

TYLER & BURSCH, LLP

LAWYERS & ADVISORS

Courtside *Newsletter*

New & Revised C.A.R. Forms Slated for December Release



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The California Association of REALTORS® (C.A.R.) will release two (2) new and eleven (11) revised forms the week of December 10, 2018. It should be noted that while C.A.R. was originally going to release two additional new forms, the Seller Common Interest and Homeowner (HOA) Questionnaire (SCIQ) and the Seller Manufactured/Mobile Home Park/Community Questionnaire (SMHCQ), these forms have been placed on hold for additional revisions until June 2019. In this month's *Courtside Newsletter*, we will explore the two new forms currently still scheduled for December release, their significance, and the revisions to existing forms.

NEW FORMS

1. Pre-Occupancy Storage Addendum (POSA)

The Pre-Occupancy Storage Addendum (POSA) is an addendum to the Purchase Agreement and "is intended for short-term pre-occupancy storage by Buyer of Buyer's personal property (Personal Property) on the Property before Close of Escrow." The form includes:

- The terms of the agreement for the pre-occupancy storage;
- The consideration that the buyer agrees to pay the seller;
- Clarification that the buyer's insurance does not cover the seller's possessions unless otherwise specified;
- A waiver for any breach, including the statement that such a waiver shall not be construed as a continuing waiver of the same or any subsequent breach; and,
- A section for any other terms or conditions/supplements.

Additionally, the form includes a section for brokers, which states that brokers do not recommend pre-occupancy storage and has advised the buyer and seller of such. Brokers should also advise the buyer and seller to seek qualified legal counsel to discuss such an arrangement should they proceed to enter into one.

2. Summary of Offer—RIPA (SUM-RIPA)

The Summary of Offer is intended to be a "summary of the terms and conditions of the Residential Income Purchase Agreement." It includes a chart regarding significant terms of the agreement, including the purchase price, initial deposit amount, deposit amount, loan amount information, the anticipated close of escrow and possession date, and any contingencies and tenant estoppel certificates. The chart lists the relevant information in an easy-to-follow format.

REVISED FORMS

1. Bed Bug Disclosure (BBD)

Paragraph 7 of the BBD now contains the affirmation of the tenant's obligation to timely inform the landlord of any bed bug issues. Additionally, the form now also contains a waiver agreeing to "release, indemnify, hold harmless and forever discharge" the landlord from any liability arising out of the tenant's failure to comply with the BBD. While C.A.R. states that it is ok to use prior versions of this form, best practice would be to use the most current version of the form.

2. Commercial Confidentiality and Non-Disclosure Agreement (CML-CNDA)

The CML-CNDA has been updated under Paragraph 4F, "Obligations Regarding the Information," to prohibit "any statement, comment, or posting on the internet which includes any social media platform or anything that may result in information becoming available on the internet." Paragraph 6B regarding "Notices" has also been updated to state that notice is sufficient following a specified amount of time after an email is sent, provided that a copy of the notice is also sent on the same day to the secondary email, text number, or fax number set forth in the CML-CNDA. While C.A.R. states that it is ok to use prior versions of this form, best practice would be to use the most current version of the form.

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3. Homeowner Association Information Request (HOA1)

Pursuant to Civil Code (CC) § 4530(a)(1), a homeowner association must provide a copy of all documents requested under CC § 4525 within ten (10) days of mailing or delivery of said request. HOA1 has been revised to include the relevant statutory language, as well as specify the time allotted for the HOA's response as "within 10 calendar days from receipt of [the] request." The HOA must also provide the information listed on C.A.R. Forms HOA 2 and HOA3. While C.A.R. states that it is ok to use prior versions of this form, a best practice would be to use the most current version of the form.

4. Receipt for Reports (RFR)

RFR has been revised to include a warning regarding the Buyer's recourse, or lack thereof, against the preparer of any report. Specifically, it states: "Buyer has been advised that if Buyer receives any report that has not been ordered by Buyer (whether prepared by or for Seller or others), Buyer may have no recourse against the preparer of the report for any errors, inaccuracies or missing information. Buyer is advised to check with the vendor of any report to determine if vendor will offer Buyer such recourse." While C.A.R. states that it is ok to use prior versions of this form, a best practice would be to use the most current version of the form.

5. Residential Listing Agreement (RLA)

Given the current trend in the housing market regarding contingency purchases, Paragraph 16 of the RLA, "Additional Terms," has been updated to include language indicating that the "Seller intends to include a contingency to purchase a replacement as part of any resulting transaction." While C.A.R. states that it is ok to use prior versions of this form, a best practice would be to use the most current version of the form.

6. Residential Purchase Agreement and Joint Escrow Instructions (RPA)

Pursuant to the new REALTOR® Code of Ethics Standard of Practice 1-7, "When acting as listing brokers, REALTORS® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing." To that end, a "Presentation of Offers" paragraph has been added under the "Real Estate Brokers" section of the RPA. In this section, the cooperating broker requests that the listing broker confirm, in writing, that the offer has been presented to the seller. While C.A.R. states that it is ok to use prior versions of this form, a best practice would be to use the most current version of the form.

7. Request for Repair (RR)

C.A.R. Form RR has been amended to include a note regarding credits in Paragraph 1(c). Following the buyer's request that the seller credit him a certain dollar amount, the note clarifies that

"any credit...is separate from and shall not reduce or supercede any other credit in the Agreement unless specifically agreed in writing." While C.A.R. states that it is ok to use prior versions of this form, best practice would be to use the most current version of the form.

8. Seller Response and Buyer Reply to Request for Repair (RRRR)

As with the Request for Repair (RR), the Seller Response to Buyer Requests now also includes the caveat that any credit included on the form is separate from and shall not reduce or supercede any other credit in the agreement unless specified in writing. It is ok to use prior version of this form.

9. Seller Multiple Counter Offer (SMCO)

Paragraph 8, "Selection of Accepted Multiple Counter Offer," of the SMCO has been updated to clarify appropriate signatories when seller does not agree to an attached counter-offer. Specifically, seller should not sign if the SMCO is subject to a counter offer and seller does not agree to the terms thereof. While C.A.R. states that it is ok to use prior versions of this form, best practice would be to use the most current version of the form.

10. Single Party Compensation Agreement (SP)

The Single Party Compensation Agreement has been revised so it is now applicable to purchases and lease transactions. The "Seller/Landlord" is referred to as the "Principal" and the form now includes references to lease agreements and transactions with tenants. While C.A.R. states that it is ok to use prior versions of this form, best practice would be to use the most current version of the form.

11. Tenant Flood Hazard Disclosure (TFHD)

Paragraph 1 of the Tenant Flood Hazard Disclosure has been amended to indicate that, by default, the property is not in a flood hazard area or in an area of potential flooding. A check box indicates if the property is, in fact, in a flood hazard area or area of potential flooding, as well an outline of the scenarios that would determine if the property is in such a zone. While C.A.R. states that it is ok to use prior versions of this form, best practice would be to use the most current version of the form.

Should you have any questions or concerns regarding these forms, we encourage you seek qualified counsel—either through an attorney or your local REALTOR® Association—for answers.

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