get certain information and therefore wants to cancel. For example, sometimes one of the parties believes ongoing, good faith negotiations indicate a waiver of the obligation to take the action specified in the contract. By delivering a notice to perform, there is a document establishing that no more time or delay will be allowed, and that party is reasserting the need to comply with the contract.

**14F. Effect of Removal of Contingencies:**

This paragraph specifies that once either buyer or seller removes contingencies, that party is precluded from raising certain legal objections that they otherwise contractually might have been able to raise during the contingency period.



# XI

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA, PAGE 11)

### Paragraph 14, Time Periods; Removal of Contingencies; Cancellation Rights G and H:

- G. DEMAND TO CLOSE ESCROW:** Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a Demand to Close Escrow (C.A.R. Form DCE). The DCE shall: (i) be Signed by the applicable Buyer or Seller; and (ii) give the other Party at least **3 Days** after Delivery to close escrow. A DCE may not be Delivered any earlier than **3 Days** prior to the Scheduled Performance Day for the Close Of Escrow. If a DCE is incorrectly Delivered or specifies a time less than the agreed time, the DCE shall be deemed invalid and void and Seller or Buyer shall be required to Deliver a new DCE.
- H. EFFECT OF CANCELLATION ON DEPOSITS:** If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to Sign and Deliver mutual instructions to cancel the sale and escrow and release deposits, if any, to the Party entitled to the funds, less (i) fees and costs paid by Escrow Holder on behalf of that Party, if required by this Agreement; and (ii) any escrow cancellation fee charged to that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. **A release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award. A Party may be subject to a civil penalty of up to \$1,000 for refusal to Sign cancellation instructions if no good faith dispute exists as to which Party is entitled to the deposited funds (Civil Code § 1057.3). Note: Neither Agents nor Escrow Holder are qualified to provide any opinion on whether either Party has acted in good faith or which Party is entitled to the deposited funds. Buyer and Seller are advised to seek the advice of a qualified California real estate attorney regarding this matter.**

#### **14G. Demand to Close Escrow:**

Where one party or the other will not close the escrow as scheduled, that party must give the other a Demand to Close Escrow (C.A.R. Form DCE) as a prerequisite to cancelling the contract, whether or not contingencies have already been removed. When the buyer refuses to close on time, and has already removed all contingencies, a seller should use the DCE instead of using the NBP. The reason is that the seller must return a buyer's deposit after cancelling following the issuance of a NBP but there is no such obligation to do so following the issuance of a DCE. The buyer who has already removed all contingencies is more than likely going to be in breach of contract for failure to close and accordingly may not have a legal right to have the deposit returned.

Whether the DCE is issued by a seller or a buyer, the form puts the receiving party on notice that escrow must be closed in three days or risk cancellation. C.A.R. form CC may be used to cancel the contract following the time period to respond to the DCE.

#### **14H. Effect of Cancellation on Deposits:**

Even though one party has contractual rights to cancel under certain circumstances, both parties are required to sign a cancellation of escrow. There are times when buyer and seller disagree on who is entitled to the deposit money. Sometimes the RPA provides an answer to that question, such as when a seller cancels after first issuing a NBP. Other times the answer is not

so clear cut. The second part of C.A.R. form CC allows the parties to disagree on the release of deposit but agree on dissolution of the transaction.

There are times when a party refuses to sign escrow instructions releasing the deposit, not for any apparent legitimate reason but rather what appears to be nothing more than an effort to make life difficult for the other party. Inaction by one party forces the other party to either take legal action or enter into some sort of settlement discussion to avoid the time and expense of pursuing legal action.

California law imposes a penalty on a party who refuses to release funds if there is no good faith dispute over who is entitled to the funds.

## Paragraph 15, Repairs and Paragraph 16, Final Verification of Condition:

- 15. REPAIRS:** Repairs shall be completed prior to final verification of condition unless Otherwise Agreed. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. Buyer acknowledges that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: (i) obtain invoices and paid receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.
- 16. FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final verification of the Property condition within the time specified in paragraph 3J, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to paragraph 7B; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).

### 15. Repairs:

Any repairs, including those performed pursuant to a pest control report or those separately agreed upon by the seller, are to be done with permits and in compliance with building codes and completed before buyer's final verification of condition. Work performed at the seller's expense may be performed by the seller. Exact restoration of appearance is not required. The seller is required to get invoices and paid receipts and provide them to the buyer.

### 16. Final Verification of Condition:

This clause is the authorization for a final "walk-through" five (or number specified) calendar days prior to COE. The clause does not give the buyer the right to inspect for everything and anything or the right to get out of the contract if the buyer discovers something that should have been noticed during the inspection contingency period. Instead, the purpose of this clause is to allow the buyer to verify that the condition of the property is as agreed upon in the contract and that the seller has complied with repair and other obligations. The buyer does not have a cancellation right under this clause, per se, but rather the buyer may discover something that the seller has not done (such as maintain the property in the condition it was in on the date of acceptance or make a required repair) and that failure may trigger rights and remedies for breach of contract under other paragraphs.

## Paragraph 17. Prorations of Property Taxes and Other Items:

**17. PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless Otherwise Agreed, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, Seller rental payments, HOA regular assessments due prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien. Seller shall pay any HOA special or emergency assessments due prior to Close Of Escrow. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special or emergency assessments that are due after Close Of Escrow. Property will be reassessed upon change of ownership. Any supplemental tax bills delivered to Escrow Holder prior to closing shall be prorated and paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information). Seller agrees all service fees, maintenance costs and utility bills will be paid current up and through the date of Close Of Escrow. TAX BILLS AND UTILITY BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be made based on a 30-day month.

### 17. Prorations of Property Taxes and Other Items:

Sellers make and receive payments for a variety of things such as taxes, rents, HOA dues, and government liens that may cover periods for which the seller no longer owns the property. In the case of payments made by the seller, the buyer would receive a windfall if the seller made a payment that primarily benefitted the buyer. In the case of receiving payments, the opposite is true. For example, if the property were being leased, and rent is due on the first of the month and the escrow closes on the fifth, the seller would have received the full rent but buyer would have responsibility for the tenant for the entire balance of the month. In order to prevent a windfall one way or the other, certain costs and receipts are prorated between buyer and seller to reflect their ownership interest in the property.

The buyer will receive NO CREDIT however toward the purchase price for Mello-Roos or other governmental special assessments, or HOA “special” assessment assumed by the buyer. The end of this paragraph refers to a supplemental tax bill the buyer will receive from the tax collector to pay the amount of increased taxes owed after the COE and before the next tax period.

Usually, the taxes collected through the escrow are based upon the tax bill of the prior owner. This makes the tax collected less than the amount based upon this new sales price if the property is worth more than the seller bought it for. Escrow has no responsibility for estimating the new property taxes that will be assessed after escrow has closed, so any effort to prorate based upon the supplemental tax bill is to be handled directly between the parties. In addition to this paragraph in the contract, the buyer is advised of this in the Statewide Buyer and Seller Advisory (C.A.R. Form SBSA) and may also be provided with a Notice of Your “Supplemental” Property Tax Bill (C.A.R. Form SPT) that also contains the relevant statutory language.

Prorations will be made based on a 30-day month, whether the actual month of the transaction has 28, 29, 30 or 31 days.

## Paragraph 18. Brokers and Agents:

### 18. BROKERS AND AGENTS:

- A. COMPENSATION:** Seller or Buyer, or both, as applicable, agree to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
- B. SCOPE OF DUTY:** Buyer and Seller acknowledge and agree that Agent: **(i)** Does not decide what price Buyer should pay or Seller should accept; **(ii)** Does not guarantee the condition of the Property; **(iii)** Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; **(iv)** Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; **(v)** Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Agent; **(vi)** Shall not be responsible for inspecting public records or permits concerning the title or use of Property; **(vii)** Shall not be responsible for identifying the location of boundary lines or other items affecting title; **(viii)** Shall not be responsible for verifying square footage, representations of others or information contained in Investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; **(ix)** Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; **(x)** Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and **(xi)** Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.

### 18A. Compensation:

This paragraph provides that compensation that either buyer or seller owes the broker arising from the transaction must be specified in a separate compensation agreement.

The listing broker will typically have a listing agreement such as the Residential Listing Agreement (C.A.R. Form RLA) but may have another agreement with the seller such as the Single Party Compensation Agreement (C.A.R. Form SP). The broker representing the buyer may be compensated from the listing broker pursuant to the MLS. If the broker representing the buyer is not a member of the MLS in which the property is listed, or the property is not listed in the MLS at all, then that broker is not entitled to compensation unless an agreement with the listing broker is put in writing (See paragraph 3 inside the Real Estate Brokers Section box on page 16). The Cooperating Broker Compensation Agreement (C.A.R. Form CBC) may be used to satisfy this written requirement. The broker representing the buyer may have an agreement signed by the buyer to pay the broker directly, such as the Buyer Representation Agreement (C.A.R. Form BRE).

Compensation owing under any written agreement is due at close of escrow if the transaction is successfully completed. If the sale does not close because the buyer defaults, then, under the terms of the listing agreement, the seller owes compensation to the listing broker only if and when the seller collects damages. (The broker is entitled to no more than half of the damages collected, not to exceed the amount of commission.)

The seller irrevocably assigns the compensation to the broker to be paid from the seller's proceeds in escrow (See, paragraph 19D). In the event of a commission dispute, the funds will typically be held in escrow (and not released to the seller) until the dispute is resolved.

### 18B. Scope of Broker Duty:

Buyers and sellers sometimes do not understand the role of a real estate broker in the transaction. This paragraph both educates the parties of the broker's

proper role and represents the parties' consent to the limitations on what a broker can do for them. For example, while a broker may provide guidance on the value of a property, the decision on what price to pay or what price to accept is up to the buyer and seller. As another example, even though the broker has a duty to conduct a visual inspection of the property, such an inspection will not cover offsite areas, or public records, or serve as a substitute for the buyer hiring inspectors to examine the property. If the buyer needs advice outside the scope of the broker's knowledge, the buyer should seek the assistance of an appropriate professional, such as an attorney, accountant, insurance agent or title company.

**19. JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:**

**A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder, which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: paragraphs 1, 3A, 3B, 3D-G, 3N(2), 3Q, 3R, 4A, 4B, 5A(1-2) 5D, 5E, 10B(2)(A), 10B(3), 10C, 11H, 11K(2), 13 (except 13D), 14H, 17, 18A, 19, 23, 25, 27, 28, 32, 33, and paragraph 3 of the Real Estate Brokers Section. If a Copy of the separate compensation agreement(s) provided for in paragraph 18A or paragraph C of the Real Estate Brokers Section is deposited with Escrow Holder by Agent, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned.**

## **Paragraph 19. Joint Escrow Instructions to Escrow Holder, A:**

### **19A. Applicable Escrow Paragraphs:**

Selected portions of the purchase agreement are instructions from the buyer and seller to the escrow holder. Thus, the RPA is both an agreement between the parties and an agreement of the escrow holder to the parties and vice versa. If a broker compensation agreement is deposited with escrow holder, escrow is instructed to disperse compensation pursuant to that separate compensation agreement (See paragraph 18A and the Real Estate Broker Section on page 16).





# XII

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA, PAGE 12)

### Paragraph 19. Joint Escrow Instructions to Escrow Holder, B, C, D, E, F & G:

- B. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder. To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller shall Sign and return Escrow Holder's general provisions or supplemental instructions within the time specified in **paragraph 3N(2)**. Buyer and Seller shall execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within **3 Days**, shall pay to Escrow Holder or HOA or HOA management company or others any fee required by **paragraphs 3, 8, 10, 11**, or elsewhere in this Agreement.
- C. A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within **3 Days** after **Acceptance**. Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title Company when received from Seller, if a separate company is providing title insurance. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under **paragraph 11H**, Escrow Holder shall deliver to Buyer, Buyer's Agent, and Seller's Agent a Qualified Substitute statement that complies with federal Law. If Escrow Holder's Qualified Substitute statement does not comply with federal law, the Parties instruct escrow to withhold all applicable required amounts under **paragraph 11H**.
- D. Agents are not a party to the escrow except for the sole purpose of receiving compensation pursuant to **paragraph 18A and paragraph C of the Real Estate Brokers Section**. If a Copy of the separate compensation agreement(s) provided for in either of those paragraphs is deposited with Escrow Holder by Agent, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). Buyer and Seller irrevocably assign to Brokers compensation specified in **paragraph 18A**, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.
- E. Buyer and Seller acknowledge that Escrow Holder may require invoices for expenses under this Agreement. Buyer and Seller, upon request by Escrow Holder, within **3 Days** or within a sufficient time to close escrow, whichever is sooner, shall provide any such invoices to Escrow Holder.
- F. Upon receipt, Escrow Holder shall provide Buyer, Seller, and each Agent verification of Buyer's deposit of funds pursuant to **paragraph 5A(1) and 5A(2)**. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify each Agent: (i) if Buyer's initial or any additional deposit or down payment is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.
- G. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within **3 Days** after mutual execution of the amendment.

### 19B. Escrow General Provisions and Other Instructions:

The RPA is not the only agreement or authorization involving escrow. Buyer and seller may receive additional instructions directly from the escrow holder and they agree to sign reasonably necessary forms to complete the transaction. This paragraph reflects an agreement by both parties to make payments to escrow holder, or to others as directed by escrow holder, for services or obligations specified elsewhere in the RPA.

### 19C. Copies of Agreement, Statement of Information and Tax Withholding:

The parties have three (3) days after acceptance to deliver the agreement to the escrow holder. Failure or refusal of escrow to acknowledge receipt of the RPA will not invalidate the agreement between the buyer and seller. Once escrow receives a Statement of Information from Seller it shall deliver it to the title company (See, paragraph 13). Escrow is instructed to withhold the

required federal and state amounts from the purchase price if seller does not deliver a tax withholding affidavit to escrow or if escrow does not provide a legally compliant substitute affidavit of its own to buyer.

#### **19D. Broker Compensation Through Escrow:**

Brokers are not parties to the RPA but are parties to the escrow solely for the purpose of compensation. Escrow shall pay brokers based on the separate compensation agreement provided, such as the Residential Listing Agreement (C.A.R. Form RLA), Single Party Compensation Agreement (C.A.R. Form SP), Buyer Representation Agreement (C.A.R. Forms BRE or BRNE) or Cooperating Broker Compensation Agreement (C.A.R. Form CBC). The buyer and seller agree to irrevocably assign any broker compensation provided for in paragraphs 18. This clause prevents the parties from changing compensation instruction to the brokers without the brokers' consent.

#### **19E. Proof of services or work before payment:**

Escrow may require invoices for payments to be made to non-parties. Buyer and seller agree to provide any such requested invoices within 3 days.

#### **19F and G. Verification of Deposits and Amendments:**

Escrow agrees to notify the brokers if the buyer fails to make a required deposit or if buyer and seller submit cancellation instructions to escrow. This allows brokers to monitor the transaction for compliance and address concerns or issues by either broker's client. The Buyer and seller agree to provide escrow with a copy of any amendment affecting any paragraph that is also an escrow instruction. This allows the escrow holder to properly perform its functions and to act in accordance with current, as opposed to outdated, instructions.

### **Paragraphs 20, 21 and 22. Selection of Service Providers, Multiple Listing Service, Attorney Fees:**

- 20. SELECTION OF SERVICE PROVIDERS:** Agents do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Agent or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.
- 21. MULTIPLE LISTING SERVICE ("MLS"):** Agents are authorized to report to the MLS that an offer has been accepted and, upon Close Of Escrow, the sales price and other terms of this transaction shall be provided to the MLS to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS. Buyer acknowledges that: (i) any pictures, videos, floor plans (collectively, "Images") or other information about the Property that has been or will be inputted into the MLS or internet portals, or both, at the instruction of Seller or in compliance with MLS rules, will not be removed after Close Of Escrow; (ii) California Civil Code § 1088(c) requires the MLS to maintain such Images and information for at least three years and as a result they may be displayed or circulated on the Internet, which cannot be controlled or removed by Seller or Agents; and (iii) Seller, Seller's Agent, Buyer's Agent, and MLS have no obligation or ability to remove such Images or information from the Internet.
- 22. ATTORNEY FEES AND COSTS:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 30A.

#### **20. Selection of Service Providers:**

Brokers have many contacts in the real estate industry and are often asked by their buyer and seller clients to make recommendations to service providers. When a broker does so, the broker should give several names to the party. This paragraph states that the broker does not guarantee performance of any service providers and buyers and sellers can select any provider they want.

**21. Multiple Listing Service (“MLS”):**

The parties give permission to the brokers to disseminate price, terms, and financing to MLS and its entities. Buyer acknowledges that information submitted to the MLS which may have induced or interested buyer to make an offer on the property, such as pictures or videos, will remain with the MLS, and possibly circulated on the Internet.

**22. Attorney Fees and Costs:**

The cost of pursuing or defending a legal action can be substantial. Often the cost of hiring an attorney exceeds the amount of the underlying dispute. So important are attorney fees that if the parties choose to “settle” a dispute, the attorney’s fees are usually one of the terms of the negotiated settlement.

This paragraph says that the loser in the dispute is obligated to pay not only the underlying judgment, or arbitration award, and not only the losing party’s attorney but also the reasonable attorney fees and costs incurred by the winning party. If a party fails to mediate as required by paragraph 30A, then that party gives up the right to get attorney fees from the other side even if that party ultimately prevails. This paragraph is only between the buyer and the seller and does NOT include the broker(s).

**Paragraphs 23 and 24. Assignment, and Equal Housing Opportunity:**

**23. ASSIGNMENT:** Buyer shall have the right to assign all of Buyer’s interest in this Agreement to Buyer’s own trust or to any wholly owned entity of Buyer that is in existence at the time of such assignment. Otherwise, Buyer shall not assign all or any part of Buyer’s interest in this Agreement without first having obtained the separate written consent of Seller to a specified assignee. Such consent shall not be unreasonably withheld. Prior to any assignment, Buyer shall disclose to Seller the name of the assignee and the amount of any monetary consideration between Buyer and assignee. Buyer shall provide assignee with all documents related to this Agreement including, but not limited to, the Agreement and any disclosures. If assignee is a wholly owned entity or trust of Buyer, that assignee does not need to re-sign or initial all documents provided. Whether or not an assignment requires seller’s consent, at the time of assignment, assignee shall deliver a letter from assignee’s lender that assignee is prequalified or preapproved as specified in **paragraph 6B**. Should assignee fail to deliver such a letter, Seller, after first giving Assignee an Notice to Buyer to Perform, shall have the right to terminate the assignment. Buyer shall, within the time specified in **paragraph 3K**, Deliver any request to assign this Agreement for Seller’s consent. If Buyer fails to provide the required information within this time frame, Seller’s withholding of consent shall be deemed reasonable. Any total or partial assignment shall not relieve Buyer of Buyer’s obligations pursuant to this Agreement unless Otherwise Agreed by Seller (C.A.R. Form AOA).

**24. EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.

**23. Assignment:**

As a general rule, contracts in California are assignable. What this means is that one person can substitute another to take his or her place and receive the benefits, and meet the obligations, of the contract. The assignment does not allow the original person (the assignor) to escape liability if the substitute (the assignee) fails to perform unless the other party to the contract signs a document releasing the assignor. There are certain exceptions to the general rule, for example, for personal service contracts or if the contract itself restricts or prohibits assignment. A real estate contract is not a personal service contract. Although if it involves seller financing, there is an argument it becomes one. So, in the absence of any language in the contract, either party can assign their rights and obligations without the need for approval of the other party.

Paragraph 23 limits the ability to assign but not completely. First, the buyer is explicitly given the right to assign the contract to the buyer's own trust, or to a wholly owned entity in existence at the time of the assignment. Second, in all other situations, the buyer must seek the written consent to the assignment from the seller. If the buyer does so, the buyer must name a specific assignee and the amount of any compensation received from the assignee. The seller shall not unreasonably withhold consent. If the buyer submits a request for assignment after the time specified in paragraph 3K, which defaults to 17 days, any refusal to consent by the seller is reasonable. The buyer must provide all documents related to the transaction to the assignee, and the assignee must initial all such documents on the first page. There is an exception if the assignee is a trust or wholly owned entity of Buyer. The assignor remains responsible even in case of an assignment. Approval of an assignment can be documented on the Assignment of Agreement Addendum (C.A.R. Form AOAA).

#### **24. Equal Housing Opportunity:**

Under both Federal and California law, it is illegal to discriminate on the basis of many protected categories such as: race, color, religion, sex, handicap, familial status, or national origin. Attached to the RPA is a Fair Housing and Discrimination Advisory (C.A.R. Form FHDA) which identifies protected classes and characteristics in California, the persons who are legally bound to follow the fair housing laws, the types of activities that should be avoided, and the types of activities that represent best practices.

### **Paragraph 25. Definitions and Instructions. A-E:**

- 25. DEFINITIONS and INSTRUCTIONS:** The following words are defined terms in this Agreement, shall be indicated by initial capital letters throughout this Agreement, and have the following meaning whenever used:
- A. "Acceptance"** means the time the offer or final counter offer is fully executed, in writing, by the recipient Party and is Delivered to the offering Party or that Party's Authorized Agent.
  - B. "Agent"** means the Broker, salesperson, broker-associate or any other real estate licensee licensed under the brokerage firm identified in **paragraph 2B**.
  - C. "Agreement"** means this document and any counter offers and any incorporated addenda or amendments, collectively forming the binding agreement between the Parties. Addenda and amendments are incorporated only when Signed and Delivered by all Parties.
  - D. "As-Is" condition:** Seller shall disclose known material facts and defects as specified in this Agreement. Buyer has the right to inspect the Property and, within the time specified, request that Seller make repairs or take other corrective action, or exercise any contingency cancellation rights in this Agreement. Seller is only required to make repairs specified in this Agreement or as Otherwise Agreed.
  - E. "Authorized Agent"** means an individual real estate licensee specified in the Real Estate Broker Section.

#### **25A. Acceptances:**

"Acceptance" means the time when an offer has become a binding agreement between the parties. It only occurs upon final acceptance after all counter offers. The triggering event is the delivery (See, paragraph 25K) of the fully executed contract or last counter offer.

#### **25B. Agent:**

"Agent" means the Broker, salesperson, broker-associate or any other real estate licensee working through the brokerage firm identified in the Confirmation of Agency (paragraph 2).

**25C. Agreement:**

“Agreement” is an all-inclusive term meaning not just the RPA but all counter offers and incorporated addenda provided they are signed by the parties.

**25D. As-Is:**

“As-Is” means seller has a contractual obligation to disclose known material facts, as of the date of acceptance, and buyer has right to inspect and exercise any contingency rights in the agreement. Seller does not have to repair disclosed defects unless otherwise specified in the RPA or other form, such as Request for Repair.

**25E. Authorized Agent:**

“Authorized Agent” means an individual real estate licensee specified in the Real Estate Broker Section. Delivery of final acceptance to an authorized agent can create an acceptance.



# XIII

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA, PAGE 13)

### Paragraph 25. Definitions and Instructions, F- J:

- F. **“C.A.R. Form”** means the most current version of the specific form referenced or another comparable form agreed to by the Parties.
- G. **“Close Of Escrow”**, including “COE”, means the date the grant deed, or other evidence of transfer of title, is recorded for any real property, or the date of Delivery of a document evidencing the transfer of title for any non-real property transaction.
- H. **“Copy”** means copy by any means including photocopy, facsimile and electronic.
- I. **Counting Days** is done as follows unless Otherwise Agreed: (1) The first Day after an event is the first full calendar date following the event, and ending at 11:59 pm. For example, if a Notice to Buyer to Perform (C.A.R. form NBP) is Delivered at 3 pm on the 7th calendar day of the month, or Acceptance of a counter offer is personally received at 12 noon on the 7th calendar day of the month, then the 7th is Day “0” for purposes of counting days to respond to the NBP or calculating the Close Of Escrow date or contingency removal dates and the 8th of the month is Day 1 for those same purposes. (2) All calendar days are counted in establishing the first Day after an event. (3) All calendar days are counted in determining the date upon which performance must be completed, ending at 11:59 pm on the last day for performance (“Scheduled Performance Day”). (4) After Acceptance, if the Scheduled Performance Day for any act required by this Agreement, including Close Of Escrow, lands on a Saturday, Sunday, or legal holiday, the performing party shall be allowed to perform on the next day that is not a Saturday, Sunday or legal holiday (“Allowable Performance Day”), and ending at 11:59 pm. (5) For the purposes of COE, any day that the Recorder’s office in the County where the Property is located is closed, the COE shall occur on the next day the Recorder’s office in that County is open. (6) COE is considered Day 0 for purposes of counting days Seller is allowed to remain in possession, if permitted by this Agreement.
- J. **“Day”** or **“Days”** means calendar day or days. However, delivery of deposit to escrow is based on business days.

#### **25F. C.A.R. Form:**

“C.A.R. Form” means the most current version of the specific form referenced or another comparable form agreed to by the parties.

#### **25G. Close of Escrow:**

“Close Of Escrow” is the day of recording. The escrow holder may still have an “open escrow” in order to cut checks, complete closing statement, or hold funds for repairs. If scheduled close of escrow falls on a Saturday, Sunday or legal holiday, the close of escrow date is extended until the next business day (See, paragraph 25I).

#### **25H. Copy:**

“Copy” can be by any means including photocopy, facsimile or electronic.

#### **25I. Counting Days:**

“Counting Days” begins on the first full calendar date after the date upon which an event occurs and ends at 11:59 p.m. on the last full calendar day of the count. After acceptance has resulted in a binding agreement, if the last day of an event, the Scheduled Performance Day, ends on a Saturday, Sunday or legal holiday, then performance continues until the next day. However, close of escrow cannot occur on any day the recorder’s office for the applicable county is closed. Close of escrow date is considered day “0” for counting days a seller is allowed to remain in possession pursuant to the agreement.

#### **25J. Day or Days:**

“Day” means calendar day.

## Paragraph 25. Definitions and Instructions, K- Q:

- K. **“Deliver,” “Delivered” or “Delivery”** of documents, unless Otherwise Agreed, means and shall be effective upon personal receipt of the document by Buyer or Seller or their Authorized Agent. Personal receipt means (i) a Copy of the document, or as applicable, link to the document, is in the possession of the Party or Authorized Agent, regardless of the Delivery method used (i.e. e-mail, text, other), or (ii) an electronic Copy of the document, or as applicable, link to the document, has been sent to any of the designated electronic delivery addresses specified in the Real Estate Broker Section on page 16. After Acceptance, Agent may change the designated electronic delivery address for that Agent by, in writing, Delivering notice of the change in designated electronic delivery address to the other Party. Links could be, for example, to DropBox or GoogleDrive or other functionally equivalent program. If the recipient of a link is unable or unwilling to open the link or download the documents or otherwise prefers Delivery of the documents directly, Recipient of a link shall notify the sender in writing, within **3 Days** after Delivery of the link (C.A.R. Form RFR). In such case, Delivery shall be effective upon Delivery of the documents and not the link. Failure to notify sender within the time specified above shall be deemed consent to receive, and Buyer opening, the document by link.
- L. **“Electronic Copy” or “Electronic Signature”** means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.
- M. **“Law”** means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
- N. **“Legally Authorized Signer”** means an individual who has authority to Sign for the principal as specified in **paragraph 32 or paragraph 33**.
- O. **“Otherwise Agreed”** means an agreement in writing, signed by both Parties and Delivered to each.
- P. **“Repairs”** means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.

### **25K. Deliver, Delivered or Delivery:**

“Deliver,” “Delivered,” or “Delivery” is effective upon personal receipt by the buyer or seller of their authorized agent. Personal receipt is effective when in the actual possession of the recipient or upon sending an electronic copy of the applicable document to the designated electronic delivery address of the Authorized Agent specified in the Real Estate Broker Section.

### **25L. Electronic Copy or Electronic Signature:**

“Electronic Copy” or “Electronic Signature” means an electronic copy or signature complying with California law.

### **25M. Law:**

“Law” means any local, state, or federal applicable law, or case, or regulation.

### **25N. Legally Authorized Signer:**

“Legally Authorized Signer” means an individual who is authorized to sign for a party as specified in paragraph 32 or 33.

### **25O. Otherwise Agreed:**

“Otherwise Agreed” means an agreement, in writing, signed by both parties and delivered to each.

### **25P. Repairs:**

“Repairs” includes alterations, replacements, modifications or retrofitting.

### **25 Q. Sign or Signed:**

“Sign” or “Signed” can be either handwritten or electronic, and on a copy or counterpart.



## Paragraphs 26 and 27. Terms and Conditions of Offer. Time of Essence; Entire Contract; Changes:

- 26. TERMS AND CONDITIONS OF OFFER:** This is an offer to purchase the Property on the terms and conditions herein. The individual Liquidated Damages and Arbitration of Disputes paragraphs are incorporated in this Agreement if initialed by all Parties or if incorporated by mutual agreement in a Counter Offer or addendum. **If at least one but not all Parties initial, a Counter Offer is required until agreement is reached.** Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance and to market the Property for backup offers after Acceptance. The Parties have read and acknowledge receipt of a Copy of the offer and agree to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing. By signing this offer or any document in the transaction, the Party Signing the document is deemed to have read the document in its entirety.
- 27. TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as Otherwise Agreed, this Agreement shall be interpreted, and disputes shall be resolved in accordance with the Laws of the State of California. **Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.**

### 26. Terms and Conditions of Offer:

The buyer's offer for the purchase of this property has an expiration date (See, paragraph 32A) after which time the offer is revoked. However, the buyer may revoke the offer at any time prior to communication of the seller's acceptance. Using a Withdrawal of Offer (C.A.R. Form WOO) will document the buyer's revocation. The seller may consider other offers any time prior to acceptance of this buyer's offer. If the seller does not accept the offer exactly as written, there must be a counter offer.

The seller may not make changes on this document above the buyer's signature. The only exception is that the seller may initial either of the optional clauses (liquidated damages or arbitration) already initialed by the buyer. If the buyer has not initialed a clause which the seller wants, or if the seller does not want a clause that the buyer initialed, there must be a counter offer to clearly evidence the intent of the parties. By signing the agreement, each party acknowledges the confirmation of the agency relationship. Any photocopies or facsimiles will be considered the same as the original document. There is no need to have all signatures on one original; counterparts are acceptable. Signing a form is an acknowledgment the document has been read.

### 27. Time Of Essence; Entire Contract; Changes:

"Time is of the essence" is a phrase that means that the parties consider it important that any act required by the contract shall take place on the date and/or time stated, unless the period is mutually extended in writing. A party to the RPA can emphasize the importance of timely performance by issuing a notice to perform to either buyer or seller in advance of the stated time (See paragraph 14E).

The RPA is intended to incorporate all prior oral or written agreements so that the RPA reflects the entire agreement of the parties. All changes must be in writing to be enforceable.

Under the Statute of Frauds, Civil Code Section 1624, certain agreements must be in writing to be enforceable. These include: (i) A lease agreement for more

than one year; (ii) An employment (listing) agreement to find a purchaser for real property. The listing agreement only authorizes the broker to find a buyer; it does not authorize the broker to sign for the seller; (iii) An employment agreement to find a property for a buyer. The Buyer Representation agreement only authorizes the broker to locate property for, not enter into a contract on behalf of, a buyer; (iv) An authorization to purchase or sell property on the principal's behalf (power of attorney). Without this written power of attorney, the listing broker's signature on the acceptance as "Sam Seller by Bob Broker per phone" is not binding on the seller; and (v) An agreement for the sale of real property.

This is the RPA. Not only must the terms of this document be in writing, but all counter-offers, supplements, addenda, or modifications must be in writing. Anything not in writing is not enforceable. The parties can use an Amendment of Existing Agreement (C.A.R. Form AEA) to make modifications to the terms of an existing contract. Like the RPA, the AEA has an expiration provision that forces the responding party to accept the amendment within the time specified and prior to its withdrawal by the party initiating the AEA.

## Paragraph 28. Legally Authorized Signer:

**28. LEGALLY AUTHORIZED SIGNER:** Wherever the signature or initials of the Legally Authorized Signer identified in **paragraph 32** or **33** appear on this Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Legally Authorized Signer **(i)** represents that the entity for which that person is acting already exists and is in good standing to do business in California and **(ii)** shall Deliver to the other Party and Escrow Holder, within **3 Days** after Acceptance, evidence of authority to act in that capacity (such as but not limited to: applicable portion of the trust or Certification Of Trust (Probate Code § 18100.5), letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).

## 28. Legally Authorized Signer:

Many times, the person who is authorized to sign the contract is not actually the buyer or seller. For example, if the buyer is a corporation, an officer of the corporation typically has authority to sign agreements on behalf of the corporation. If property is held in trust, the trustee of the trust has authority to enter in the agreement. The trustee may or may not be the person who put the property in trust in the first place and may not be the occupant. Ideally, the person signing the contract will always do so by including that person's proper title, such as President, Managing Partner, Trustee, Executor, or Attorney in Fact (for those holding a power of attorney).

Paragraph 32B and 33B allow for the identity of a legally authorized signer if the principal is an entity. These paragraphs have two primary purposes: First, they let all parties know that the person who is signing is doing so in a representative capacity and not in his or her own right. Second, as referenced in paragraph 28, they are an agreement that even if the person signing does not indicate the official title each time a signature or initial is required, it is

presumed to be done in the representative capacity. The legally authorized signer must provide some kind of proof that the representative has authority to act. This proof can be a copy of relevant portions of a trust, a power of attorney, a court order or resolution of a corporate or LLC board of directors, for example. The proof shall be provided to the other party and to the escrow holder.

If a legally authorized signer enters the transaction after acceptance, for example by way of an Assignment of Agreement Addendum, the legally authorized signer and entity will be identified in one of two Representative Capacity Signature Disclosure forms (C.A.R. Form RCSD-B (for buyers) and RCSD-S (for sellers)).



# XIV

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA, PAGE 14)

### Paragraph 29. Liquidated Damages:

**29. LIQUIDATED DAMAGES:**

If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. If the Property is a dwelling with no more than four units, one of which Buyer intends to occupy, then the amount retained shall be no more than 3% of the purchase price. Any excess shall be returned to Buyer. Release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award. **AT THE TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R. FORM DID).**

Buyer's Initials \_\_\_\_\_ / \_\_\_\_\_

Seller's Initials \_\_\_\_\_ / \_\_\_\_\_

### 29. Liquidated Damages:

A liquidated damage clause allows the parties to predetermine what the damages will be in the event the buyer is in breach of contract. Generally, these clauses permit the seller to keep the buyer's deposit. The clause must be separately signed or initialed and appear in certain size font. There are additional restraints on liquidated damage clauses inserted into contracts for the sale of residential properties:

- If the property being purchased is a one-to-four unit dwelling that the buyer intends to occupy, a deposit actually paid that doesn't exceed 3% of the purchase price is presumed to be reasonable, and the seller may keep it. If the deposit actually paid exceeds 3%, the buyer is usually entitled to the balance over the 3% amount. For properties other than one-to-four residential or that are not intended to be owner-occupied, the liquidated damage clause is still enforceable for a reasonable amount of the deposit, without identifying "reasonable" as 3%.
- If the deposit has been increased since the initial deposit was made, it will be included in the deposit the seller can keep only if the buyer and seller have signed or initialed a new liquidated damage clause at the time the increase was received. The Delivery of Increased Deposit/Liquidated Damages Addendum (C.A.R. Form DID) satisfies this requirement.

It is important to remember that the liquidated damage clause specifies the dollar amount the seller is entitled to; it does not authorize the automatic release of funds to the seller. The seller still has to prove the buyer breached the contract and did not have a valid contractual reason to cancel. Accordingly,

the release of funds will require further written agreement of the parties or a judicial decision or arbitration award.

For this clause to be included as an obligation under this contract, it must be initialed by the buyer and the seller. If at least one, but not all parties initial, a counter offer is required until agreement is reached.

## Paragraph 30. Mediation:

### 30. MEDIATION:

- A.** The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. The mediation shall be conducted through the C.A.R. Real Estate Mediation Center for Consumers ([www.consumermediation.org](http://www.consumermediation.org)) or through any other mediation provider or service mutually agreed to by the Parties. The Parties **also agree to mediate any disputes or claims with Agents(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Agent.** Mediation fees, if any, shall be divided equally among the Parties involved, and shall be recoverable under the prevailing party attorney fees clause. If, for any dispute or claim to which this paragraph applies, any Party **(i)** commences an action without first attempting to resolve the matter through mediation, or **(ii)** before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.
- B. ADDITIONAL MEDIATION TERMS: (i) Exclusions from this mediation agreement are specified in paragraph 31B; (ii) The obligation to mediate does not preclude the right of either Party to seek a preservation of rights under paragraph 31C; and (iii) Agent's rights and obligations are further specified in paragraph 31D.**

## 30. Mediation:

Mediation is a process in which parties to a dispute talk about the dispute and negotiate with each other through and under the oversight of a neutral third party, called a mediator. The mediator is not empowered to impose a settlement upon the parties but can facilitate their ability to reach agreement.

This is not an “optional” clause that requires a check box or initialing. When the parties sign the RPA, they agree to attempt to resolve disputes through the mediation process before escalating the dispute by filing a court action or arbitration.

Mediation is deemed so important and effective at resolving disputes that there is a potential penalty imposed on those buyers and sellers that do not give mediation a chance. Any party who does not attempt mediation before filing an arbitration or court action or any party who, before litigation or arbitration has been commenced, refuses to mediate after a demand has been made is not entitled to be awarded attorney’s fees even if they subsequently win the legal action. However, a small claims court action may be filed without incurring the mediation-first penalty.

Part of the mediation terms are found in the immediately following arbitration of disputes paragraph (See, paragraphs 31B, C, and D). The brokers may, but are not obligated to, join the buyer-seller mediation.

The RPA specifically identifies the C.A.R. Real Estate Mediation Center for Consumers by name, but the parties are entitled to mediate a dispute with any other mediator or mediation provider of their mutual choosing. However, in order to prevent a dispute over where and through whom to mediate, in the absence of an agreement to the contrary, the parties agree to mediate using the services of the C.A.R. Consumer Mediation Center.

## Paragraph 31. Arbitration of Disputes:

### 31. ARBITRATION OF DISPUTES:

- A. The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The Parties also agree to arbitrate any disputes or claims with Agents(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Agent. The arbitration shall be conducted through any arbitration provider or service mutually agreed to by the Parties, OR

The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of residential real estate Law experience, unless the Parties mutually agree to a different arbitrator. Enforcement of, and any motion to compel arbitration pursuant to, this agreement to arbitrate shall be governed by the procedural rules of the Federal Arbitration Act, and not the California Arbitration Act, notwithstanding any language seemingly to the contrary in this Agreement. The Parties shall have the right to discovery in accordance with Code of Civil Procedure § 1283.05. The arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction.

- B. **EXCLUSIONS:** The following matters are excluded from mediation and arbitration: (i) Any matter that is within the jurisdiction of a probate, small claims or bankruptcy court; (ii) an unlawful detainer action; and (iii) 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.
- C. **PRESERVATION OF ACTIONS:** The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.
- D. **AGENTS:** Agents shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Agents(s) participating in mediation or arbitration shall not be deemed a party to this Agreement.

- E. **"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."**

**"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."**

Buyer's Initials \_\_\_\_\_/\_\_\_\_\_

Seller's Initials \_\_\_\_\_/\_\_\_\_\_

### 31. Arbitration:

Arbitration is a process for resolving disputes in which a neutral third party decides for the parties who is right and who is wrong after listening to them present evidence. In a sense it is similar to going to court but the arbitrator will not be a sitting judge and there is no jury. Further distinctions between going to arbitration and going to court is that arbitration is private, the parties have to pay for the services of the arbitrator, the parties get to choose their arbitrator and there is only a limited right to contest, or appeal, the arbitrator's decision.

For the arbitration clause to be included as an obligation under this contract, it must be initialed by the buyer and the seller (See, paragraph 31E). If at least one, but not all, parties initial, a counter offer is required until agreement is reached (See, paragraph 26).

Arbitration is always an option for the parties and may be agreed upon at some future time, if not initialed in this contract. However, it is usually more difficult to get an agreement to arbitrate once the dispute has occurred. By initialing in this contract, the parties are agreeing in advance to arbitrate.

**31A. Arbitration:**

The first paragraph contains the terms of the arbitration agreement. The first sentence is a reminder that non-binding mediation is a first step under this contract. If mediation does not successfully resolve the dispute, the sentence alerts the parties that a binding decision will be made by a neutral arbitrator, not a judge or jury. The second sentence provides that brokers may, but are not obligated to, join the buyer-seller arbitration. As there are many individuals and entities that offer arbitration services, the third sentence allows the parties to choose in advance through which one of them an arbitration will be conducted, if necessary. Just as getting an agreement to arbitrate may be difficult if not pre-agreed in the contract, so too can it be difficult to get adverse parties to agree on a provider to conduct the arbitration, if not previously determined by the contract. If there is an agreement in the contract, the arbitration clause becomes “self-executing” and a disputing party would ordinarily be able to commence an arbitration by delivering the applicable paperwork, such as a claim form, directly to the arbitration service without first having to receive a court order or separate, post-dispute agreement from the other party. Because many parties may not be familiar with arbitration providers, the zipForm® version of the RPA may contain a list of arbitration providers that have a regional or statewide presence. Parties may choose from the list, write in the name of their own preferred provider, or leave the field blank, in which case an agreement on a provider would have to be reached after the dispute has surfaced. The next sentence states the arbitrator will be a retired judge, justice, or an attorney with at least five (5) years of residential real estate law experience. The parties can select someone else only if they mutually agree. Although neither a sitting judge nor a jury hears the case, the award rendered by the arbitrator may be filed with the Superior Court resulting in an enforceable court order. However, the decision of the arbitrator may not be appealed to a court except in rare circumstances that concern process issues rather than the substantive issues in the case. This paragraph also grants the right to discovery. This means the parties may request documents, interview witnesses, and otherwise “discover” the evidence the other party will use (fact finding).

There are a few exceptions to the arbitration requirement (See paragraphs 31B and C) allowing, for example, a small claims court action to be filed without violating or waiving the contractual requirement to arbitrate.

**31B. Exclusions:**

Certain matters are excluded from the obligation to mediate and arbitrate because those matters can be resolved more expeditiously outside of arbitration or because special rules have been established by the legislature to deal with such issues. The excluded matters are: (i) Judicial or nonjudicial foreclosures; (ii) Unlawful detainer actions; (iii) Small claims actions; and (iv) any matter within the jurisdiction of the probate or bankruptcy court.



**31C. Preservation of Actions:**

Sometimes a lawsuit needs to be filed right away if a statute of limitations is about to expire. In such cases, the lawsuit does not violate the mediation– first requirement or the obligation to arbitrate but the prudent attorney will simultaneously file a motion to “stay” the lawsuit pending mediation or arbitration.

Sometimes, even if a person has a valid legal claim that can be established in arbitration, in court, or through a mediator, the legal process does the person no good if the other party is able to transfer, hide or encumber assets. This paragraph allows a party to take certain legal actions to preserve the status quo without violating the obligation to mediate first and therefore, without losing the right to receive prevailing party attorney fees if ultimately successful, and without violating the obligation to arbitrate. The filing of the following specific judicial actions does not constitute a violation of the mediation or arbitration provisions: (i) A lis pendens (a recorded notice intended to make third parties aware that there is a pending action affecting the property); (ii) An order of attachment so that assets cannot be liquidated; (iii) Appointment of a receiver to run a business or manage a property, (iv) Filing an injunction to start or stop an activity or action; and (v) Filing a mechanic’s lien. With the exception of the lis pendens, all these preventative actions are rare in a residential real estate dispute.

**31D. Agents:**

This paragraph clarifies that brokers cannot be compelled to arbitrate or mediate a dispute with the buyer or seller and further that if the broker agrees to arbitrate or mediate, by agreeing, the broker is not deemed to be a party to the transaction.

Buyers and sellers will often ask their broker if the broker recommends initialing the arbitration clause (and liquidated damage clause too). However, brokers should not advise the parties whether to initial the clause or not. The broker may give information to the parties to help them make up their own minds but the decision to initial, and thereby include the clause in the contract, is for the buyer or seller to make.

**31E. Notice:**

The last paragraph is the NOTICE to the parties required by statute. This clause puts the parties on notice that the agreement to arbitrate is voluntary, but once agreed upon, they will be compelled to arbitrate instead of litigate. The statutory NOTICE must be in 10 point bold typeset.



# XV

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA, PAGE 15)

### Paragraph 32. Offer:

#### 32. OFFER

**A. EXPIRATION OF OFFER:** This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless by the date and time specified in **paragraph 3C**, the offer is Signed by Seller and a Copy of the Signed offer is Delivered to Buyer or Buyer's Authorized Agent. **Seller has no obligation to respond to an offer made.**

**B.  ENTITY BUYERS:** (Note: If this paragraph is completed, a Representative Capacity Signature Disclosure (C.A.R. Form RCSD) is not required for the Legally Authorized Signers designated below.)

(1) One or more Buyers is a trust, corporation, LLC, probate estate, partnership, holding a power of attorney or

Other: \_\_\_\_\_

(2) This Agreement is being Signed by a Legally Authorized Signer in a representative capacity and not in an individual capacity. See **paragraph 28** for additional terms.

(3) The name(s) of the Legally Authorized Signer(s) is/are: \_\_\_\_\_

(4) If a trust, identify Buyer as trustee(s) of the trust or by simplified trust name (ex. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust). If the entity is a trust or under probate, the following is the full name of the trust or probate case, including case #: \_\_\_\_\_

**C.** The RPA has 16 pages. Buyer acknowledges receipt of, and has read and understands, every page and all attachments that make up the Agreement.

#### **D. BUYER SIGNATURE(S):**

(Signature) By, \_\_\_\_\_ **Date:** \_\_\_\_\_

Printed name of BUYER: \_\_\_\_\_

Printed Name of Legally Authorized Signer: \_\_\_\_\_ Title, if applicable, \_\_\_\_\_

(Signature) By, \_\_\_\_\_ **Date:** \_\_\_\_\_

Printed name of BUYER: \_\_\_\_\_

Printed Name of Legally Authorized Signer: \_\_\_\_\_ Title, if applicable, \_\_\_\_\_

IF MORE THAN TWO SIGNERS, USE Additional Signature Addendum (C.A.R. Form ASA).

### 32A. Expiration of Offer:

Once all buyers sign the RPA it becomes an offer capable of being accepted. However, acceptance must be made by the date and time specified (See, paragraph 3C). In order for acceptance to be effective, the seller-signed copy of the RPA must be delivered to: (i) the buyer or (ii) the buyer's authorized agent, who is defined as any individual real estate licensee for buyer identified in the Real Estate Brokers Section on the last page (See, paragraph 25E). Paragraph 25K defines delivery as: (i) when the seller-signed offer is in the possession of the buyer or other authorized recipient or (ii) when an electronic version of the seller-signed offer has been electronically sent to the email or text address, or alternate designated electronic delivery address, provided in the Real Estate Brokers Section.

A bold reminder is added to inform buyers that sellers have no obligation accept, reject, or even respond to the buyer's offer. Sellers have an opportunity to indicate a rejection by initialing the "Offer Not Accepted" box immediately below the seller signature section. In some markets, sellers receive so many offers on their properties that replying to each one does not appear to be a

good use of the seller's time. If the buyer's offer has not been accepted or countered by the time specified in this paragraph, then the offer is no longer valid. There are times when a response to an offer comes after the expiration of the time specified and both buyer and seller want to contract with each other. The best practice in those cases, if a counter offer is being issued, is for the seller to indicate in the counter offer that the time for acceptance is being extended until the date of the counter offer.

### **32B. Entity Buyers:**

Ownership of residential real estate is increasingly being held through a trust, or in the name of an entity set up by the buyer, most commonly a limited liability company (LLC) but it could be through any other type of entity such as a corporation, partnership, power of attorney, or some kind of court authorized estate such as probate or conservatorship.

This paragraph recognized that reality and allows for the buyer signature to be made by a person authorized to sign on behalf of the entity (Legally Authorized Signer. See, paragraph 25N). Paragraph B(2) makes clear the legally authorized signer is acting on behalf of the (entity) buyer and not for the signer in a personal capacity. The legally authorized signer(s) identity is provided in B(3). Paragraph B(4) is a reminder that the name of the buyer on the contract might not be the full name of the entity, but rather a shortened version. Accordingly, the full name should be specified.

Whenever the signature or initials of the legally authorized signer are placed on the agreement, they are meant to convey the buyer not the signer, personally (See, paragraph 28). Whenever the shortened version is used, it is meant to convey the full name.

A separate form, the Representative Capacity Signature Disclosure is only needed for legally authorized signers if this paragraph is not completed. Examples included instances where more two principals are signing on behalf of a buyer and the third or other is an entity who is signing an Additional Signature Addendum (C.A.R. Form ASA) or the entity is assigned the contract at a later point in time.

### **32C. Length of Contract:**

This paragraph reminds the buyer that the RPA is 16 pages, excluding bundled forms such as the Agency Disclosures, and to read all pages, including attachments, such as addenda and the bundled forms.

### **32D. Buyer Signatures:**

Each buyer signs and dates the RPA and the printed name of that buyer is included below the signature. If the buyer is an entity signing by a legally authorized signer, the box should be checked below the buyer's printed name of the legally authorized signer, and that signer's title, printed below the printed name of the buyer.

If there are more than two buyers, check the box to include the Additional Signature Addendum.

### Paragraph 33. Acceptance:

**33. ACCEPTANCE**

**A. ACCEPTANCE OF OFFER:** Seller warrants that Seller is the owner of the Property or has the authority to execute this Agreement. Seller accepts the above offer and agrees to sell the Property on the above terms and conditions. Seller has read and acknowledges receipt of a Copy of this Agreement and authorizes Agent to Deliver a Signed Copy to Buyer.  
**Seller's acceptance is subject to the attached Counter Offer or Back-Up Offer Addendum, or both, checked below.** Seller shall return and include the entire agreement with any response.  
 **Seller Counter Offer** (C.A.R. Form SCO or SMCO)  
 **Back-Up Offer Addendum** (C.A.R. Form BUO)

**B. Entity Sellers: (Note: If this paragraph is completed, a Representative Capacity Signature Disclosure form (C.A.R. Form RCSD) is not required for the Legally Authorized Signers designated below.)**

(1) One or more Sellers is a trust, corporation, LLC, probate estate, partnership, holding a power of attorney or  Other \_\_\_\_\_.

(2) This Agreement is being Signed by a Legally Authorized Signer in a representative capacity and not in an individual capacity. See **paragraph 28** for additional terms.

(3) The name(s) of the Legally Authorized Signer(s) is/are: \_\_\_\_\_.

(4) If a trust, identify Seller as trustee(s) of the trust or by simplified trust name (ex. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust). If the entity is a trust or under probate, the following is the full name of the trust or probate case, including case #: \_\_\_\_\_.

**C.** The RPA has 16 pages. Seller acknowledges receipt of, and has read and understands, every page and all attachments that make up the Agreement.

**D. SELLER SIGNATURE(S):**

(Signature) By, \_\_\_\_\_ **Date:** \_\_\_\_\_  
 Printed name of SELLER: \_\_\_\_\_  
 Printed Name of Legally Authorized Signer: \_\_\_\_\_ Title, if applicable, \_\_\_\_\_

(Signature) By, \_\_\_\_\_ **Date:** \_\_\_\_\_  
 Printed name of SELLER: \_\_\_\_\_  
 Printed Name of Legally Authorized Signer: \_\_\_\_\_ Title, if applicable, \_\_\_\_\_

IF MORE THAN TWO SIGNERS, USE Additional Signature Addendum (C.A.R. Form ASA).

#### 33A. Acceptance of Offer:

The seller warrants the authority to sell the property. The agent is authorized to deliver the signed contract to the buyer in order to create a valid acceptance. If a counter offer or back-up addendum, or both, is to be issued, the applicable box(es) should be checked and the form attached. Acceptance is not when the seller signs but instead when a copy of the accepted offer is delivered to the buyer or authorized agent. The seller is advised to return the entire agreement with any response. One purpose of returning the entire agreement is that the buyer will be able to determine if the seller has initialed the liquidated damage or arbitration clauses or both.

#### 33B. Entity Sellers:

Ownership of residential real estate is increasingly being held through a trust, or in the name of an entity set up by the owner, most commonly a limited liability company (LLC) but it could be through any other type of entity such as a corporation, partnership, power of attorney, or some kind of court authorized estate such as probate or conservatorship.

This paragraph recognized that reality and allows for the seller signature to be made by a person authorized to sign on behalf of the entity (Legally

Authorized Signer. See, paragraph 25N). Paragraph B(2) makes clear the legally authorized signer is acting on behalf of the (entity) seller and not for the signer in a personal capacity. The legally authorized signer(s) identity is provided in B(3). Paragraph B(4) is a reminder that the name of the seller on the contract might not be the full name of the entity, but rather a shortened version. Accordingly, the full name should be specified.

Whenever the signature or initials of the legally authorized signer are placed on the agreement, they are meant to convey the seller not the signer, personally (See, paragraph 28). Whenever the shortened version is used, it is meant to convey the full name.

A separate form, the Representative Capacity Signature Disclosure is only needed for legally authorized signers if this paragraph is not completed. Examples included instances where more two principals are signing on behalf of a seller and the third or other is an entity who is signing an Additional Signature Addendum (C.A.R. Form ASA) or the entity is assigned the contract at a later point in time.

### **33C. Length of Contract:**

This paragraph reminds the seller that the RPA is 16 pages, excluding bundled forms such as the Agency Disclosures, and to read all pages, including attachments, such as addenda and the bundled forms.

### **33D. Seller Signatures:**

Each seller signs and dates the RPA and the printed name of that seller is included below the signature. If the seller is an entity signing by a legally authorized signer, the box should be checked below the seller's signature line and the name of the legally authorized signer, and that signer's title, printed below the printed name of the buyer.

If there are more than two sellers, check the box to include the Additional Signature Addendum.

## **Offer Not Accepted:**

<p><b>OFFER NOT ACCEPTED:</b> _____ / _____ No Counter Offer is being made. This offer was not accepted by Seller _____ (date)  <small>Seller's Initials</small></p>
--

### **Offer Not Accepted:**

In this box the seller can indicate that the buyer's offer is rejected. While not required under the law, some buyers want to know that their offer was considered even if not accepted.

# XVI

## EXAMINING THE CONTRACT - POINT FOR POINT (RPA, PAGE 16)

### Real Estate Brokers Section:

**REAL ESTATE BROKERS SECTION:**

- 1. Real Estate Agents are not parties to the Agreement between Buyer and Seller.**
- 2. Agency relationships are confirmed as stated in paragraph 2.**
- 3. Cooperating Broker Compensation:** Seller's Broker agrees to pay Buyer's Broker and Buyer's Broker agrees to accept, out of Seller's Broker's proceeds in escrow, the amount specified in the MLS, provided Buyer's Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Seller's Broker and Buyer's Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sale, then compensation must be specified in a separate written agreement (C.A.R. Form CBC). Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.
- 4. Presentation of Offer:** Pursuant to the National Association of REALTORS® Standard of Practice 1-7, if Buyer's Agent makes a written request, Seller's Agent shall confirm in writing that this offer has been presented to Seller.
- 5. Agents' Signatures and designated electronic delivery address:**
  - A. Buyer's Brokerage Firm** \_\_\_\_\_ Lic. # \_\_\_\_\_  
By \_\_\_\_\_ Lic.# \_\_\_\_\_ Date \_\_\_\_\_  
By \_\_\_\_\_ Lic.# \_\_\_\_\_ Date \_\_\_\_\_  
 More than one agent from the same firm represents Buyer. Additional Agent Acknowledgement (C.A.R. Form AAA) attached.  
 More than one brokerage firm represents Buyer. Additional Broker Acknowledgement (C.A.R. Form ABA) attached.  
**Designated Electronic Delivery Address(es):**  
Email \_\_\_\_\_ Text # \_\_\_\_\_  
Alternate: \_\_\_\_\_  
 if checked, Delivery shall be made to the alternate designated electronic delivery address only.  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_
  - B. Seller's Brokerage Firm** \_\_\_\_\_ Lic. # \_\_\_\_\_  
By \_\_\_\_\_ Lic.# \_\_\_\_\_ Date \_\_\_\_\_  
By \_\_\_\_\_ Lic.# \_\_\_\_\_ Date \_\_\_\_\_  
 More than one agent from the same firm represents Seller. Additional Agent Acknowledgement (C.A.R. Form AAA) attached.  
 More than one brokerage firm represents Seller. Additional Broker Acknowledgement (C.A.R. Form ABA) attached.  
**Designated Electronic Delivery Address(es):**  
Email \_\_\_\_\_ Text # \_\_\_\_\_  
Alternate: \_\_\_\_\_  
 if checked, Delivery shall be made to the alternate designated electronic delivery address only.  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

### Real Estate Brokers Section:

This section covers the following:

Paragraph 1. The signatures of the agents do not make them parties to the contract.

Paragraph 2. The agents confirm the agency relationships with the parties (See, paragraph 2).

Paragraph 3. The seller's agent agrees to pay the buyer's agent pursuant to the MLS offer of compensation (if the buyer's agent is a participant of that MLS or a reciprocal MLS) or pursuant to a separate written agreement such as a Cooperating Broker Compensation Agreement (C.A.R. Form CBC). Verbal agreements between real estate licensees are enforceable if they can be proved. Both agents agree that any compensation agreement must be in writing so that disputes between brokers can be avoided.

Paragraph 4. Sometimes buyer's agents are not sure if their client's offer has been presented to the seller. If the agent makes a written request to the seller's agent, and the seller's agent is a REALTOR®, the seller's agent is obligated to confirm in writing that the offer was presented or provide evidence of the seller's instruction not to present. The confirmation may occur at the bottom of page 16.

Paragraph 5. If there are more agents representing a buyer or seller, such as a team working for a buyer or seller, then the box for an Additional Agent Acknowledgment (C.A.R. Form AAA) should be checked and the form attached. If two brokers are working with either a buyer or seller, then the box for an Additional Broker Acknowledgement (C.A.R. Form ABA) should be checked and the form attached.

The Designated Electronic Delivery Address section is provided which allows for acceptance of the offer and delivery of notices and forms specified in an accepted offer. Delivery to the address is deemed complete when an electronic copy is sent to the designated address. If an email address and text number or both are included then those may be used to electronically deliver acceptance and notices and other documents.

An alternate designated electronic delivery address may be provided. For some brokerage firms or agents, the general email address or text number that is automatically filled into this paragraph may not be the preferred location for delivery of documents. If so, a box can be checked indicating that delivery shall only be made to the alternate address provided.



## Escrow Holder Acknowledgment and Presentation of Offer:

### ESCROW HOLDER ACKNOWLEDGMENT:

Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked,  a deposit in the amount of \$ \_\_\_\_\_), Counter Offer numbers \_\_\_\_\_ and \_\_\_\_\_, and agrees to act as Escrow Holder subject to **paragraph 19** of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised by \_\_\_\_\_ that the date of Acceptance of the Agreement is \_\_\_\_\_

Escrow Holder \_\_\_\_\_ Escrow # \_\_\_\_\_

By \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_

Phone/Fax/E-mail \_\_\_\_\_

Escrow Holder has the following license number # \_\_\_\_\_

Department of Financial Protection and Innovation,  Department of Insurance,  Department of Real Estate.

**PRESENTATION OF OFFER:** \_\_\_\_\_ / \_\_\_\_\_ Seller's Brokerage Firm presented this offer to Seller on \_\_\_\_\_ (date).  
Broker or Designee Initials

### Escrow Holder Acknowledgment:

The escrow holder acknowledges receipt of the contract and agrees to act as escrow holder. The escrow holder can also fill in the amount of any deposit and other documentation received, such as counter offers or addenda. The escrow holder is asked to identify the date the parties or their agents have advised is the date of acceptance of the agreement. That date will be used to calculate all other dates specified in the agreement, such as close of escrow, document production and contingency removal.

### Presentation of Offer:

There are times when a buyer or buyer's agent is unsure when or if an offer was presented. This paragraph allows the listing broker to make a representation about the presentation date.

## CONCLUSION

The C.A.R. California Residential Purchase Agreement (C.A.R. Form RPA), standing alone or with related addenda discussed in this book, can be used in almost all residential transactions as it serves the needs of most parties desiring to contract to purchase and sell real estate. Remember, the purchase and sale of a home is a major financial investment and should be handled as such. In addition, the Purchase Agreement is the foundation of the real estate transaction. Be sure that you understand the entire Purchase Agreement **BEFORE** drafting or reviewing an offer for your client.