

Chapter 6



Contracts & Property Purchase Agreements

Chapter 6 Goals:

- Define the various contract types
- Understand the vital elements of a contract and how a contract is held valid
- Recognize how a contract can be revoked
- Understand how a contract is formed
- Explain the parties of a contract
- Explain what a counter offer is and what occurs after a counter offer has been made
- Understand the difference between fraud and negligence

Chapter 6: Contracts & Property Purchase Agreements

Key Terms

acceptance	emancipated minor	offeree
accord and satisfaction	exchange	offeror
affirmative fraud	executory contract	operation of law
assignee	express contract	option
assignment	implied contract	real property purchase agreement
assignor	menacing	reformation
bilateral contract	minor	release
breach of contract	mistake	rescission
commercial frustration	mutual consent	specific performance
condition precedent	mutuality of contract	statute of frauds
constructive fraud	Natural Hazard Disclosure Statement	statute of limitations
contingency	negative fraud	unconscionability
contract	negligent misrepresentation	unilateral contract
contractual obligation	novation	voidable contract
counteroffer		
duress		

Contracts

A **contract** is a legally binding agreement that ties two or more parties to an agreed-upon set of terms.



The American Law Institute defines a contract as “a promise or set of promises for the breach of which law gives a remedy, or the performance of which the law recognizes as a duty.”

An individual or entity involved in a contract is known as a party of the contract. The promise that each party makes in a contract is known as a **contractual obligation**.

The **statute of frauds** requires certain agreements to be in writing in order to be enforceable. It includes the following contracts:

- Marriage contract
- Settlements
- The sale, purchase, or transfer of real property
- The lease of real estate for more than one year
- The authorization of an agent, broker, or other professional to represent a client in a real estate transaction

- The administration of an estate
- The sale of personal property over \$500
- The payment of debt
- A lending agreement for more than \$100,000
- A contract that cannot be performed within a year of its execution
- An agreement that will extend beyond the performing party's lifetime

Types of Contracts

Unilateral vs. Bilateral

A **unilateral contract** is an agreement in which only one party is obligated to perform a specific act.

For example, assume Jack lost his cat and places a reward sign that offers to pay \$500 to anyone who can locate his cat. Anyone who reads the sign and locates the cat is entitled to the \$500 reward, however they are no under a binding obligation to find the cat. Only Jack is bound by the terms of the contract, therefore it is a unilateral contract.

A **bilateral contract** is an agreement whereby one party is entitled to receive money or a service in exchange for another party providing money or a service. A real estate purchase contract is considered a bilateral contract as a buyer puts forth money in exchange for the title to a seller's property.

Express

An **express contract** – sometimes known as a special contract – is an agreement that sets out an exchange of terms between parties. An example of an express contract is one that has been signed by both parties.

An express contract has clear and definitive terms including the services that are being rendered and dates that correspond to the agreement. It is different from an implied contract that exists though implied actions and the behaviors of parties.

Acceptance of an express contract must be final, there can be no changes to the contract-this constitutes a counteroffer, which means it is no longer an express contract.

Although such contracts are typically made in writing, they can be verbal.

Implied

An **implied contract** is an agreement whereby the actions of involved parties bind them to a contract.

Such contracts are not made verbally or in writing, but assumed based on the actions of involved parties.

For example, Jonny and Mary move into a house without creating an account with the city for waste management services. Jonny puts their trash out on the curb and the following day, the city collects the trash. Although Jonny and Mary did not formally agree to pay for waste management services, an implied contract was created when Jonny put their trash on the curb. Therefore, Jonny and Mary can be billed for services rendered.

Executory

An **executory contract** – or illusory contract – describes an agreement in which certain contractual obligations have yet to be performed by parties. More simply, it a contract that has yet to be executed.

For example, a buyer and a seller may agree to a purchase agreement and enter escrow, but the purchase agreement is still considered an executory contract until both parties have performed the conditions stipulated within it and closed escrow.

Once the conditions have been met, an executory contract becomes an executed contract.

Components of a Valid Contract

Real estate agreements must be made in writing in order to be enforceable.

One party's claims that another party verbally agreed to something cannot be substantiated. This is why verbal contracts are not enforceable.

The following requirements must be upheld for a contract to be valid:

- Mutual consent
- Competent parties
- Clear and definable contract terms
- Goals of contract are legal
- Offer
- Acceptance

- Consideration

If one of the above components is missing, a contract is incomplete and therefore, void.

Mutual Consent

All parties entering into a contract must express their desire to do so, and of their own volition.

Mutual consent is achieved when both parties understand the terms of an agreement and signal consent through their actions. For example: the act of signing a contract.

Competent Parties

All parties entering into a contract must be legally and mentally competent. With few exceptions, the majority of adults are considered competent parties.

The following parties are not considered competent parties, or have certain contractual restrictions:

- Minors
- Mentally incapacitated individuals
- Alien citizens
- Incarcerated individuals

Minor

Any party below the age of 18 is a **minor**. California law assumes that a minor does not have the legal capacity or experience to engage in real estate transactions. If a minor wishes to engage in a transaction, a guardian must accompany the minor in his or her decision-making process.

Minors can receive property through an inheritance or be gifted real estate without a guardian or co-title holder, however.

One exception is an emancipated minor. An **emancipated minor** is an individual under the age of eighteen who is no longer a dependent of a parent or legal guardian. In order to be emancipated, a minor must get legal approval from a court, get married, or enlist in the armed forces. An emancipated minor has the legal authority to make decisions for themselves, including the right to be involved in a real estate transaction.

Mentally Incapacitated

In California, a contract will be considered unenforceable if one or more of the parties are mentally incapacitated. This includes individuals who are mentally handicapped or under the influence at the time of a contract's execution.

A mentally incompetent individual is required to have a guardian act on his or her behalf in a real estate transaction. A court must approve decisions made by a guardian.

If a court determines that a party in a contract was incapacitated at the time of a contract's execution, the contract will be terminated or invalidated until the party's capacity is restored.

If a party in a contract is deemed to have been competent, the contract is enforceable.

Alien Citizens

California law affords the same property rights to alien citizens as American citizens. California's Civil Code states: "Any person, whether citizen or alien, may take, hold, and dispose of property, real or personal, within the state."

Incarcerated Individuals

Incarcerated individuals maintain real property rights. This means they are able to acquire or convey property while in prison. Property can also be transferred to an incarcerated individual as a gift or inheritance, or through a will.

Incarcerated individuals may have their right to enter into a contract invalidated, however, due to the increased likelihood that they will be unable to execute the terms of the contract.

Goals of Contract are Legal

A contract must abide by all local, state, and federal laws. If any contract provision violates the law or unfairly prevents someone from engaging in legal activity, the contract is unenforceable.

Although parties of a contract may technically agree to unlawful terms – such as using a property to perform an illegal activity – a court will find the contract unenforceable if a lawsuit is initiated.

Clear and Definable Contract Terms

A contract should have clear, definitive terms that are easily understood by both parties. For example, the following conditions should be specified:

- Dates of the contract, including a clear beginning and end date
- All parties involved. The first and last name of each party must be included, as well as both parties' address.
- Each party's performance duties, including deadlines and contingencies

Consideration

Consideration is the exchanged value between parties in a contract. This can involve the exchange of one party's money for another party's services, property, objects, ideas, or future acts.

In the context of real estate, consideration typically refers to a subject property being exchanged for the property's sale price.

A contract must have sufficient consideration in order to be enforceable. **Mutuality of contract** refers to when a party has met its obligation or consideration.

Offer

In order for a contract to be initiated, there must be an offer. An offer represents the terms to which one party is willing to agree and a definitive course of action.

A real estate offer exists when a party who is offering to buy (the **offeror**) communicates his or her intention to purchase to a party who is offering to sell (the **offeree**).

An offer's terms must be specific. For example, a valid contract cannot simple list a property's purchase price as "to be determined". A contract must give an exact value or a specific range or method for calculating the purchase price. An example would be a clause that states: "the purchase price will use the average price per square foot as the basis for the final sales price".

An offer is not a legally binding document until it is accepted. An offeror can revoke his or her offer up until the offeree accepts it.

Counteroffer

A **counteroffer** refers to when an offeree (seller) responds to an offeror's (buyer's) offer with additional changes or provisions.

In this case, the offeree rejects the offeror's original terms and submits a new offer with different terms. Essentially, there is a reversal of roles between parties: the original offeree is now an offeror who is dictating the terms of the contract; the original offeror is now an offeree who is in a position to either accept or reject those terms.

As many changes occur throughout the course of a real estate transaction, there may be multiple counteroffers before reaching a final agreement.

Counteroffers are commonly in regards to offering price, closing date, closing costs, agent commissions, and whether fixtures are included.

For example, a buyer may counteroffer for more time in order to obtain financing or a seller may request additional time in order to find a new home.

When a counteroffer with new terms is accepted, all previous offers are terminated.

Acceptance

A contract becomes legally enforceable when an offered party notifies an offering party of his or her acceptance. **Acceptance** indicates a clear willingness by an offered party to be bound by a contract.

Acceptance takes place immediately upon receipt or confirmation by an offered party. In California, an offered party can accept an offer verbally, although it is highly advisable to obtain a written acceptance.

If a proposed contract contains a specific provision about how to indicate acceptance, this provision must be met in order for acceptance to be valid.

A condition required for a contract to take place is referred to as a **condition precedent**.

Example

Question: The Magliano family lists their primary residence for sale at \$515,000. The Lucile family offers \$500,000 for it. The Maglianos counteroffer for \$508,000, including closing costs. The Luciles counteroffer at \$506,000. The Maglianos accept the Luciles' offer via certified mail. While in escrow, the

Maglianos realize that market prices have significantly increased and their home is really valued at \$530,000. Can the Maglianos terminate their agreement with the Luciles and offer their home at a higher price?

Answer: No. Once the Maglianos accepted the offer, the agreement became legally binding. If the Maglianos wish to sell their home at a higher price, they must terminate the accepted agreement and create a new agreement.

Rejection

An offeree can outright reject an offeror's offer for any reason. The rejecting party can either inform the offering party of his or her rejection or simply not respond to the offer.

When a rejection occurs, the option of acceptance is terminated.

Example

Question: Steve and Tanya list their home for sale. The Nance family offers to purchase it for \$300,000. Steve and Tanya agree. While in escrow, the Nances decide that they want to keep all of the home's furnishings, including the couches, décor, and chandeliers. Steve and Tanya agree to let the Nances keep the furnishings for an additional \$8,000. The Nances agree and pay Steve and Tanya the \$8,000 out of escrow. Are Steve and Tanya obligated to give the Nances the furnishings even though it isn't written in the original purchase contract?

Answer: Yes. Steve and Tanya's acceptance of the Nances' money in exchange for the furnishings indicates agreement amongst parties.

Altering or Terminating a Contract

A contract may be altered or terminated through the following methods:

- Operation of law
- Release
- Accord and satisfaction
- Assignment
- Novation

- Reformation
- Rescission
- Commercial frustration
- Breach of contract
- Mistake
- Unconscionability

Operation of Law

Operation of law is when a contract terminates automatically and/or without legal action being taken. A contract may terminate by operation of law when it reaches its agreed-upon end date or when all involved parties have satisfied their required obligations.

Release

A party in a contract can choose to release the other party from his or her obligations. This is typically done through a release letter. A release letter terminates a contract and both parties' obligations to one another.

Accord and Satisfaction

Accord and satisfaction occurs when one party involved in a contract agrees to release the other party from the contract in return for a settlement. Typically, the settlement amount is for a reduced payment amount in exchange for releasing the party from all other liabilities. In other words, both parties waive their legal right to sue for future damages.

Assignment

An **assignment** is when one party transfers his or her contractual obligations to a third party. The party transferring the rights is called the **assignor**; the party receiving them is called the **assignee**. The third party may be a friend, family member, or business partner of the assignor.

For example, Patricia makes an offer on a seller's property. The seller accepts. However, Patricia decides she does not want to purchase the property in her name. She therefore assigns the purchase agreement to her husband so that the property is in his name.

When assigning a contract, the assignor transfers his or her full interest in the contract to the assignee. Upon accepting the assignment, the assignee takes on primary responsibility and liability of a contract's terms and obligations. This includes the right to equity, rental income, and debt.

The assignee essentially becomes the assignor, while the assignor continues to hold secondary liability.

A contract is assignable unless a specific clause in the original purchase agreement stipulates against assignment or a provision within the original purchase agreement cannot be satisfied by an assignee.

The other party in the original contract must be informed of the assignment. In the event that an assignor assigns a contract while having a dispute with the other party, the assignor is not exonerated of his or her obligations.

Novation

Novation refers to the replacement/modification/substitution of a particular provision in an original contract with a new provision.

For example, novation may be used to add duties to a specific party or to remove a party from the contract.

Reformation

Reformation refers to a court's ability to alter the contents of a legally binding contract in order to clarify conflicting or unclear terms.

There must be a valid reason to "reform" a contract, such as correcting an error or inadvertent misrepresentation, or clarifying a specific provision. Parties of the contract may also "reform" an agreement to conform to the changing nature of a transaction. For example: making a provision more equitable to both parties.

Reformation can only be utilized by parties who have acted in good faith in the original execution of the contract.

If one party objects to reformation, the contract can be terminated or the other party can forcibly alter certain conditions through a lawsuit.

Rescission

Rescission refers to the legal concept of removing or “un-making” a contract. It brings both parties back the original state they were in prior to a contract’s execution.

Either party may rescind a contract; however, a contract cannot be rescinded simply because one party does not want to perform his or her required duties. Either both parties must agree to rescind the contract, or one party must demonstrate how a provision within a contract makes it worthy of rescission.

Commercial Frustration

Commercial frustration – also known as impossibility of performance – refers to a situation in which an unforeseen, uncontrollable circumstance makes the fulfillment of a contract by one party impossible, or nearly impossible. Commercial frustration allows the party who suffered the unforeseen circumstance to be excused from a contract’s legal obligations and/or to rescind the contract entirely.

Typically, commercial frustration occurs when one party experiences financial hardship.

For example, if a buyer makes an offer on a property and subsequently loses his or her job, the buyer may no longer have the necessary funds to purchase the property. In this case, the buyer can declare commercial frustration and be excused from the contract.

Another example is when a seller can no longer sell his or her property because he or she is unable to afford a switch property.

Commercial frustration does not apply to situations that could have been reasonably predicted, however.

Breach of Contract

A **breach of contract** occurs when one party fails to perform his or her obligations in a contract and/or engages in an activity that prevents the other party from fulfilling his or her obligations.

The violated party has the right to file a lawsuit and recover damages that resulted from the breach. These damages may be due to a loss of time, the prevention of a sale, or another circumstance.

Specific performance is a court order that requires a violating party in a contract to perform the specific action that the contract obligated him or her to perform. Specific performance only occurs in instances where a violated party has initiated a lawsuit.

No two contracts are exactly alike and each specific performance case is unique. Consequently, the specific performance process can be complex, time-consuming, and expensive. Most buyers and sellers do not have the time or the resources to be involved in such an arduous process.

An alternative to specific performance is a standard lawsuit whereby the violated party takes the violating party to court to recover for monetary damages.

If a buyer fails to meet his or her obligations in a contract, the buyer may forfeit his or her deposit. If a seller fails to meet his or her obligations, the seller may be subject to a fee.

Example

Question: The Nash family is in contract to buy the Jaque residence. Days before closing, the Nash family decides they no longer wish to buy the house. Furious with the Nash family's actions, the Jaque family says they will not return the Nash family's deposit. Do they have the right to do this?

Answer: *Yes, assuming the Jaque family has met all of the contract's terms and obligations. As the Nash family has breached the terms of the contract, the Jaque family is entitled to the deposit.*

Mistakes

A **mistake** is defined as an erroneous belief that certain facts are true. These misunderstandings can be regarding the material facts of a property, provisions within a contract, or understanding of the law.

A unilateral mistake occurs when one party in a contract misunderstands its terms or provisions. A unilateral mistake typically does not void a contract unless the mistake leads to a positive one-sided result for the mistaken party.

A mutual mistake occurs when both parties enter into a contract under the same erroneous assumption about the material facts surrounding the contract. In this case, the contract is void.

Voidable Contracts

A **voidable contract** is a contract whose terms may not be enforceable due to the circumstances surrounding the contract's execution.

Unconscionability refers to terms in a contract or actions by contract parties that are grossly one-sided, unfair, or immoral. Unconscionable acts include intentional misrepresentation, fraud, and threatening behavior.

Negligent misrepresentation refers to when a party's negligent actions – either through lack of care or information – causes another party to make a negative decision.

Fraud refers to any action or contract term that is:

- Presented as a fact when the presenting party knows it isn't true
- Purposely deceiving, confusing, or uninformative
- Made without the intention of being completed
- Withholding of information

Affirmative fraud occurs when one party deliberately presents false or misleading information in order to convince another party to make a decision. **Negative fraud** occurs when one party deliberately conceals or withholds information in order to convince another party to make a decision.

For example, a seller who knowingly conceals that his or her home possesses foundational cracks and mold commits negative fraud.

Constructive fraud occurs when one party falsely misrepresents a material fact and another party makes a decision because of that misrepresentation, which results in damages.

If there is proof that an unconscionable act has been committed, a contract may be terminated.

Example

Question: An elderly woman named Jill wishes to sell her home so that she can move into a retirement home. An experienced buyer, Eric, submits an extremely low offer of \$300,000. Jill originally bought her home 60 years ago and knows nothing about current real estate values. Believing Eric's offer to be fair, she accepts the offer. Shortly after, Jill's daughter informs her mother that homes in

the area are selling for much higher and that her mother's home is actually worth \$420,000. Can Jill back out of her acceptance of Eric's offer?

Answer: Yes. Jill can revoke her acceptance because the contract grossly favors Eric to the point of it not being a fair offer. In short, the agreement is unconscionable.

Threat

Both parties must enter into a contract freely and voluntarily. A contract may be voided if one party engages in threatening behavior against the other party.

Menacing involves one party intentionally putting another party in fear of physical injury or death. Typically, this involves the display of a weapon or an action that suggests imminent danger.

Duress involves one party threatening to harm another party – or putting them under duress – for the purpose of making them do something against his or her will.

Statute of Limitations

A **statute of limitations** refers to the legal period of time in which a violated party may bring forth a lawsuit. Upon the expiration of a statute of limitations, the violated party may no longer claim legal judgments or damages.

Legal action for a void or invalid contract must be brought within a reasonable time period. The amount of time a party has to initiate a lawsuit differs based on the scenario:

- **Within 90 days:** Civil suits for lost or stolen personal items at a property, including clothing, jewelry, and baggage.
- **Within six months:** Legal actions to recover wages, merchandise, goods, and other property seized by an officer or government official.
- **Within one year:** Legal actions for libel, slander, injury, or death caused by an unlawful or negligent act.
- **Within two years:** A legal action for a wrongful contract term or obligation.
- **Within three years:** A legal action regarding real property or real estate contracts, including the damage of goods on a property.
- **Within five years:** A legal action to recover profits.
- **Within ten years:** A legal action to submit a judgment or court order.

Real Estate Purchase Agreement

A **real property purchase agreement** is a contract executed between a seller and a buyer that legally transfers real property. It sets forth the details of the transfer and the duties and obligations of each party involved.

Like other contracts, a purchase agreement must include mutual consent, competent parties, clearly defined and legal goals, consideration, offer, and acceptance. If any of these components are missing, a purchase agreement is not enforceable.

California Residential Purchase Agreement

Figure 7-1 is the standard California Residential Purchase Agreement. The following is an explanation of the terms held within it.

1. *Offer.* Indicates the buyer's full name and the subject property address. A legal property description should be used for rural properties and include acreage, the property borders, and the lot and block description. A legal description can be acquired from an online database or a seller/seller's agent. A buyer must also include the purchase price and the date that he or she will close escrow. The price should be written in numeric and word form.
2. *Agency.* Indicates the agencies and agency members involved.
3. *Financing.* A purchase agreement will state details about a buyer's deposit; about whether a buyer will be submitting an all-cash offer or obtaining a loan; and about whether a loan will be obtained from a lending institution or directly from the seller.
4. *Allocation of Costs.* Includes the costs in a transaction and which party is responsible for paying for them. Costs are not definitive and are negotiated on a transaction-by-transaction basis. For example, in a seller's market, a buyer may have to bear more of the costs in order to make a competitive offer. Costs include appraisal and title insurance fees, inspection costs, loan origination fees, and credit report and recording fees. These costs will be discussed further in Chapter 10.
5. *Closing and Possession.* Indicates the closing and possession dates.
6. *Statutory Disclosures.* Indicates that all required statutory disclosures must be made available to the buyer.
7. *Condominium/Planned Development Disclosures.* Indicates any property limitations of a condominium or common interest subdivision, including parking information and any H.O.A. fees and meetings.
8. *Included and Excluded Items.* Indicates the items that are included and excluded from the sale.

9. *Property Condition.* Indicates the condition of the property.
10. *Buyer's Inspection of Property.* Indicates a buyer's legal right to conduct investigations and inspections on a property. This includes soil reports, mold testing, termite inspections, lead-based paint tests, and any other inspections that a buyer chooses to make. A buyer assumes all risk and liability when conducting inspections, including for any workers or companies who assist in the inspections.
A seller is not responsible for conducting inspections. However, they are responsible for informing a buyer they are aware of certain material facts that would be discovered in an inspection.
11. *Seller Disclosures.* A seller is required to disclose all known material facts about a property's condition within a purchase agreement. This includes any known defects (i.e. mold, foundational problems, water damage), all required statutory disclosures (i.e. lead-based paint hazard disclosures, **Natural Hazard Disclosure Statement**), and any debts or liens on the property.
A seller may decide to sell his or her property "as is". However, the seller must still make the mandatory disclosures.
12. *Title and Vesting.* Title insurance insures a buyer's ownership interest in a property.
13. *Sale of Buyer's Property.* Indicates the contingency that a buyer must sell his or her current property in order to purchase the new property.
14. *Contingency Removal Dates.* Indicates the dates by which all contract contingencies must be satisfied and certain demands and/or obligations met.
15. *Repairs.* Indicates whether any repairs must be made prior to the close of a transaction.
16. *Final Verification of Property Condition.* Allows a buyer to inspect a property once more prior to executing a transaction.
17. *Proration.* Indicates how property taxes will be split amongst a buyer and a seller based on the date a property is acquired. A buyer is not responsible for property taxes until he or she is the property owner.
18. *Selection of Service Providers.* Informs a buyer that a broker cannot guarantee service provided by his or her licensees or associated employees.
19. *Multiple Listing Service (MLS).* Authorizes an authorized agent to list a property on the MLS. Unauthorized individuals cannot use the MLS or make offers.
20. *Equal Housing Opportunity.* Indicates that the sale of a property must comply with all federal and state Equal Housing Opportunity standards.
21. *Attorney Fees.* Indicates that in the event of a legal dispute between a buyer and a seller, the losing party must pay for all legal costs.

22. *Definitions.* Defines major keywords and factors that influence a real estate transaction.
23. *Agent/Broker Compensation.* Specifies an agent/broker's compensation in a transaction and which party is responsible for paying it.
24. *Joint Escrow Instructions.* The terms of a purchase agreement will be used as joint escrow instructions during the escrow process. A copy of the purchase agreement must be delivered to the escrow company within three days of an offer's acceptance.
25. *Liquidated Damages.* Indicates that in the event a buyer does not perform his or her obligations, a seller has the right to keep the buyer's deposit as liquidated damages. These damages are awarded to a seller to cover time lost, the loss of a sale, or mortgage payments. The maximum amount that can be charged as liquidated damages is 3% of the final purchase price.
26. *Dispute Resolution.* Indicates that a buyer and a seller must attempt to resolve legal matters through mediation rather than immediately enter into a legal lawsuit. If matters cannot be resolved through mediation, arbitration should be used next. However, neither party has the right to waive the other party's right to a court trial.
27. *Terms and Conditions of Offer.* Indicates that a purchase agreement is not valid until a seller signs off on it.
28. *Superseding Terms.* Indicates that any additional understandings – whether verbal or in writing, mutually agreed-upon or not – are superseded by the terms of the purchase agreement.
29. *Expiration of Offer.* Indicates the date an offer will expire.
30. *Acceptance of Offer.* By signing an agreement, the seller officially asserts that he or she is the legal property owner or has the right to convey the property.

Contingencies

A **contingency** refers to a condition that must be met in order to advance to the next step in a real estate transaction.

A common contingency included in a purchase agreement relates to time. For example, a seller may only have a certain amount of time to make disclosures.

Another common contingency is known as a home sale contingency. This stipulates that a buyer will purchase a seller's property as long as he or she is first able to sell his or her existing property.

Purchase agreements generally include financing contingencies. For example, a buyer may say: "Purchase price is contingent upon access to financing." If a buyer cannot

obtain access to financing, the buyer can be released from the contract. If a buyer cannot obtain financing within an agreed-upon time period, the seller may be able to terminate the contract.

A purchase agreement will indicate a date by which all contract contingencies must be satisfied. If a buyer does not remove contingencies before the specified date, the buyer will forfeit his or her deposit.

Counteroffer Form

In order to make a counteroffer on any offered terms, a seller must check the box on a counteroffer form. Doing so effectively communicates that a transaction is accepted “subject to the counteroffer.” A counteroffer however terminates the original offer.

A Counteroffer Form provides a blank space for a seller to include any changes and additions to a buyer’s original offer. A seller must write his or her full name, the date the document was executed, and the date by which the counteroffer must be accepted by a buyer. A seller will typically give a buyer one to two days to respond to the additional terms. A seller can also counter more than one offer at a time by going to Section Four of the contract.

If a buyer accepts a seller’s counteroffer, he or she will then sign and date the counteroffer. A counteroffer is only official when both parties have signed and dated it.

Contract Changes

Nearly all purchase agreements will make changes to the original contract before the close of a transaction, particularly in regards to closing dates, inspections, and buyer financing.

Any amendments to a purchase agreement must be made in writing. Handwritten changes (i.e. comments, instructions, dates) take precedence over pre-printed and typed material. Specific information also supersedes general information.

Closing & Possession

Real property must be vacant when it is transferred. If a property is a rental property, the seller must deal with tenants before the execution of the sale to ensure that the property is ready to be occupied by the new owner.

Keys, electronic entry devices, security passcodes, and other home security-related measures should also be provided to the buyer at the closing unless otherwise noted.



NATURAL HAZARD DISCLOSURE STATEMENT
 (C.A.R. Form NHD, Revised 10/04)

This statement applies to the following property:

The transferor and his or her agent(s) or a third-party consultant disclose the following information with the knowledge that even though this is not a warranty, prospective transferees may rely on this information in deciding whether and on what terms to purchase the subject property. Transferor hereby authorizes any agent(s) representing any principal(s) in this action to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

The following are representations made by the transferor and his or her agent(s) based on their knowledge and maps drawn by the state and federal governments. This information is a disclosure and is not intended to be part of any contract between the transferee and transferor.

THIS REAL PROPERTY LIES WITHIN THE FOLLOWING HAZARDOUS AREA(S):

A SPECIAL FLOOD HAZARD AREA (Any type Zone "A" or "V") designated by the Federal Emergency Management Agency.

Yes _____ No _____ Do not know and information not available from local jurisdiction _____

AN AREA OF POTENTIAL FLOODING shown on a dam failure inundation map pursuant to Section 8589.5 of the Government Code.

Yes _____ No _____ Do not know and information not available from local jurisdiction _____

A VERY HIGH FIRE HAZARD SEVERITY ZONE pursuant to Section 51178 or 51179 of the Government Code. The owner of this property is subject to the maintenance requirements of Section 51182 of the Government Code.

Yes _____ No _____

A WILDLAND AREA THAT MAY CONTAIN SUBSTANTIAL FOREST FIRE RISKS AND HAZARDS pursuant to Section 4125 of the Public Resources Code. The owner of this property is subject to the maintenance requirements of Section 4291 of the Public Resources Code. Additionally, it is not the state's responsibility to provide fire protection services to any building or structure located within the wildlands unless the Department of Forestry and Fire Protection has entered into a cooperative agreement with a local agency for those purposes pursuant to Section 4142 of the Public Resources Code.

Yes _____ No _____

AN EARTHQUAKE FAULT ZONE pursuant to Section 2622 of the Public Resources Code.

Yes _____ No _____

A SEISMIC HAZARD ZONE pursuant to Section 2696 of the Public Resources Code.

Yes (Landslide Zone) _____ Yes (Liquefaction Zone) _____

No _____ Map not yet released by state _____

Buyer's Initials ()
 Seller's Initials ()

Reviewed by _____ Date _____



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NHD REVISED 10/04 (PAGE 1 OF 2)

NATURAL HAZARD DISCLOSURE STATEMENT (NHD PAGE 1 OF 2)

Phone: _____ Fax: _____

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Property Address:

Date:

THESE HAZARDS MAY LIMIT YOUR ABILITY TO DEVELOP THE REAL PROPERTY, TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER A DISASTER.

THE MAPS ON WHICH THESE DISCLOSURES ARE BASED ESTIMATE WHERE NATURAL HAZARDS EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A PROPERTY WILL BE AFFECTED BY A NATURAL DISASTER. TRANSFEREE(S) AND TRANSFEROR(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING THOSE HAZARDS AND OTHER HAZARDS THAT MAY AFFECT THE PROPERTY.

Signature of Transferor(s)

Date

Signature of Transferor(s)

Date

Agent(s)

Date

Agent(s)

Date

Check only one of the following:

Transferor(s) and their agent(s) represent that the information herein is true and correct to the best of their knowledge as of the date signed by the transferor(s) and agent(s).

Transferor(s) and their agent(s) acknowledge that they have exercised good faith in the selection of a third-party report provider as required in Civil Code Section 1103.7, and that the representations made in this Natural Hazard Disclosure Statement are based upon information provided by the independent third-party disclosure provider as a substituted disclosure pursuant to Civil Code Section 1103.4. Neither transferor(s) nor their agent(s) (1) has independently verified the information contained in this statement and report or (2) is personally aware of any errors or inaccuracies in the information contained on the statement. This statement was prepared by the provider below:

Third-Party Disclosure Provider(s)

Date

Transferee represents that he or she has read and understands this document. Pursuant to Civil Code Section 1103.8, the representations made in this Natural Hazard Disclosure Statement do not constitute all of the transferor's or agent's disclosure obligations in this transaction.

Signature of Transferee(s)

Date

Signature of Transferee(s)

Date

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Date

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EQUAL OPPORTUNITY



CALIFORNIA
ASSOCIATION
OF REALTORS®

**CALIFORNIA
RESIDENTIAL PURCHASE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**
(C.A.R. Form RPA-CA, Revised 12/15)

Date Prepared:

1. OFFER:

- A. THIS IS AN OFFER FROM
B. THE REAL PROPERTY to be acquired is
(City), (County), California, (Zip Code), Assessor's Parcel No.

- C. THE PURCHASE PRICE offered is

- D. CLOSE OF ESCROW shall occur on _____ Dollars \$
(date) or _____ Days After Acceptance.
E. Buyer and Seller are referred to herein as the "Parties." Brokers are not Parties to this Agreement.

2. AGENCY:

- A. DISCLOSURE: The Parties each acknowledge receipt of a X "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD).

- B. CONFIRMATION: The following agency relationships are hereby confirmed for this transaction:

Listing Agent (Print Firm Name) is the agent of (check one):
the Seller exclusively; or both the Buyer and Seller.

Selling Agent (Print Firm Name) (if not the same as the Listing Agent) is the agent of (check one): the Buyer exclusively; or the Seller exclusively; or both the Buyer and Seller.

- C. POTENTIALLY COMPETING BUYERS AND SELLERS: The Parties each acknowledge receipt of a X "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

3. FINANCE TERMS: Buyer represents that funds will be good when deposited with Escrow Holder.

- A. INITIAL DEPOSIT: Deposit shall be in the amount of \$

(1) Buyer Direct Deposit: Buyer shall deliver deposit directly to Escrow Holder by electronic funds transfer, cashier's check, personal check, other within 3 business days after Acceptance (or)

- OR (2) Buyer Deposit with Agent: Buyer has given the deposit by personal check (or) to the agent submitting the offer (or to). The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder within 3 business days after Acceptance (or).

Deposit checks given to agent shall be an original signed check and not a copy.

(Note: Initial and increased deposits checks received by agent shall be recorded in Broker's trust fund log.)

- B. INCREASED DEPOSIT: Buyer shall deposit with Escrow Holder an increased deposit in the amount of \$ within Days After Acceptance (or).

If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount in a separate liquidated damages clause (C.A.R. Form RID) at the time the increased deposit is delivered to Escrow Holder.

- C. ALL CASH OFFER: No loan is needed to purchase the Property. This offer is NOT contingent on Buyer obtaining a loan. Written verification of sufficient funds to close this transaction IS ATTACHED to this offer or Buyer shall, within 3 (or) Days After Acceptance, Deliver to Seller such verification.

D. LOAN(S):

- (1) FIRST LOAN: in the amount of \$ This loan will be conventional financing or FHA, VA, Seller financing (C.A.R. Form SFA), assumed financing (C.A.R. Form AFA), Other . This loan shall be at a fixed rate not to exceed % or, an adjustable rate loan with initial rate not to exceed %. Regardless of the type of loan, Buyer shall pay points not to exceed % of the loan amount.

- (2) SECOND LOAN in the amount of \$ This loan will be conventional financing or Seller financing (C.A.R. Form SFA), assumed financing (C.A.R. Form AFA), Other . This loan shall be at a fixed rate not to exceed % or, an adjustable rate loan with initial rate not to exceed %. Regardless of the type of loan, Buyer shall pay points not to exceed % of the loan amount.

- (3) FHA/VA: For any FHA or VA loan specified in 3D(1), Buyer has 17 (or) Days After Acceptance to Deliver to Seller written notice (C.A.R. Form FVA) of any lender-required repairs or costs that Buyer requests Seller to pay for or otherwise correct. Seller has no obligation to pay or satisfy lender requirements unless agreed in writing. A FHA/VA amendatory clause (C.A.R. Form FVAC) shall be a part of this Agreement.

E. ADDITIONAL FINANCING TERMS:

- F. BALANCE OF DOWN PAYMENT OR PURCHASE PRICE in the amount of \$ to be deposited with Escrow Holder pursuant to Escrow Holder instructions.

- G. PURCHASE PRICE (TOTAL): \$

Buyer's Initials () ()
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Seller's Initials () ()



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Phone: _____ Fax: _____

Property Address:

Date:

H. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS: Buyer (or Buyer's lender or loan broker pursuant to paragraph 3J(1)) shall, within 3 (or) Days After Acceptance, Deliver to Seller written verification of Buyer's down payment and closing costs. (Verification attached.)

I. APPRAISAL CONTINGENCY AND REMOVAL: This Agreement is (or is NOT) contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the purchase price. Buyer shall, as specified in paragraph 14B(3), in writing, remove the appraisal contingency or cancel this Agreement within 17 (or) Days After Acceptance.

J. LOAN TERMS:

(1) **LOAN APPLICATIONS:** Within 3 (or) Days After Acceptance, Buyer shall Deliver to Seller 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 3D. If any loan specified in paragraph 3D is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate. (Letter attached.)

(2) **LOAN CONTINGENCY:** Buyer shall act diligently and in good faith to obtain the designated loan(s). Buyer's qualification for the loan(s) specified above is a **contingency** of this Agreement unless otherwise agreed in writing. 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. Buyer's contractual obligations regarding deposit, balance of down payment and closing costs are not contingencies of this Agreement.

(3) **LOAN CONTINGENCY REMOVAL:**

Within 21 (or) Days After Acceptance, Buyer shall, as specified in paragraph 14, in writing, remove the loan contingency or cancel this Agreement. If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.

(4) **NO LOAN CONTINGENCY:** Obtaining any loan specified above is NOT a contingency of this Agreement. If Buyer does not obtain the loan and as a result does not purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.

(5) **LENDER LIMITS ON BUYER CREDITS:** 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 the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit 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.

K. 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 covenant concerning financing. Buyer shall pursue the financing specified in this Agreement. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in the Agreement and the availability of any such alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

4. SALE OF BUYER'S PROPERTY:

A. This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer.

OR B. This Agreement and Buyer's ability to obtain financing are contingent upon the sale of property owned by Buyer as specified in the attached addendum (C.A.R. Form COP).

5. ADDENDA AND ADVISORIES:

A. **ADENDA:**

- Back Up Offer Addendum (C.A.R. Form BUO)
- Septic, Well and Property Monument Addendum (C.A.R. Form SWPI)
- Short Sale Addendum (C.A.R. Form SSA)

Addendum # (C.A.R. Form ADM)

Court Confirmation Addendum (C.A.R. Form CCA)

Other

B. **BUYER AND SELLER ADVISORIES:**

- Probate Advisory (C.A.R. Form PA)
- Trust Advisory (C.A.R. Form TA)
- Short Sale Information and Advisory (C.A.R. Form SSIA)

Buyer's Inspection Advisory (C.A.R. Form BIA)

Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)

REO Advisory (C.A.R. Form REO)

Other

6. OTHER TERMS:

7. ALLOCATION OF COSTS

A. INSPECTIONS, REPORTS AND CERTIFICATES: Unless otherwise agreed in writing, this paragraph 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.

- (1) Buyer Seller shall pay for a natural hazard zone disclosure report, including tax environmental Other:
prepared by [Click here to select your Service Provider](#)
- (2) Buyer Seller shall pay for the following Report
prepared by
- (3) Buyer Seller shall pay for the following Report
prepared by

Buyer's Initials ()()

Seller's Initials ()()

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CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 2 OF 10)

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Property Address:

Date:

B. GOVERNMENT REQUIREMENTS AND RETROFIT:

- (1) Buyer Seller shall pay for smoke alarm and carbon monoxide device installation and water heater bracing, if required by Law. Prior to Close Of Escrow ("COE"), Seller shall provide Buyer written statement(s) of compliance in accordance with state and local Law, unless Seller is exempt.
- (2) (i) Buyer Seller shall pay the cost of compliance with any other minimum mandatory government inspections and reports if required as a condition of closing escrow under any Law.
(ii) Buyer Seller shall pay the cost of compliance with any other minimum mandatory government retrofit standards required as a condition of closing escrow under any Law, whether the work is required to be completed before or after COE.
(iii) Buyer shall be provided, within the time specified in paragraph 14A, 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.

C. ESCROW AND TITLE:

- (1) (a) Buyer Seller shall pay escrow fee
(b) Escrow Holder shall be
(c) The Parties shall, within 5 (or) Days After receipt, sign and return Escrow Holder's general provisions.
- (2) (a) Buyer Seller shall pay for owner's title insurance policy specified in paragraph 13E
(b) Owner's title policy to be issued by
(Owner shall pay for any title insurance policy insuring Buyer's lender, unless otherwise agreed in writing.)

D. OTHER COSTS:

- (1) Buyer Seller shall pay County transfer tax or fee
(2) Buyer Seller shall pay City transfer tax or fee
(3) Buyer Seller shall pay Homeowners' Association ("HOA") transfer fee
(4) Seller shall pay HOA fees for preparing documents required to be delivered by Civil Code §4525.
(5) Buyer Seller shall pay HOA fees for preparing all documents other than those required by Civil Code §4525.
(6) Buyer to pay for any HOA certification fee.
(7) Buyer Seller shall pay for any private transfer fee
(8) Buyer Seller shall pay for
(9) Buyer Seller shall pay for
(10) Buyer Seller shall pay for the cost, not to exceed \$, of a standard (or upgraded) one-year home warranty plan, issued by [Click here to select your Service Provider](#), with the following optional coverages: Air Conditioner Pool/Spa Other.

Buyer is informed that home warranty plans have many optional coverages in addition to those listed above. Buyer is advised to investigate these coverages to determine those that may be suitable for Buyer.

OR Buyer waives the purchase of a home warranty plan. Nothing in this paragraph precludes Buyer's purchasing a home warranty plan during the term of this Agreement.

8. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:

A. NOTE TO BUYER AND SELLER: Items listed as included or excluded in the MLS, flyers or marketing materials are not included in the purchase price or excluded from the sale unless specified in paragraph 8 B or C.

B. ITEMS INCLUDED IN SALE: Except as otherwise specified or disclosed,

- (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, window and door screens, awnings, shutters, window coverings, attached floor coverings, television antennas, satellite dishes, air coolers/conditioners, pool/spa equipment, garage door openers/remote controls, mailbox, in-ground landscaping, trees/shrubs, water features and fountains, water softeners, water purifiers, security systems/alarms and the following if checked: all stove(s), except ; all refrigerator(s) except ; all washer(s) and dryer(s), except ;

- (3) The following additional items:
(4) Existing integrated phone and home automation systems, including necessary components such as intranet and Internet-connected hardware or devices, control units (other than non-dedicated mobile devices, electronics and computers) and applicable software, permissions, passwords, codes and access information, are (are NOT) included in the sale.

- (5) **LEASED OR LIENED ITEMS AND SYSTEMS:** Seller shall, within the time specified in paragraph 14A, (i) disclose to Buyer if any item or system specified in paragraph 8B or otherwise included in the sale is leased, or not owned by Seller, or specifically subject to a lien or other encumbrance, and (ii) Deliver to Buyer all written materials (such as lease, warranty, etc.) concerning any such item. Buyer's ability to assume any such lease, or willingness to accept the Property subject to any such lien or encumbrance, is a contingency in favor of Buyer and Seller as specified in paragraph 14B and C.

- (6) Seller represents that all items included in the purchase price, unless otherwise specified, (i) are owned by Seller and shall be transferred free and clear of liens and encumbrances, except the items and systems identified pursuant to 8B(5) and , and (ii) are transferred without Seller warranty regardless of value.

C. ITEMS EXCLUDED FROM SALE: Unless otherwise specified, the following items are excluded from sale: (i) 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; (ii) furniture and other items secured to the Property for earthquake purposes; and (iii)

Brackets attached to walls, floors or ceilings for any such component, furniture or item shall remain with the Property (or will be removed and holes or other damage shall be repaired, but not painted).

Buyer's Initials () ()

Seller's Initials () ()

RPA-CA REVISED 12/15 (PAGE 3 OF 10)

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 3 OF 10)

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Property Address:

Date:

9. CLOSING AND POSSESSION:

- A. Buyer intends (or does not intend) to occupy the Property as Buyer's primary residence.
- B. **Seller-occupied or vacant property:** Possession shall be delivered to Buyer: (i) at 6 PM or AM/ PM on the date of Close Of Escrow; (ii) no later than calendar days after Close Of Escrow; or (iii) at AM/ PM on .
- C. **Seller remaining in possession After Close Of Escrow:** If Seller has the right to remain in possession after Close Of Escrow, (i) the Parties are advised to sign a separate occupancy agreement such as C.A.R. Form SIP, for Seller continued occupancy of less than 30 days, C.A.R. Form RLAS for Seller continued occupancy of 30 days or more; and (ii) 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; and (iii) Buyer is advised to consult with Buyer's lender about the impact of Seller's occupancy on Buyer's loan.
- D. **Tenant-occupied property:** Property shall be vacant at least 5 (or) Days Prior to Close Of Escrow, unless otherwise agreed in writing. Note to Seller: If you are unable to deliver Property vacant in accordance with rent control and other applicable Law, you may be in breach of this Agreement.

OR Tenant to remain in possession (C.A.R. Form TIP).

- E. At Close Of Escrow: Seller assigns to Buyer any assignable warranty rights for items included in the sale; and Seller shall Deliver to Buyer available Copies of any such warranties. Brokers cannot and will not determine the assignability of any warranties.
- F. At Close Of Escrow, unless otherwise agreed in writing, Seller shall provide keys, passwords, codes and/or means to operate all locks, mailboxes, security systems, alarms, home automation systems and intranet and Internet-connected devices included in the purchase price, and garage door openers. If the Property is a condominium or located in a common interest subdivision, Buyer may be required to pay a deposit to the Homeowners' Association ("HOA") to obtain keys to accessible HOA facilities.

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

- A. (1) Seller shall, within the time specified in paragraph 14A, Deliver to Buyer: (i) if required by Law, a fully completed: Federal Lead-Based Paint Disclosures (C.A.R. Form FLD) and pamphlet ("Lead Disclosures"); and (ii) unless exempt, fully completed disclosures or notices required by sections 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 ("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).
- (2) Any Statutory Disclosure required by this paragraph is considered fully completed if Seller has answered all questions and completed and signed the Seller section(s) and the Listing Agent, if any, has completed and signed the Listing Broker section(s), or, if applicable, an Agent Visual Inspection Disclosure (C.A.R. Form AVID). Nothing stated herein relieves a Buyer's Broker, 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 Broker.
- (3) **Note to Buyer and Seller:** Waiver of Statutory and Lead Disclosures is prohibited by Law.
- (4) Within the time specified in paragraph 14A, (i) Seller, unless exempt from the obligation to provide a TDS, shall, complete and provide Buyer with a Seller Property Questionnaire (C.A.R. Form SPQ); (ii) if Seller is not required to provide a TDS, Seller shall complete and provide Buyer with an Exempt Seller Disclosure (C.A.R. Form ESD).
- (5) Buyer shall, within the time specified in paragraph 14B(1), return Signed Copies of the Statutory, Lead and other disclosures to Seller.
- (6) In the event Seller or Listing Broker, 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, Seller shall promptly provide a subsequent or amended disclosure or notice, in writing, covering those items. However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies of which Buyer is otherwise aware, or which are disclosed in reports provided to or obtained by Buyer or ordered and paid for by Buyer.
- (7) If any disclosure or notice specified in paragraph 10A(1), or subsequent or amended disclosure or notice is Delivered to Buyer after the offer is Signed, Buyer shall have the right to cancel this Agreement within 3 Days After Delivery in person, or 5 Days After Delivery by deposit in the mail, by giving written notice of cancellation to Seller or Seller's agent.

- B. **NATURAL AND ENVIRONMENTAL HAZARD DISCLOSURES AND OTHER BOOKLETS:** Within the time specified in paragraph 14A, Seller shall, if required by Law: (i) Deliver to Buyer earthquake guide(s) (and questionnaire), environmental hazards booklet, and home energy rating pamphlet; (ii) 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; and Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.

- C. **WITHHOLDING TAXES:** Within the time specified in paragraph 14A, to avoid required withholding, Seller shall Deliver to Buyer or qualified substitute, an affidavit sufficient to comply with federal (FIRPTA) and California withholding Law (C.A.R. Form AS or QS).

- D. **MEGAN'S LAW DATABASE DISCLOSURE:** Notice: Pursuant to Section 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. 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 Brokers are required to check this website. If Buyer wants further information, Broker recommends that Buyer obtain information from this website during Buyer's inspection contingency period. Brokers do not have expertise in this area.)

- E. **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.nmps.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 Web site.

F. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:

- (1) **SELLER HAS:** 7 (or) Days After Acceptance to disclose to Buyer if the Property is a condominium, or is located in a planned development or other common interest subdivision (C.A.R. Form SPQ or ESD).

Buyer's Initials () ()
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CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 4 OF 10)

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(2) If the Property is a condominium or is located in a planned development or other common interest subdivision, Seller has 3 (or) Days After Acceptance to request from the HOA (C.A.R. Form HOA1): (i) Copies of any documents required by Law; (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; and (v) the names and contact information of all HOAs governing the Property (collectively, "CI Disclosures"). (vi) private transfer fees; (vii) Pet fee restrictions; and (viii) smoking restrictions. Seller shall itemize and Deliver to Buyer all CI Disclosures received from the HOA and any CI Disclosures in Seller's possession. Buyer's approval of CI Disclosures is a contingency of this Agreement as specified in paragraph 14B(3). The Party specified in paragraph 7, as directed by escrow, shall deposit funds into escrow or direct to HOA or management company to pay for any of the above.

11. CONDITION OF PROPERTY: Unless otherwise agreed in writing: (i) the Property is sold (a) "AS-IS" in its PRESENT physical condition as of the date of Acceptance and (b) subject to Buyer's investigation rights; (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.

A. Seller shall, within the time specified in paragraph 14A, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, and make any and all other disclosures required by law.

B. Buyer has the right to conduct Buyer Investigations of the Property and, as specified in paragraph 14B, based upon information discovered in those investigations: (i) cancel this Agreement; or (ii) request that Seller make Repairs or take other action.

C. **Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition.** Seller 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 permits issued.

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

A. Buyer's acceptance of the condition of, and any other matter affecting the Property, is a contingency of this Agreement as specified in this paragraph and paragraph 14B. Within the time specified in paragraph 14B(1), Buyer shall have the right, at Buyer's expense unless otherwise agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations"), including, but not limited to: (i) a general physical inspection; (ii) 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); (iii) inspect for lead-based paint and other lead-based paint hazards; (iv) satisfy Buyer as to any matter specified in the attached Buyer's Inspection Advisory (C.A.R. Form BIA); (v) review the registered sex offender database; (vi) confirm the insurability of Buyer and the Property including the availability and cost of flood and fire insurance; and (vii) review and seek approval of leases that may need to be assumed by Buyer. Without Seller's prior written consent, Buyer shall neither make nor cause to be made: invasive or destructive Buyer Investigations, except for minimally invasive testing required to prepare a Pest Control Report; or inspections by any governmental building or zoning inspector or government employee, unless required by Law.

B. Seller shall make the Property available for all Buyer Investigations. Buyer shall (i) as specified in paragraph 14B, complete Buyer Investigations and either remove the contingency or cancel this Agreement, and (ii) give Seller, at no cost, complete Copies of all such Investigation reports obtained by Buyer, which obligation shall survive the termination of this Agreement.

C. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is made available to Buyer.

D. **Buyer indemnity and seller protection for entry upon 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.

13. TITLE AND VESTING:

A. Within the time specified in paragraph 14, Buyer shall be provided a current preliminary title report ("Preliminary Report"). 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. Buyer's review of the Preliminary Report and any other matters which may affect title are a contingency of this Agreement as specified in paragraph 14B. 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. Seller shall within 7 Days After Acceptance, give Escrow Holder a completed Statement of Information.

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 (which Seller is obligated to pay off) 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.

C. Within the time specified in paragraph 14A, Seller has a duty to disclose to Buyer all matters known to Seller affecting title, whether of record or not.

D. At Close Of Escrow, Buyer shall receive a grant deed conveying title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's leasehold interest), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's supplemental escrow instructions. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.

Buyer's Initials ()()

Seller's Initials ()()

RPA-CA REVISED 12/15 (PAGE 5 OF 10)

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 5 OF 10)



- Property Address:** _____ Date: _____
- E. Buyer shall receive a CLTA/ALTA "Homeowner's Policy of Title Insurance", if applicable to the type of property and buyer. If not, Escrow Holder shall notify Buyer. A title company can provide information about the availability, coverage, and cost of other title policies and endorsements if the Homeowner's Policy is not available. Buyer shall choose another policy, instruct Escrow Holder in writing and shall pay any increase in cost.
- 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 HAS:** 7 (or) Days After Acceptance to Deliver to Buyer all Reports, disclosures and information for which Seller is responsible under paragraphs 5, 6, 7, 8B(5), 10A, B, C, and F, 11A and 13A. If, by the time specified, Seller has not Delivered any such item, Buyer after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP) may cancel this Agreement.
- B. (1) **BUYER HAS:** 17 (or) Days After Acceptance, unless otherwise agreed in writing, to: (i) complete all Buyer Investigations; review all disclosures, reports, lease documents to be assumed by Buyer pursuant to paragraph 8B(5), 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 Lead Disclosures and other disclosures Delivered by Seller in accordance with paragraph 10A.
- (2) Within the time specified in paragraph 14B(1), Buyer may 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 (C.A.R. Form RRRR) Buyer's requests.
- (3) By the end of the time specified in paragraph 14B(1) (or as otherwise specified in this Agreement), Buyer shall Deliver to Seller a removal of the applicable contingency or cancellation (C.A.R. Form CR or CC) of this Agreement. However, if any report, disclosure or information for which Seller is responsible is not Delivered within the time specified in paragraph 14A, then Buyer has 5 (or) Days After Delivery of any such items, or the time specified in paragraph 14B(1), whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.
- (4) **Continuation of Contingency:** Even after the end of the time specified in paragraph 14B(1) and before Seller cancels, if at all, pursuant to paragraph 14D, 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 14D(1).
- (5) **Access to Property:** Buyer shall have access to the Property to conduct inspections and investigations for 17 (or) Days After Acceptance, whether or not any part of the Buyer's Investigation Contingency has been waived or removed.
- C. **REMOVAL OF CONTINGENCIES WITH OFFER:** Buyer removes the contingencies specified in the attached Contingency Removal form (C.A.R. Form CR). If Buyer removes any contingency without an adequate understanding of the Property's condition or Buyer's ability to purchase, Buyer is acting against the advice of Broker.
- D. **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 NBP, 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 3A, or 3B or if the funds deposited pursuant to paragraph 3A or 3B are not good when deposited; (ii) Deliver a notice of FHA or VA costs or terms as required by paragraph 3D(3) (C.A.R. Form FVA); (iii) Deliver a letter as required by paragraph 3J(1); (iv) Deliver verification, or a satisfactory verification if Seller reasonably disapproves of the verification already provided, as required by paragraph 3C or 3H; (v) In writing assume or accept leases or liens specified in 8B5; (vi) Return Statutory and Lead Disclosures as required by paragraph 10A(5); or (vii) Sign or initial a separate liquidated damages form for an increased deposit as required by paragraphs 3B and 21B; or (viii) Provide evidence of authority to sign in a representative capacity as specified in paragraph 19. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
- E. **NOTICE TO BUYER OR SELLER TO PERFORM:** The NBP or NSP shall: (i) be in writing; (ii) be signed by the applicable Buyer or Seller; and (iii) give the other Party at least 2 (or) Days After Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A NBP or NSP may not be Delivered any earlier than 2 Days Prior to the expiration of the applicable time for the other Party to remove a contingency or cancel this Agreement or meet an obligation specified in paragraph 14.
- F. **EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES:** If Buyer removes, in writing, any contingency or cancellation rights, unless otherwise specified in writing, 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 Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.
- G. **CLOSE OF 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 (or) Days After Delivery to close escrow. A DCE may not be Delivered any earlier than 3 Days Prior to the scheduled close of escrow.
- 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 mutual instructions to cancel the sale and escrow and release deposits, if any, to the party entitled to the funds, less fees and costs incurred by that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. Except as specified below, release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award. If either Party fails to execute mutual instructions to cancel escrow, one Party may make a written demand to Escrow Holder for the deposit. (C.A.R. Form BDRD or SDRD). Escrow Holder, upon receipt, shall promptly deliver notice of the demand to the other Party. If, within 10 Days After Escrow Holder's notice, the other Party does not object to the demand, Escrow Holder shall disburse the deposit to the Party making the demand. If Escrow Holder complies with the preceding process, each Party shall be deemed to have released Escrow Holder from any and all claims or liability related to the disbursal of the deposit. Escrow Holder, at its discretion, may nonetheless require mutual cancellation instructions. 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 who is entitled to the deposited funds (Civil Code §1057.3).

Buyer's Initials ()()
RPA-CA REVISED 12/15 (PAGE 6 OF 10)

Seller's Initials ()()



CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 6 OF 10)

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- Property Address:** _____ Date: _____
- 15. FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final verification of the Property within 5 (or) Days Prior to Close Of Escrow, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to paragraph 11; (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).
- 16. REPAIRS:** Repairs shall be completed prior to final verification of condition unless otherwise agreed in writing. 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. It is understood 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.
- 17. PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless otherwise agreed in writing, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, rents, HOA regular, special, and emergency dues and assessments imposed 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. 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 assessments that are now a lien but not yet due. Property will be reassessed upon change of ownership. Any supplemental tax bills shall be 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). TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be made based on a 30-day month.
- 18. BROKERS:**
- 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 Broker: (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 Broker; (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.
- 19. REPRESENTATIVE CAPACITY:** If one or more Parties is signing this Agreement in a representative capacity and not for him/herself as an individual then that Party shall so indicate in paragraph 31 or 32 and attach a Representative Capacity Signature Disclosure (C.A.R. Form RCSD). Wherever the signature or initials of the representative identified in the RCSD 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 Party acting in a representative capacity (i) represents that the entity for which that party is acting already exists 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).
- 20. 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, 3, 4B, 5A, 6, 7, 10C, 13, 14G, 17, 18A, 19, 20, 26, 29, 30, 31, 32 and paragraph D of the section titled Real Estate Brokers on page 10. If a Copy of the separate compensation agreement(s) provided for in paragraph 18A, or paragraph D of the section titled Real Estate Brokers on page 10 is deposited with Escrow Holder by Broker, 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. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder and will execute such provisions within the time specified in paragraph 7C(1)(c). 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 will 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 (or) Days, shall pay to Escrow Holder or HOA or HOA management company or others any fee required by paragraphs 7, 10 or elsewhere in this Agreement.
 - B. A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within 3 Days After Acceptance (or). 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 Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under paragraph 10C, Escrow Holder shall deliver to Buyer a Qualified Substitute statement that complies with federal Law.

Buyer's Initials ()()
RPA-CA REVISED 12/15 (PAGE 7 OF 10)

Seller's Initials ()()



CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 7 OF 10)

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Property Address:**Date:**

- C. Brokers are a party to the escrow for the sole purpose of compensation pursuant to paragraph 18A and paragraph D of the section titled Real Estate Brokers on page 10. 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.
- D. Upon receipt, Escrow Holder shall provide Seller and Seller's Broker verification of Buyer's deposit of funds pursuant to paragraph 3A and 3B. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify all Brokers: (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.
- E. 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.

21. REMEDIES FOR BUYER'S BREACH OF CONTRACT:

- A. Any clause added by the Parties specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase in violation of this Agreement shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.
- B. **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. Except as provided in paragraph 14H, 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 RID).**

Buyer's Initials _____ / _____

Seller's Initials _____ / _____

22. DISPUTE RESOLUTION:

- A. **MEDIATION:** 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 through the C.A.R. Real Estate Mediation Center for Consumers (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 Broker(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. Mediation fees, if any, shall be divided equally among the Parties involved. 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. Exclusions from this mediation agreement are specified in paragraph 22C.**

- B. **ARBITRATION OF DISPUTES:**
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 Broker(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. 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. The Parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, 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. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 22C.

"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 _____ / _____

C. ADDITIONAL MEDIATION AND ARBITRATION TERMS:

- (1) **EXCLUSIONS:** The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; and (iii) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court.

Buyer's Initials () ()
RPA-CA REVISED 12/15 (PAGE 8 OF 10)

Seller's Initials () ()

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 8 OF 10)

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Property Address: _____ Date: _____

(2) **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.

(3) **BROKERS:** Brokers shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Broker(s) participating in mediation or arbitration shall not be deemed a party to this Agreement.

23. SELECTION OF SERVICE PROVIDERS: Brokers do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Broker or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.

24. MULTIPLE LISTING SERVICE ("MLS"): Brokers are authorized to report to the MLS a pending sale 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.

25. ATTORNEY FEES: 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 22A.

26. ASSIGNMENT: 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. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless otherwise agreed in writing by Seller. (C.A.R. Form AOOA).

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

28. TERMS AND CONDITIONS OF OFFER:
This is an offer to purchase the Property on the above terms and conditions. The liquidated damages paragraph or the arbitration of disputes paragraph is incorporated in this Agreement if initiated 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. 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.

29. 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 specified, 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.

30. DEFINITIONS: As used in this Agreement:

- A. "Acceptance" means the time the offer or final counter offer is accepted in writing by a Party and is delivered to and personally received by the other Party or that Party's authorized agent in accordance with the terms of this offer or a final counter offer.
- B. "Agreement" means this document and any counter offers and any incorporated addenda, collectively forming the binding agreement between the Parties. Addenda are incorporated only when Signed by all Parties.
- C. "C.A.R. Form" means the most current version of the specific form referenced or another comparable form agreed to by the parties.
- D. "Close Of Escrow", including "COE", means the date the grant deed, or other evidence of transfer of title, is recorded.
- E. "Copy" means copy by any means including photocopy, NCR, facsimile and electronic.
- F. "Days" means calendar days. However, after Acceptance, the last Day for performance of any act required by this Agreement (including Close Of Escrow) shall not include any Saturday, Sunday, or legal holiday and shall instead be the next Day.
- G. "Days After" means the specified number of calendar days after the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59 PM on the final day.
- H. "Days Prior" means the specified number of calendar days before the occurrence of the event specified, not counting the calendar date on which the specified event is scheduled to occur.
- I. "Deliver", "Delivered" or "Delivery", unless otherwise specified in writing, means and shall be effective upon: personal receipt by Buyer or Seller or the individual Real Estate Licensee for that principal as specified in the section titled Real Estate Brokers on page 10, regardless of the method used (i.e., messenger, mail, email, fax, other).
- J. "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.
- K. "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.
- L. "Repairs" means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
- M. "Signed" means either a handwritten or electronic signature on an original document, Copy or any counterpart.

31. EXPIRATION OF OFFER: This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless the offer is Signed by Seller and a Copy of the Signed offer is personally received by Buyer, or by _____, who is authorized to receive it, by 5:00 PM on the third Day after this offer is signed by Buyer (or by _____, AM/ PM, on _____ (date)).

One or more Buyers is signing this Agreement in a representative capacity and not for him/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-B) for additional terms.

Date _____ BUYER
 (Print name) _____
 Date _____ BUYER
 (Print name) _____

Additional Signature Addendum attached (C.A.R. Form ASA).

Seller's initials (_____) (_____)

RPA-CA REVISED 12/15 (PAGE 9 OF 10)

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 9 OF 10)

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Property Address:

Date:

32. 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 Broker to Deliver a Signed Copy to Buyer.

(If checked) SELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED COUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:

One or more Sellers is signing this Agreement in a representative capacity and not for him/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-S) for additional terms.

Date SELLER

(Print name)

Date SELLER

(Print name)

Additional Signature Addendum attached (C.A.R. Form ASA).

(_____/_____) (Do not initial if making a counter offer.) CONFIRMATION OF ACCEPTANCE: A Copy of Signed Acceptance was personally received by Buyer or Buyer's authorized agent on (date) at

AM/ PM. A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence the date that Confirmation of Acceptance has occurred.

REAL ESTATE BROKERS:

A. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.

B. Agency relationships are confirmed as stated in paragraph 2.

C. If specified in paragraph 3A(2), Agent who submitted the offer for Buyer acknowledges receipt of deposit.

D. COOPERATING BROKER COMPENSATION: Listing Broker agrees to pay Cooperating Broker (**Selling Firm**) and Cooperating Broker agrees to accept, out of Listing Broker's proceeds in escrow, the amount specified in the MLS, provided Cooperating Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Listing Broker and Cooperating 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.

Real Estate Broker (Selling Firm)	Fax	E-mail	CalBRE Lic. #	Date
By			CalBRE Lic. #	Date
By			CalBRE Lic. #	Date
Address			City	State Zip
Telephone				
Real Estate Broker (Listing Firm)	Fax	E-mail	CalBRE Lic. #	Date
By			CalBRE Lic. #	Date
By			CalBRE Lic. #	Date
Address			City	State Zip
Telephone				

ESCROW HOLDER ACKNOWLEDGMENT:

Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, a deposit in the amount of \$ _____), Seller's Statement of Information and _____, and agrees to act as Escrow Holder subject to paragraph 20 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised that the date of Confirmation of Acceptance of the Agreement as between Buyer and Seller is

Escrow Holder _____ Escrow # _____
By _____ Date _____

Address _____

Phone/Fax/E-mail _____

Escrow Holder has the following license number # _____

Department of Business Oversight, Department of Insurance, Bureau of Real Estate.

PRESENTATION OF OFFER: (_____) (_____) Listing Broker presented this offer to Seller on _____ (date).
Broker or Designee Initials

REJECTION OF OFFER: (_____) (_____) No counter offer is being made. This offer was rejected by Seller on _____ (date).
Seller's Initials

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RPA-CA REVISED 12/15 (PAGE 10 of 10)

Buyer Acknowledges that page 10 is part of this Agreement (_____) (_____)

Buyer's Initials

Reviewed by
Broker or Designee



CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 10 OF 10)

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Alternative Property Agreements

Option

An **option** grants a buyer the exclusive right to purchase a seller's property in the future. An option gives a buyer more time to obtain the necessary funds to purchase the property.

For example, Ted and Sarah are intent on buying the Franklin residence. They don't have the necessary funds for a down payment, but they can afford the property's monthly mortgage payments. Ted and Sarah can make an option offer in which they agree to rent the Franklin's home until they can provide the required down payment amount.

Once a seller enters into an option agreement with a buyer, the seller is legally bound to sell his or her property to that buyer in the future. A seller cannot cancel the agreement unless it reaches its agreed-upon expiration date.

Exchange

An **exchange** refers to the swapping of property between property owners.

An exchange is commonly used amongst businesses that exchange assets (i.e. technology, information) in return for a property.

As the process of an exchange deals with assets with different loan amounts, cash value, and/or attached creditors, it is very detailed. This is why most parties involved in an exchange hire a skilled legal or asset management team.

Because different properties have different equity, the party that gains additional value may be subject to taxation. **Boot** refers to the taxable income that is placed on the party who retains additional value.