

Chapter 10



Escrow & Title Insurance

Chapter 10 Goals:

- Understand the different requirements to create a valid escrow for the sale of real estate
- Understand escrow law and the various exemptions
- List the multiple stages of the escrow process and the responsibilities of each party during the escrow process
- List the varying types of title insurance
- Understand the HUD-1 settlement statement

Chapter 10: Escrow & Title Insurance

Key Terms

abstract of title	escrow	licensed escrow agent
amendment to escrow instructions	escrow agent	loan commitment
audit	escrow cancellation	lot book
beneficiary statement	escrow instructions	non-licensed escrow agent
binding contract	extended-coverage policy	preliminary title report
bulk sale escrow	general index	prorating
certificate of title	guarantee of title	settlement statement
close of escrow	hazard insurance	standard coverage policy
closing costs	HUD-1 Settlement	Statement
conditional delivery	impound account	title
contingency	interpleader	title insurance
demand for payoff	joint escrow instructions	title insurance surplus fund
	lender appraisal	title plant

Escrow

The process of buying and selling real estate is time-consuming and expensive. With significant money and assets being transferred between parties, many issues can arise in between the initiation of an offer and the close of a transaction.

Escrow is an entity that acts as a neutral third party between principals in a real estate transaction. Escrow facilitates escrow activities for the sale, transfer, or lease of a property.

An escrow also serves as a depository for all consideration in a transaction, including a buyer's/lender's funds (i.e. deposit, down payment) and the title/deed to a seller's property.

The California Financial Code Section 17003 (a) defines escrow as:

- “...any transaction wherein one person, for the purpose of effecting the sale, transfer, encumbering or leasing of real or personal property to another person, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by such third person until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered by such third person to a grantee, grantor, promise, promisor, obligee, obligor, bailee, bailor, or any agent or employee of any of the latter.”

Escrow companies also can provide escrow services for the sale of businesses and other asset-based transactions. This is known as **bulk sale escrow**.

Escrow Agent

An **escrow agent** – also referred to as an escrow holder or escrow officer – is the person responsible for performing tasks on behalf of an escrow company in service of a buyer and a seller.

As a buyer typically initiates a real estate transaction, he or she is generally responsible for finding an escrow agent. Principals may opt to select an escrow agent together, however.

An escrow agent must be submitted with a purchase agreement.

Escrow companies' impartiality is the main reason they are used in real estate transactions; so is their confidentiality. An escrow agent must maintain the privacy of all principals and never disclose information to third parties without a principal's approval.

An escrow agent's duty is not to sway decisions in a transaction; rather, it is to inform all parties of the responsibilities they must meet in order to close the transaction.

It is also not an escrow agent's responsibility to determine whether a buyer or a seller is engaging in fraud or other wrongdoings. However, an escrow agent can be held liable if its negligence or failure to disclose material facts leads to an unfavorable circumstance for a buyer or a seller. If an escrow agent is found to be liable, its license may be revoked.

Licensed Escrow Agents

Escrow agents are licensed as companies, not individuals.

To become a licensed escrow agent, an applicant must:

- *Pay an application fee.* In California, this is \$625 per location and \$425 for every additional location.
- *Create an escrow account for client deposits*
- *Pass an extensive background check*
- *Have fidelity and surety bonding*
- *Meet minimum financial requirements*

- *Meet minimum experience requirements.* Each licensed escrow company must have at least one agent with a minimum of five years of responsible escrow practice at the primary branch. Each additional location must have an escrow agent with a minimum of four years experience.
- *File a branch location application*

In Southern California, most real estate transactions involve a licensed escrow company or other financial institution that focuses specifically on escrow.

Escrow companies may be subject to an independent audit up to once a year.

Non-Licensed Escrow Agents

In Northern California, non-licensed title insurance companies handle escrow. Non-licensed escrow agents are not required to have as much experience as licensed escrow agents. They include:

- Title insurance companies
- Banks
- Lending institutions
- Savings associations
- Attorneys
- Real estate agents/brokers

A real estate agent/broker can only act as an escrow agent in a transaction where the agent/broker is already representing a buyer or a seller.

An agent/broker cannot claim that he or she is an escrow agent or advertise escrow services, except if it's in addition to his or her primary real estate business.

An agent/broker cannot solicit escrow business from other brokers with the goal of having a "side business". An escrow cannot create an organization or association of agents/brokers for the express purpose of conducting an escrow business. An agent/broker is also prohibited from paying referral fees to other businesses for referring clients who need escrow services to the agent/broker.

The Escrow Process

Creating Escrow

In order for escrow to take place, there needs to be:

- A binding contract
- A conditional delivery

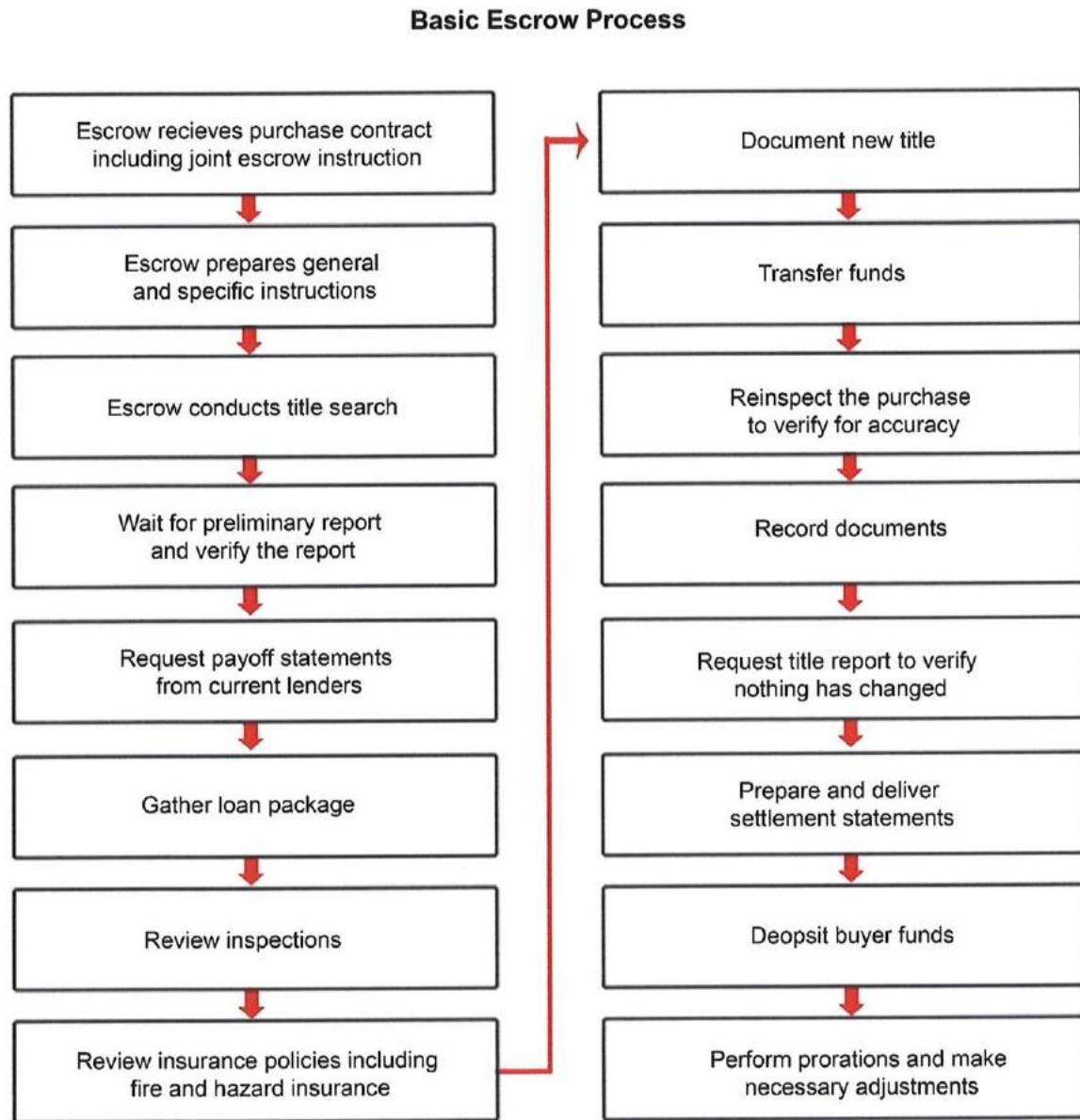
A **binding contract** is an agreement that binds parties to the provisions of a contract. In terms of escrow, it is an agreement between a buyer and a seller that includes the obligations both parties must fulfill in order to close escrow.

A binding contract can come in multiple forms, including:

- Purchase contract (most common)
- Exchange agreement
- Agreement for sale
- Option for transfer
- Additional legal documents

A **conditional delivery** occurs once a buyer and a seller have fulfilled their mutual obligations. Delivery occurs when:

- A buyer transfers funds to purchase a property
- A seller transfers title to a buyer
- Loan documentation and required paperwork are transferred



Escrow Instructions

Escrow opens once a seller has accepted a buyer's offer and both parties have signed a purchase agreement. The agreed-upon terms and conditions within a purchase agreement become **joint escrow instructions**.

The principals in a transaction (i.e. buyer, seller, lender) are responsible for submitting escrow instructions to an escrow agent.

If either principal wants to amend escrow instructions, both parties must consent. Any

alteration is referred to as an **amendment to escrow instructions**. An escrow agent must be made aware of any changes immediately.

If there are any discrepancies between a purchase agreement and escrow instructions, the most recently signed paperwork typically supersedes the other.

Escrow instructions should be defined and easy to understand for all parties. They should not contain clauses that are confusing or have multiple meanings. Failure to create clear escrow instructions can delay the escrow process and/or jeopardize a transaction.

Escrow instructions indicate the duties and obligations all principals must perform in order to close escrow. They include:

- Initial deposit amount
- Lender appraisal
- Title (i.e. preliminary title report, title insurance)
- Financing terms
- Contingencies
- Inspections and reports
- Closing statements and costs

Initial Deposit Amount

The first step in escrow instructions is typically for a buyer to put forward an initial deposit. This deposit is a percentage of a property's total purchase price, typically 2-4%. This deposit serves as a good faith indicator of a buyer's intent to purchase.

A buyer must also indicate the method of deposit (i.e. check, cashier's check).

Lender Appraisal

If a buyer is using financing to purchase a property, the buyer's lender will appraise the subject property to verify that the listing price and actual value are similar.

Title

Before a lender funds a mortgage or a buyer purchases a property, they must hire a title insurance company to create a summary of all parties who have, or claim to have, an interest in the property.

An **abstract of title** – or simply, an abstract – provides a summarized history of all documents, claims, and legal actions affecting a property title, starting with the original grant deed. A **title plant** is a series of records that provide the ownership and lien history of a subject property.

A **certificate of title** is a government-issued document that indicates the owners of real property and identifies liens, easements, and other encumbrances. Although a certificate of title does not guarantee a “clean” title, it does provide a snapshot of what is believed to be the accurate ownership status of a property. Many lenders may request a certificate of title prior to funding a loan.

A **general index** is a list of property owners who hold property titles. A **lot book** is a collection of records regarding the title and interest holders of properties in a certain geographical location.

A **guarantee of title** ensures that a property title is “clean” and that no other parties hold an interest in the property. It promises that a buyer will be the sole owner of a property upon the close of the transaction.

Preliminary Title Report

A **preliminary title report** – or “prelim” – provides a summary of the terms and conditions a title insurance company will cover under a title insurance policy.

The report includes:

- A legal description of the subject property
- Current title holders
- Other parties who claim to have an interest in the property
- Liens, defects, and encumbrances
- Lien holders (including the government)
- Items that will not be covered by title insurance

A prelim is not an insurance policy; rather, it is a summary of what will and will not be covered with the purchase of a title insurance policy.

A prelim is created once escrow is opened and prior to a final title insurance policy being issued.

Most transactions are straightforward and do not typically require preliminary title reports. However, they are created to allow a buyer and a lender to clearly verify their investments.

Title Insurance

Title insurance protects a buyer from financial loss if previously undisclosed title defects, liens, or additional encumbrances are discovered on a property. Title insurance is purchased with almost every real estate transaction, particularly those that use lender financing.

Title insurance protects a buyer's interests. In the event a buyer does not have title insurance and an undisclosed lien holder is found on a property's title, the buyer may be responsible to pay off the lien, even if the lien did not belong to him or her.

Title insurance also protects a lender who is funding a loan for the purchase of a property by ensuring that the lender is the primary lien holder. Almost all lenders require title insurance to protect their investment.

California's Civil Code requires parties to be informed if title insurance is not being used using the following warning:

"Important: In a purchase or exchange of real property, it may be advisable to obtain title insurance regarding the close of escrow since there may be prior recorded liens and encumbrances which affect a party's interest in the property being acquired. A new policy of title insurance should be obtained to ensure your interest in the property that you are acquiring."

Every title insurer is required to save at least 10% of its insurance premiums to create a title insurance surplus fund. A **title insurance surplus fund** is maintained to cover potential losses on real estate transactions.

The fund is equal to 25% of an insurer's aggregate capital stock or one million dollars, whichever is lower. If at any time the fund holds more than the amount required by Section 12370, an insurer may transfer the excess to its general assets.

Standard Coverage Policy

A **standard coverage policy** protects buyers from title defects, including:

- Tax liens
- Forgery
- Lack of capacity by the grantor to make effective decisions
- Previous deed that failed to be delivered
- Fraud
- Defective recording
- Improperly executed title

- Undisclosed spouse who claims a right to the property (typically divorce)

A standard policy does not protect against:

- Previously undisclosed title defects
- Tax claims or other assessments that are not tax liens
- Mechanic's lien
- Water rights
- Building permit violations
- Mining claims
- Zoning issues
- Undisclosed liens or easements
- Unrecorded deeds or leases
- Government zoning
- Building permit or code violations
- Matters of the property that were not disclosed

Extended Coverage Policy

Even though title companies do extensive research on all policyholder properties – including lien holders and titleholders – it is possible for items to be missed in the process. It is for this reason that **extended-coverage policy** exists.

As many lenders are out-of-state, they do not have time to verify the condition of a property firsthand. An extended coverage policy offsets the risk for such lenders.

Extended coverage protects against the following:

- Unrecorded liens or easements
- Water rights
- Mining claims
- Inability to access property
- Rights of parties who have possession of the property (generally includes tenants)
- Patent issues
- Undiscovered survey or lack of physical inspection

An extended coverage lender's policy excludes:

- Government regulations (generally zoning and coding issues)
- Matters already discovered by the insured, but not disclosed to the insurer
- Eminent domain

- Physical condition of property
- Violations of property borders

Hazard Insurance

Hazard insurance covers repairs or damaged items that need to be replaced on a property. It is recommended that a buyer purchase hazard insurance.

Escrow agents will request a copy of a hazard insurance policy. A lender may also require a borrower to obtain hazard insurance to protect its financial investment.

Form No. 1402.06
ALTA Owner's Policy (6-17-06)
1100302P050600



Policy Page 1
Policy Number:

OWNER'S POLICY OF TITLE INSURANCE

ISSUED BY

First American Title Insurance Company

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at the address shown in Section 18 of the Conditions.

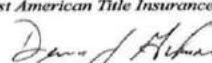
COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protection
 if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective
 - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
 - (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this policy, but only to the extent provided in the Conditions.

First American Title Insurance Company

BY  PRESIDENT

ATTEST  SECRETARY



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Policy Number:

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risks 9 and 10); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Insured": The Insured named in Schedule A.
 - (i) The term "Insured" also includes
 - (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
 - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
 - (C) successors to an Insured by its conversion to another kind of Entity;
 - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - (2) if the grantee wholly owns the named Insured,
 - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
 - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.

- (ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
- (e) "Insured Claimant": An Insured claiming loss or damage.
- (f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
- (h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
- (j) "Title": The estate or interest described in Schedule A.
- (k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under this policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

- (a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
- (b) The Company shall have the right, in addition to the options contained in

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Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

- (c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

- (a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.
- (b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Insurance.
To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay. Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.
- (b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.
 - (i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or
 - (ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs,

attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of:
 - (i) the Amount of Insurance; or
 - (ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.
- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,
 - (i) the Amount of Insurance shall be increased by 10%, and
 - (ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.
- (c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

- (a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.
- (c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

- (a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.
- If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

Form No. 1402.06
ALTA Owner's Policy (6-17-06)

Policy Page 4
Policy Number:

- (b) The Company's right of subrogation includes the rights of the Insured to indemnities, guarantees, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

- (a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.
- (b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.
- (c) Any amendment or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

- (d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17. CHOICE OF LAW; FORUM

- (a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefore in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located. Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.
- (b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at 1 First American Way, Santa Ana, CA 92707, Attn: Claims Department.

POLICY OF TITLE INSURANCE



Form No. 1402.06
ALTA Owner's Policy (6-17-06)

Policy Page 5
Policy Number:

SCHEDULE A

First American Title Insurance Company

Name and Address of the issuing Title Insurance Company:
First American Title Insurance Company
1125 17th Street, Suite 750
Denver, CO 80202

File No.:

Policy No.:

Address Reference: ,

Amount of Insurance: \$

Date of Policy: at

1. Name of Insured:

2. The estate or interest in the Land that is insured by this policy is:

3. Title is vested in:

4. The Land referred to in this policy is described as follows:

Financing Terms

Because financing is required for the overwhelmingly majority of real estate transactions, a contract will likely include a loan commitment. A **loan commitment** indicates the terms of a buyer's financing.

If a buyer is taking out a loan to finance the purchase of a property, an escrow agent will work with a mortgage broker or lender to move the loan process forward. The escrow officer will receive a copy of a buyer's loan documents, including his or her loan approval and any conditions that must be met.

An **HUD-1 Settlement Statement** is a standardized real estate form used to document all of the costs and fees associated with originating a mortgage. It allows borrowers to more easily understand the cost of borrowing.

On October 3, 2015, the HUD-1 Settlement Statement was replaced with the Closing Disclosure. This form consolidates the HUD-1 with a Good Faith Estimate and the Truth in Lending Disclosure.

A **beneficiary statement** – also known as a **demand for payoff** – is a written disclosure form that indicates the status of a borrower's mortgage. It includes the remaining mortgage balance due to a lender, the interest rate, and the conditions of the loan (such as prepayment penalties).

An escrow agent will inform a lender that has an interest in a subject property that it is being sold. The lender must supply a beneficiary statement prior to the close of escrow.



A. Settlement Statement (HUD-1)

B. Type of Loan							
1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> RHS	3. <input type="checkbox"/> Conv. Unins.	6. File Number:	7. Loan Number:	8. Mortgage Insurance Case Number:		
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv. Ins.						
C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.							
D. Name & Address of Borrower:		E. Name & Address of Seller:		F. Name & Address of Lender:			
G. Property Location:		H. Settlement Agent:		I. Settlement Date:			
Place of Settlement:							
J. Summary of Borrower's Transaction				K. Summary of Seller's Transaction			
100. Gross Amount Due from Borrower 101. Contract sales price 102. Personal property 103. Settlement charges to borrower (line 1400) 104. 105. Adjustment for items paid by seller in advance 106. City/town taxes to 107. County taxes to 108. Assessments to 109. 110. 111. 112. 120. Gross Amount Due from Borrower 200. Amount Paid by or in Behalf of Borrower 201. Deposit or earnest money 202. Principal amount of new loan(s) 203. Existing loan(s) taken subject to 204. 205. 206. 207. 208. 209. Adjustments for items unpaid by seller 210. City/town taxes to 211. County taxes to 212. Assessments to 213. 214. 215. 216. 217. 218. 219. 220. Total Paid by/for Borrower 300. Cash at Settlement from/to Borrower 301. Gross amount due from borrower (line 120) 302. Less amounts paid by/for borrower (line 220) () 303. Cash <input type="checkbox"/> From <input type="checkbox"/> To <input type="checkbox"/> To Borrower				400. Gross Amount Due to Seller 401. Contract sales price 402. Personal property 403. 404. 405. Adjustment for items paid by seller in advance 406. City/town taxes to 407. County taxes to 408. Assessments to 409. 410. 411. 412. 420. Gross Amount Due to Seller 500. Reductions in Amount Due to Seller 501. Excess deposit (see instructions) 502. Settlement charges to seller (line 1400) 503. Existing loan(s) taken subject to 504. Payoff of first mortgage loan 505. Payoff of second mortgage loan 506. 507. 508. 509. Adjustments for items unpaid by seller 510. City/town taxes to 511. County taxes to 512. Assessments to 513. 514. 515. 516. 517. 518. 519. 520. Total Reduction Amount Due Seller 600. Cash at Settlement to/from Seller 601. Gross amount due to seller (line 420) 602. Less reductions in amounts due seller (line 520) () 603. Cash <input type="checkbox"/> To <input type="checkbox"/> From Seller			

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

L. Settlement Charges			
700. Total Real Estate Broker Fees Division of commission (line 700) as follows :			Paid From Borrower's Funds at Settlement
701. \$	to		
702. \$	to		
703. Commission paid at settlement			
704.			
800. Items Payable in Connection with Loan			
801. Our origination charge	\$	(from GFE #1)	
802. Your credit or charge (points) for the specific interest rate chosen	\$	(from GFE #2)	
803. Your adjusted origination charges		(from GFE #A)	
804. Appraisal fee to		(from GFE #3)	
805. Credit report to		(from GFE #3)	
806. Tax service to		(from GFE #3)	
807. Flood certification to		(from GFE #3)	
808.			
809.			
810.			
811.			
900. Items Required by Lender to be Paid in Advance			
901. Daily interest charges from to @ \$ /day		(from GFE #10)	
902. Mortgage insurance premium for months to		(from GFE #3)	
903. Homeowner's insurance for years to		(from GFE #11)	
904.			
1000. Reserves Deposited with Lender			
1001. Initial deposit for your escrow account		(from GFE #9)	
1002. Homeowner's insurance months @ \$ per month \$			
1003. Mortgage insurance months @ \$ per month \$			
1004. Property Taxes months @ \$ per month \$			
1005. months @ \$ per month \$			
1006. months @ \$ per month \$			
1007. Aggregate Adjustment -\$			
1100. Title Charges			
1101. Title services and lender's title insurance		(from GFE #4)	
1102. Settlement or closing fee \$			
1103. Owner's title insurance		(from GFE #5)	
1104. Lender's title insurance	\$		
1105. Lender's title policy limit \$			
1106. Owner's title policy limit \$			
1107. Agent's portion of the total title insurance premium to	\$		
1108. Underwriter's portion of the total title insurance premium to	\$		
1109.			
1110.			
1111.			
1200. Government Recording and Transfer Charges			
1201. Government recording charges		(from GFE #7)	
1202. Deed \$ Mortgage \$ Release \$			
1203. Transfer taxes		(from GFE #8)	
1204. City/County tax/stamps Deed \$ Mortgage \$			
1205. State tax/stamps Deed \$ Mortgage \$			
1206.			
1300. Additional Settlement Charges			
1301. Required services that you can shop for		(from GFE #6)	
1302.	\$		
1303.	\$		
1304.			
1305.			
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)			

Comparison of Good Faith Estimate (GFE) and HUD-1 Charges		Good Faith Estimate	HUD-1
Charges That Cannot Increase	HUD-1 Line Number		
Our origination charge	# 801		
Your credit or charge (points) for the specific interest rate chosen	# 802		
Your adjusted origination charges	# 803		
Transfer taxes	# 1203		

Charges That In Total Cannot Increase More Than 10%		Good Faith Estimate	HUD-1
Government recording charges	# 1201		
	#		
	#		
	#		
	#		
	#		
	Total		
	Increase between GFE and HUD-1 Charges	\$	or %

Charges That Can Change		Good Faith Estimate	HUD-1
Initial deposit for your escrow account	# 1001		
Daily interest charges \$ /day	# 901		
Homeowner's insurance	# 903		
	#		
	#		
	#		

Loan Terms	
Your initial loan amount is	\$
Your loan term is	years
Your initial interest rate is	%
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	\$ includes <input type="checkbox"/> Principal <input type="checkbox"/> Interest <input type="checkbox"/> Mortgage insurance
Can your interest rate rise?	<input type="checkbox"/> No <input type="checkbox"/> Yes, it can rise to a maximum of % The first change will be on and can change again every after Every change date, your interest rate can increase or decrease by %. Over the life of the loan, your interest rate is guaranteed to never be lower than % or higher than %.
Even if you make payments on time, can your loan balance rise?	<input type="checkbox"/> No <input type="checkbox"/> Yes, it can rise to a maximum of \$
Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	<input type="checkbox"/> No <input type="checkbox"/> Yes, the first increase can be on and the monthly amount owed can rise to \$. The maximum it can ever rise to is \$
Does your loan have a prepayment penalty?	<input type="checkbox"/> No <input type="checkbox"/> Yes, your maximum prepayment penalty is \$
Does your loan have a balloon payment?	<input type="checkbox"/> No <input type="checkbox"/> Yes, you have a balloon payment of \$ due in years on
Total monthly amount owed including escrow account payments	<input type="checkbox"/> You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself. <input type="checkbox"/> You have an additional monthly escrow payment of \$ that results in a total initial monthly amount owed of \$. This includes principal, interest, any mortgage insurance and any items checked below: <input type="checkbox"/> Property taxes <input type="checkbox"/> Homeowner's insurance <input type="checkbox"/> Flood insurance <input type="checkbox"/>

Note: If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.

Contingencies

A contingency refers to any obligation that a buyer or a seller must meet in order for a transaction to move forward. For example: a seller may make a property sale contingent on the seller's ability to find a new place to live.

A common contingency is a loan contingency. A loan contingency might state: "Purchase offer is subject to the buyer getting approved for a loan within X days." This requires a buyer to provide proof of loan pre-approval, proof that a loan is in process, and other financial documentation.

Inspections and Reports

Common reports and inspections – including soil, mold, roofing, plumbing, and termite reports – should be included in escrow instructions.

Escrow instructions should also state which party will handle the cost of inspections and any necessary repairs.

The condition of a seller's property must be maintained throughout the transaction. A buyer has the right to make a final property inspection prior to the close.

	ESCROW INSTRUCTIONS Buyer and Seller Instructions																						
Prepared by: Agent _____ Broker _____		Phone _____ Email _____																					
<p>DATE: _____, 20_____. <i>Items left blank or unchecked are not applicable.</i></p> <p>Escrow number _____</p> <p>Escrow/Brokerage company _____</p> <p>Licensed by the Department of _____, State of California, license # _____</p> <p>Escrow officer _____</p> <p>Address _____</p> <p>Phone number _____</p> <p>Fax _____</p> <p>Buyer _____</p> <p>Seller _____</p> <p>TERMS OF SALE: (for escrow use only)</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">\$_____</td> <td>TOTAL Consideration Seller to receive from Buyer</td> </tr> <tr> <td>\$_____</td> <td>Assessment Bond paid with property taxes</td> </tr> <tr> <td>\$_____</td> <td>1st Trust Deed of Record</td> </tr> <tr> <td>\$_____</td> <td>2nd Trust Deed of Record</td> </tr> <tr> <td>\$_____</td> <td>Trust Deed to record</td> </tr> <tr> <td>\$_____</td> <td>Trust Deed to record</td> </tr> <tr> <td>\$_____</td> <td>Cash through Escrow</td> </tr> <tr> <td>\$_____</td> <td>Other Consideration _____</td> </tr> </table> <div style="float: right; width: 30%; padding-top: 10px;"> <p>An escrow administrative fee will be charged each principal for postponement of closing by two months or more beyond the originally scheduled closing date in these instructions or on cancellation of these instructions, due to acts or omissions of either principal.</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Postponement Fee . . . \$_____</td> <td style="width: 50%;">Cancellation Fee . . . \$_____</td> </tr> <tr> <td>Buyer's Initials _____</td> <td>Seller's Initials _____</td> </tr> </table> </div> <p>1. You, the escrow officer, are authorized and instructed as follows:</p> <ol style="list-style-type: none"> 1.1 Buyer deposits herewith the sum of \$_____. 1.2 On or before _____, 20_____, the date set for closing, Buyer will deposit with You on your request the additional sum of \$_____, to make a total deposit of \$_____. 1.3 Buyer will deliver to You prior to the date set for closing any additional funds and instruments required which You request. 1.4 You may thereafter use these funds and instruments until such time as You have received written instruction not to do so. Brokers are authorized to extend any performance date up to one month. 1.5 Close of escrow is the date instruments are recorded. <p>2. Upon the use of these funds and instruments, You are to obtain the following policy of title insurance, with the usual title company exceptions, in the following checked type and form:</p> <p>Title to be vested in Buyer or Assignee free of encumbrances other than those set forth herein. Buyer's interest in title to be insured under a policy issued by _____ as a(n) _____ Homeowner(s) policy (one-to-four units), _____ Residential ALTA-R policy (vacant or improved residential parcel), _____ Owner's policy (other than one-to-four units), _____ Joint Protection policy (also naming the Carryback Seller or Purchase-assist Lender), or _____ Binder (to insure resale or refinance within two years).</p> <p>Endorsements _____</p> <p>2.1 With title insurance in the amount of \$_____ covering the following described real property, commonly known as _____ and legally described as _____</p> <p>_____</p> <p>_____</p> <p>2.2 Showing title vested in _____</p>				\$_____	TOTAL Consideration Seller to receive from Buyer	\$_____	Assessment Bond paid with property taxes	\$_____	1st Trust Deed of Record	\$_____	2nd Trust Deed of Record	\$_____	Trust Deed to record	\$_____	Trust Deed to record	\$_____	Cash through Escrow	\$_____	Other Consideration _____	Postponement Fee . . . \$_____	Cancellation Fee . . . \$_____	Buyer's Initials _____	Seller's Initials _____
\$_____	TOTAL Consideration Seller to receive from Buyer																						
\$_____	Assessment Bond paid with property taxes																						
\$_____	1st Trust Deed of Record																						
\$_____	2nd Trust Deed of Record																						
\$_____	Trust Deed to record																						
\$_____	Trust Deed to record																						
\$_____	Cash through Escrow																						
\$_____	Other Consideration _____																						
Postponement Fee . . . \$_____	Cancellation Fee . . . \$_____																						
Buyer's Initials _____	Seller's Initials _____																						

2.3 Subject to the following only:

- a. All General and Special taxes for the _____ fiscal year, including any special district taxes or personal property taxes collected with the ad valorem taxes.
- b. Assessments and Bonds with an unpaid balance of \$_____.
- c. Any covenants, conditions, restrictions, reservations, rights, right of ways and easements of record, or in deed to record, and EXCEPTIONS of water, minerals, oil, gas, and kindred substances, on or under said real property, now of record, or in deed to record.
- d. First encumbrance now of record with an unpaid balance of \$_____. payable \$_____ monthly, including interest of ____% per annum. ARM
- e. Second encumbrance now of record with an unpaid balance of \$_____. payable \$_____ monthly, including interest of ____% per annum, all due and payable _____, 20_____.
- f. Deed of Trust to record in the amount of \$_____. Execution of loan documents under §2.3f or §2.3g shall be Buyer's approval of their terms. Should Seller carry back under §2.3h, You are to obtain Seller's written approval of the loan terms for any Deed of Trust to record.
- g. Deed of Trust to record in the amount of \$_____.
- h. Purchase money Deed of Trust with Assignment of Rents on standard form, executed by Buyer securing a note for \$_____ in favor of Seller as their interests appear on the preliminary title report, with interest at ____% per annum from close of escrow, principal and interest payable in installments of \$_____, or more, each on the same day of every calendar month, beginning one month from close of escrow, or _____, 20_____, and continuing until _____.

You, as escrow holder, are instructed to prepare the note and Deed of Trust and insert the correct principal amount and correct first payment date, interest accrual date and due date as soon as they can be determined. The address for deliver of note payments is _____.

3. You are to obtain at Seller's expense beneficiary statements on the Deed(s) of Trust (or mortgage) now of record (§2.3d and §2.3e above). If the principal balances shown by the statements are more or less than the amount shown above, You are to make adjustments as checked below:

cash through escrow, total consideration, or purchase-money Deed of Trust.

- 3.1 You are to deliver to Buyer for Buyer's approval prior to close of escrow a copy of the beneficiary statement for each Deed of Trust to remain of record on closing.
- 3.2 You are to deliver to Seller prior to close of escrow, any payoff demand necessary to eliminate encumbrances so You can comply with conditions in §2.3 for title insurance.

4. You are to obtain at Seller's expense a UCC-3 clearance on the following described personal property
-
-
-

and cause title thereto to be vested in Buyer subject to the following UCC-1 financing statements:

- a. A UCC-1 obligation in the approximate amount of \$_____, payable \$_____ per month, including an annual percentage rate of ____%, all due and payable _____, 20_____.
- b. A UCC-1 form in favor of Seller at Buyer's expense as additional security for any note carried back under §2.3h above.
- 5. Prior to close of escrow, Buyer is to hand You a sufficient hazard insurance policy. In the event Seller carries back under §2.3h above, then Seller is to be named as additional loss payee. The policy is to be in an amount sufficient to cover all lien balances or the coverage demanded by the new lender if greater in amount.
- 6. Prior to the close of escrow and at Seller's expense, Seller to hand You a structural pest control clearance on the subject property.
- 7. Prior to close of escrow and at Seller's expense, You are to obtain a one-year policy of homeowner's warranty issued by _____, in favor of Buyer, covering _____.
- 8. Prior to the close of escrow and at Seller's expense, You are to obtain from the homeowners' association (HOA) of any common interest development which includes the described property the following checked item(s) for Buyer's approval:

- 8.1 A statement of condition of assessments;

- PAGE THREE OF FOUR — FORM 401 -----
- 8.2 Copies of the association's articles, bylaws, CC&Rs, collection and lien enforcement policies, operating budget, operating rules, CPA's financial review, insurance policy summary and any age restriction statement;
- 8.3 Copies from the association of any notice to Seller of CC&R violations, any list of construction defects, and any assessment charges not yet payable.
9. You are authorized and instructed to prepare assignments for all existing lease/rental agreements.
10. The following checked prorations and adjustments shall be computed by You on a monthly basis of 30 days as of close of escrow, or _____, 20_____, on which date Buyer is to be treated as the owner for the entire day:
- Taxes, based on latest tax statement available and Seller warrants that no reassessment or reassessment activity has since occurred
 - Hazard (fire) insurance premium
 - Interest on existing note(s) and Deed(s) of Trust
 - Rents and deposits based on rental statement handed to You and approved by Buyer and Seller prior to close of escrow
 - Impounds, under §2.3d or §2.3e above, together with an assignment of these impounds to Buyer through escrow
 - Association assessments for any common interest development which includes the property
 - _____
- 10.1 You are to account for the above prorations and adjustments into the item checked below:
cash through escrow, total consideration, or purchase-money Deed of Trust.
11. You are to promptly obtain and hand Buyer a preliminary title report on the property from title company for Buyer's approval or disapproval and cancellation of this transaction within _____ days of receipt by Buyer or Buyer's Broker of the report.
12. The Grant Deed to state the tax statements are to be mailed to _____
at _____.
13. Escrow is herewith handed a purchase agreement dated _____, 20_____, and (a) counteroffer dated _____, 20_____, entered into by Buyer and Seller regarding the sale of the property which authorizes and instructs escrow to act on the provisions of the agreement as mutual escrow instructions to close this transaction.
- 13.1 Any inconsistencies between the provisions in the purchase agreement and provisions in the instructions prepared by escrow shall be controlled by the instructions prepared by escrow.
14. The close of escrow and disbursement of funds can be affected based on the form of the deposit with escrow. Funds deposited in cash or by electronic payment allow for closing and disbursement on or after the business day of deposit with the escrow's financial institution. Funds deposited by cashier's check allow for closing and disbursement on or after two business days after deposit with the escrow's financial institution. All other forms of deposit cannot be disbursed and thus, the closing cannot occur until the funds are made available to escrow by the escrow's financial institution.
15. Buyer is required to withhold 10% of each Seller's share of the sales price for payment of Seller's federal income taxes on this transaction, unless Seller meets one of the following conditions:
- 15.1 Each Seller provides Buyer with their taxpayer identification number and declares under penalty of perjury to be a citizen of the United States or a resident alien [ft Form 301];
- 15.2 Buyer declares under penalty of perjury the property will be used as their residence and the sales price is \$300,000 or less [ft Form 301]; or
- 15.3 Seller requests and obtains a withholding certificate from the Internal Revenue Service (IRS) authorizing a reduced amount or no amount be withheld.
16. Buyer is required to withhold 3½% of each Seller's share of the sales price for payment of Seller's California income taxes on this transaction, unless one of the following exemptions exists:
- 16.1 Seller executes a real estate withholding certificate, FTB form 593-C, declaring the sale is exempt due to:
- The property sold is or was last used as Seller's principal residence;
 - The property sold was the decedent's principal residence;
 - The property was sold as part of an IRC §1031 exchange;
 - The property was taken by involuntary conversion and will be replaced under IRC §1033; or
 - The property was sold at a taxable loss.
- 16.2 Buyer is also exempt from withholding 3½% of Seller's share of the sales price if:
- The property was sold for less than \$100,000;
 - Buyer is acquiring the property by a deed-in-lieu of foreclosure; or
- PAGE THREE OF FOUR — FORM 401 -----

PAGE FOUR OF FOUR — FORM 401 —

- c. Seller is a bank acting as a trustee under an agreement other than a Deed of Trust.
- 16.3 On an installment sale, Buyer may agree to withhold on each payment on the carryback note and thus defer withholding. [FTB Forms 593-I and 597]
17. In the event You become involved in litigation between Buyer and Seller arising out of this transaction, Buyer and Seller shall pay a reasonable fee for attorney services which You may be required to incur.
- 17.1 Before any party to this agreement files an action on a dispute arising out of this agreement which remains unresolved after 30 days of informal negotiations, the parties agree to enter into non-binding mediation administered by a neutral dispute resolution organization and undertake a good faith effort during mediation to settle the dispute.
18. You are authorized to use Seller's instruments when You hold and can deliver to Seller the money and instruments to be delivered to Seller under these instructions.
- 18.1 You are authorized to pay and charge Seller for the following checked item(s):
- Bonds, assessments, taxes and other liens of record to show title as called for.
 - Documentary transfer taxes as required.
 - Brokerage fees: \$ _____ to _____
\$ _____ to _____
\$ _____ to _____
 - Transaction coordinator's fees:
\$ _____ to _____
\$ _____ to _____
 - Title insurance premium on the policy to be issued to Buyer.
 - Costs of recording Seller's Grant Deed.
 - Escrow fees for your services and any charges incurred by escrow on Seller's behalf.
 - Payables submitted to escrow for payment by Seller or Seller's Broker.
 - Attorney fees: \$ _____ to _____
 - _____
19. You are authorized to pay and charge Buyer for the following checked item(s):
- Escrow fees for your services and any charges incurred by escrow on Buyer's behalf.
 - Costs of and lender's charges for recording or assuming any Deed of Trust, including a policy of title insurance for any new lender.
 - Attorney fees: \$ _____ to _____
 - Brokerage fees: \$ _____ to _____
 - Title insurance premium on the policy to be issued to Buyer.
 - _____
20. _____

I hereby agree to perform all acts called for above to be performed by Seller.

Date: _____, 20 _____

Seller: _____

Signature: _____

Seller: _____

Signature: _____

Address: _____

Phone: _____

Cell: _____

Email: _____

I hereby agree to perform all acts called for above to be performed by Buyer.

Date: _____, 20 _____

Buyer: _____

Signature: _____

Buyer: _____

Signature: _____

Address: _____

Phone: _____

Cell: _____

Email: _____

Responsibilities of Escrow Parties

Buyer

In no particular order, a buyer is responsible for the following in order to close escrow:

- Signing escrow instructions
- Reviewing preliminary title report
- Reviewing loan documents
- Reviewing disclosures
- Reviewing property inspection reports
- Obtaining his or her own property inspection prior to the close of sale (not required, but recommended)
- Making initial deposit
- Paying closing costs

Seller

A seller is responsible for the following in order to close escrow:

- Signing escrow instructions
- Providing disclosure statements
- Approving listing agreement
- Providing documentation of existing mortgage(s) on the property
- Providing buyer with current hazard insurance policies
- If the property is a rental, provide all tenant rental agreements (including rent amount), income collected, and other relative financial documentation
- Providing property deed

Escrow Agent

An escrow's responsibility is to facilitate the close of a transaction by enforcing escrow instructions.

An escrow prepares and distributes all necessary escrow paperwork, such as basic contract forms. It ensures that both principals sign all necessary documentation and facilitates any changes or amendments that need to be made. Escrow agents must adhere to local, state, and federal law regarding documentation.

As stated earlier, an escrow also serves as a depository for all consideration in a

transaction, including a buyer's/lender's funds (i.e. deposit, down payment) and the title/deed to a seller's property. It verifies the availability of escrow funds and facilitates the proper distribution and use of all funds.

One main job of an escrow agent is to keep accurate and current records of everything related to a transaction. This includes copies of signed documents and proof of fund transfers. Records should be updated daily, weekly, or monthly, depending on the required activities of a particular escrow company.

An escrow agent works with all parties involved in a transaction – from a buyer and a seller, to real estate agents, to mortgage brokers or lenders – in order to verify that all aspects of a transaction are being met. While an escrow agent is not responsible for instructing parties in a transaction, a good escrow agent will answer any questions or concerns parties have about the escrow process.

In the event that there is a conflict between principals, an escrow agent may bring forward an **interpleader** to help resolve it.

An escrow agent cannot do the following:

- Act or negotiate on behalf of one principal to the detriment of the other
- Allow parties to make amendments to escrow instructions without the signed approval of the other parties
- Send or accept signed blank documents
- Use deceptive language in escrow documents that prevents a principal's understanding of fees or conditions
- Pay fees for referrals
- Provide legal advice
- Provide tax advice
- Provide real estate consulting
- Disclose confidential escrow information to any party other than the parties involved in a transaction
- Send, release, or execute the transfer of documents or consideration in a manner that delays or prevents the escrow process
- Knowingly implement illegal escrow instructions

Example

Question: A buyer named Sheila needs a few more days to get approved for a loan in order to buy the McMillan residence. Mrs. McMillan verbally agrees to

extend the closing date by a few days, but she does not alter the escrow instructions. What is going to happen?

Answer: If Mrs. McMillan does not inform escrow of Sheila's request for a few more days, the transaction will terminate on the original closing date. Only if Mrs. McMillan signs a written agreement or amends the existing escrow instructions will the closing date be changed.

Real Estate Agent

As a representative of a buyer or a seller, a real estate agent's role during escrow is significant. An agent must be aware of all aspects of the escrow process and facilitate the smooth close of a transaction.

An agent's responsibilities during escrow include:

- Constant communication with the escrow agent and other agents
- Verifying a buyer's financing status
- Ensuring buyer payments are received on schedule
- Verifying that all escrow paperwork has been submitted, signed, and executed
- Delivering an executed purchase contract to a buyer or a seller
- Making amendments to a purchase contract, if requested
- Explaining escrow instructions to both parties
- Reviewing preliminary title reports
- Providing disclosures
- Assisting clients with inspections
- Negotiating escrow fees on behalf of a principal
- Assisting with loan documentation, if requested

Agents are encouraged to go above and beyond their expected duties in order to close a deal.



CALIFORNIA
ASSOCIATION
OF REALTORS®

**COOPERATING BROKER COMPENSATION
AGREEMENT AND ESCROW INSTRUCTION**

(C.A.R. Form CBC, Revised 4/09)

1. IDENTITY OF LISTING BROKER, PROPERTY AND SELLER:

("Listing Broker") is a real estate broker who has entered into a written agreement for the marketing and sale or lease of the real property, manufactured home, or business opportunity described as _____, Assessor's Parcel No. _____, situated in _____, County of _____, California ("Property") for _____ ("Seller").

2. IDENTITY OF COOPERATING (SELLING) BROKER AND BUYER:

("Cooperating Broker") is a real estate broker licensed to practice real estate in California (or _____ if checked) and represents _____ ("Buyer") who has offered, is contemplating making an offer, or has entered into a contract, to purchase or lease the Property.

3. LISTING BROKER COMPENSATION TO COOPERATING BROKER:

Provided the transaction between the principals closes or Listing Broker receives compensation for the transaction, Listing Broker agrees to pay Cooperating Broker, and Cooperating Broker agrees to accept, compensation as follows:

A. PROPERTY LISTED WITH THE MULTIPLE LISTING SERVICE ("MLS"):

(i) Confirmation of Compensation in MLS: Cooperating Broker is a participant in the MLS or reciprocal MLS and accepts the offer of compensation published in the MLS as: _____ % of the selling (or leasing) price or \$ _____ and/or _____.

OR (ii) Modification of Compensation in MLS: Cooperating Broker is a participant in the MLS or reciprocal MLS and accepts the offer of compensation published in the MLS as modified herein: _____ % of the selling (or leasing) price or \$ _____ and/or _____.

OR (iii) Cooperating Broker Not a Member of the MLS or Reciprocal MLS: Cooperating Broker compensation shall be _____ % of the selling (or leasing) price or \$ _____ and/or _____. Listing Broker and Cooperating Broker agree to resolve disputes arising out of this agreement by arbitration conducted by the Association of Realtors® (or if none, the MLS) to which the Listing Broker belongs.

OR (iv) Short Sale Confirmation of Compensation in MLS: Cooperating Broker (i) is a participant in the MLS or a reciprocal MLS; (ii) accepts the offer of compensation published in the MLS; and (iii) if the amount or method of reduction of commission upon Lender approval is specified in the MLS, agrees to such reduction.

B. PROPERTY NOT LISTED WITH ANY MULTIPLE LISTING SERVICE ("MLS"):

Cooperating Broker compensation shall be _____ % of the selling (or leasing) price or \$ _____ and/or _____.

C. COOPERATING BROKER HAS PROCURED A TENANT FOR THE PROPERTY LISTED FOR LEASE, AND THAT TENANT ACQUIRES THE PROPERTY DURING THE TERM OF THE LEASE OR ANY EXTENSION:

Cooperating Broker compensation on the sale shall be _____ % of the selling price or \$ _____ and/or _____.

4. BROKER INSTRUCTION TO ESCROW HOLDER:

Listing Broker and Cooperating Broker instruct Escrow Holder to disburse to Cooperating Broker the amount specified in paragraph 3, out of Listing Broker's proceeds in escrow, and upon Close Of Escrow of the Property. This compensation instruction can be amended or revoked only with the written consent of both Brokers. Escrow Holder shall immediately notify Brokers if either Broker instructs Escrow Holder to change the terms of this instruction.

5. MANAGEMENT APPROVAL:

If Paragraph 3A(ii), 3A(iii), or 3B is checked, this Agreement is not binding until the Broker or office manager for the Listing Broker firm has signed below.

6. ACKNOWLEDGMENT:

By signing below, the undersigned acknowledges that each has read, understands, accepts and has received a Copy of this Agreement.

Listing Broker (Firm) _____ BRE Lic. # _____

By (Agent) _____ BRE Lic. # _____ Date _____
Address _____ City _____ State _____ Zip _____
Telephone _____ Fax _____ E-mail _____

If paragraph 3A(ii), 3A(iii), or 3 B is checked:

Listing Broker/Office Manager: _____ Date _____
(Name) _____ (Signature) _____

Cooperating Broker (Firm) _____ BRE Lic. # _____

By (Agent) _____ BRE Lic. # _____ Date _____
Address _____ City _____ State _____ Zip _____
Telephone _____ Fax _____ E-mail _____

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CBC 4/09 (PAGE 1 OF 1)

COOPERATING BROKER COMPENSATION AGREEMENT AND ESCROW INSTRUCTION (CBC PAGE 1 OF 1)

Closing Escrow

Closing escrow – or simply, “closing” – is the final step in a real estate transaction prior to a property title being transferred from a seller to a buyer. This is where both principals sign closing statements and pay closing costs.

Closing Costs



A **settlement statement** – also known as a closing statement – is an accounting form used to itemize all the costs required in order to close escrow.

Closing costs include any expenses that exceed the purchase price of a subject property.

Closing costs are negotiable between a buyer and a seller. However, a buyer is typically responsible for paying for the following items:

- Loan origination and lender fees
- Appraisal fee
- Credit report fee
- Recording fees for buyer documents (i.e. property deed)
- Mortgage insurance
- Buyer’s share of prorated expenses
- Title insurance fee
- Buyer portion of escrow fees
- Notary fees related to the buyer’s portion of transaction
- Structural reports and inspection fees

A seller is typically responsible for the following fees:

- Seller’s portion of escrow fees
- Beneficiary statement
- Disclosure reports
- Pest reports, if requested by buyer
- Agent/broker commission
- Loan payoff and any prepayment penalties
- Seller’s share of prorated expenses
- Notary fees related to the seller’s portion of transaction
- Home warranty, if applicable
- VA fees, if applicable

Prorating

Prorating is the process of dividing and distributing property expenses among principals in accordance with their respective periods of ownership. Expenses are typically prorated using a 30-day period.

The most commonly prorated expenses are:

- Property taxes
- Property insurance
- Rental payments

For example, a seller handles property taxes for the period he or she lives in a property. A buyer will assume those property taxes upon the close of a transaction. However, property taxes are paid in cycles and do not always align with a transaction's closing date. Therefore, a property's taxes will be prorated so that a seller pays the property taxes before the closing date and the buyer pays the property taxes after the closing date.

Rental properties that are purchased in the middle of the month will typically be prorated based on the number of days left in the month. This avoids a tenant or a landlord from over- or under-paying.

Example

Question: Shaun wishes to sell a parcel of land to his cousin, Dan. The land is a 12-unit building that collects \$21,600 a month in rental income. The property is sold on January 10th. If the property taxes and rental income are prorated, how much rental income are both Shaun and Dan entitled to?

Answer: *Based on a standard 30-day month, the property collects \$720 a day in rental income ($\$21,600 / 30 = \720). Shaun owns the property for ten days of the month of January; Dan will own it for 20 days. Using the daily rental income figure and days of ownership, Shaun will be entitled to \$7,200 in rental income ($\720×10 days), while Dan will be entitled to \$14,400 ($\720×20 days).*

Impound Account

Most borrowers make property-related payments separately; however, some lenders require borrowers to use an impound account.

An **impound account** is an escrow account managed by a lender for the purpose of

collecting a borrower's property expenses. Rather than paying various parties at a different time, an impound account allows a borrower to pay for all the costs associated with his or her property with one payment.

These expenses include mortgage payments, property taxes, hazard insurance, title insurance payments, and H.O.A. fees.

Mortgage programs that require impound accounts are more expensive because they cover all of the aforementioned costs.

Lenders use these accounts to protect its investment. Dividing a borrower's annual payments into more manageable monthly payments increases the likelihood that the borrower will stay current and not be subject to foreclosure.

In California, it is illegal for lenders to require single-family residence borrowers to have impound accounts, except in the following circumstances:

- The loan amount is higher than 90% of the property value
- A borrower has failed to make two consecutive tax payments
- The loan is a government-backed loan (i.e. FHA or VA loan)

Audit

Escrow agents must audit the transaction one last time to verify that all terms of the transaction have been met. Auditing involved going through all the escrow instructions and verifying the terms of the agreement remain and that nothing has changed. Auditing the file might also involve communicating with the necessary party's to be sure everything is accurate.

Title Review

A subject property's title will be reviewed one last time to verify that nothing has changed since the preliminary title report, such as the addition of a new encumbrance or the discovery of an old lien holder. Assuming no changes have occurred, the title company will proceed.

The Close

When all escrow instructions have been met and all closing costs have been paid, escrow closes. The **close of escrow** involves an escrow releasing a buyer's funds to a seller and the seller's property deed to the buyer.

It typically takes one to five business days for escrow to close.

Neither a buyer nor a seller needs to be physically present to close a transaction.

Upon closing, the escrow agent will send all closing statements to a buyer and a seller. Once a transaction is fully executed, it will be recorded.

Escrow Cancellation

In the event that a buyer or a seller does not want to move forward with a transaction, escrow may be cancelled.

If a buyer has met the prescribed conditions and cancels escrow within the allotted timeframe, his or her deposit will be returned. Both parties must sign for the release of consideration.



**CANCELLATION OF CONTRACT,
RELEASE OF DEPOSIT
AND CANCELLATION OF ESCROW**
(C.A.R. Form CC, Revised 11/14)

In accordance with the terms and conditions of the: California Residential Purchase Agreement; or
 Other _____ ("Agreement"),
 dated _____, including all amendments and related documents, on property known
 as _____ ("Property"),
 between _____ ("Buyer")
 and _____ ("Seller").

Paragraphs 1 and 2 below constitute escrow instructions to Escrow Holder. Release of funds (pursuant to paragraph 2) requires mutually Signed release instructions from Buyer and Seller, judicial decision or arbitration award. A party may be subject to a civil penalty of up to \$1,000 for refusal to sign such instructions if no good faith dispute exists as to who is entitled to the deposited funds (Civil Code §1057.3).

- 1. CANCELLATION OF CONTRACT:** Buyer Seller | both Buyer and Seller cancel(s) the Agreement for the following reason:
 A. As permitted by the good faith exercise of paragraph(s) _____ of the Agreement
OR B. Buyer has failed to remove the applicable contingency after being given a Notice to Buyer to Perform (C.A.R. Form NBP).
OR C. Buyer has failed to take the applicable contractual action after being given a Notice to Buyer to Perform (C.A.R. Form NBP).
OR D. Seller has failed to take the applicable contractual action after being given a Notice to Seller to Perform (C.A.R. Form NSP).
OR E. Seller has failed to remove the applicable contingency after being given a Notice to Seller to Perform (C.A.R. Form NSP).
OR F. Per mutual agreement.
OR G. Other _____

Buyer's or Seller's Signature (party cancelling the contract)

Date _____

Buyer's or Seller's Signature (party cancelling the contract)

Date _____

2. RELEASE OF DEPOSIT and CANCELLATION OF ESCROW

- Buyer and Seller cancel escrow # _____ with _____ and
 A. Seller authorizes release of Buyer's deposit, less Buyer's fees and costs, to Buyer.
OR B. Buyer authorizes release of Buyer's deposit, less Seller's fees and costs, to Seller. (Pursuant to a properly executed liquidated damages clause, Buyer's authorization of release of deposit to Seller is limited to no more than 3% of the purchase price. Any additional deposit shall be returned to Buyer.)
OR C. Both Buyer and Seller acknowledge mutual cancellation of the Agreement and authorize Escrow Holder to continue to hold the deposit until receiving subsequent mutual instructions, judicial decision or arbitration award.
OR D. Other: _____

Unless otherwise specified, Buyer and Seller (i) mutually release each other from all obligation to buy, sell or exchange the Property under the Agreement, and from all claims, actions and demands that each may have against the other(s) by reason of the Agreement; and (ii) intend that all rights and obligations arising out of the Agreement are null and void.

Date _____ Date _____

Buyer _____ Seller _____

Buyer _____ Seller _____

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CC REVISED 11/14 (PAGE 1 OF 1) **CANCELLATION OF CONTRACT, RELEASE OF DEPOSIT AND CANCELLATION OF ESCROW (CC PAGE 1 OF 1)**

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CANCELLATION OF LISTING
(C.A.R. Form COL, Revised 4/11)

written Residential Listing Agreement (or, if checked, Lease Listing, Other dated _____ ("Listing"), with _____ regarding the real property or manufactured home described as:

("Broker") has entered into a _____)
("Principal"),
("Property").

Broker and Principal agree to cancel the Listing and terminate their agency relationship, duties and responsibilities with and to each other, subject to the terms and conditions specified below.

1. (If checked) Principal agrees to pay Broker the amount of compensation specified in the Listing:
 (A) If, prior to the end of the specified Listing Period or any extension, Principal enters into a contract to sell, convey, lease or otherwise transfer the Property; or
 (B) If, during the period specified after expiration of the Listing Period or any extension, Principal enters into a contract to sell, convey, lease or otherwise transfer the Property to any person named below, or that person's related entity, who, after the commencement of the Listing and prior to this cancellation, (i) physically entered and was shown the Property by Broker or a cooperating broker, or (ii) submitted to Seller a signed, written offer to acquire, lease, exchange or obtain an option on the Property:

(C) In the event of a transaction specified in A or B above, Broker has no obligation to represent Principal in such transaction.

(D) Compensation is payable on close of escrow or, if completion of the transaction is prevented by default of Seller, on Seller's default.

- OR 2. (If checked) Principal agrees to pay Broker _____ % of the compensation specified in the Listing:
 (A) If: (i) prior to the end of the specified Listing Period or any extension, Principal enters into a listing agreement for the sale or lease of the Property with another real estate broker; and (ii) Principal enters into a contract to sell, convey, lease or otherwise transfer the Property during the specified Listing Period.
 (B) Principal agrees to notify the other real estate broker of the compensation obligation of this paragraph and to pay Broker such compensation upon close of escrow.
 (C) Compensation is payable on close of escrow or, if completion of the transaction is prevented by default of Seller, on Seller's default.
- OR 3. (If checked) Principal agrees to pay Broker \$ _____, for out-of-pocket expenses, costs incurred and services rendered in marketing the Property prior to cancellation of the Listing.
- OR 4. (If checked) Principal owes no compensation to Broker.
- OR 5. (If checked) Other _____.

Other than as provided herein, Broker and Principal mutually release each other from all obligations under the Listing and from all claims, actions and demands that each may have against the other by reason of the Listing. However, Broker and Principal agree that the dispute resolution and attorney fees provisions of the Listing shall control any dispute arising out of this cancellation of Listing.

I acknowledge that I have read and understand this Cancellation of Listing and have received a copy.

Principal _____

Date _____

Real Estate Broker (Firm)

Date _____

By (Broker/Office Manager)

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CANCELLATION OF LISTING (COL PAGE 1 OF 1)

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