

# Chapter 13



## Escrow & Title Insurance

### Chapter 13 Goals:

- What escrow is
- Which parties are involved in escrow
- Who selects the escrow agent
- Escrow's role in a real estate transaction
- How escrow companies get licensed
- The escrow process
- Important escrow terms
- Executing escrow instructions
- What is title insurance
- Title insurance's role in a real estate transaction
- Differences between standard and extended title insurance

# Chapter 13: Escrow & Title Insurance

## Key Terms

abstract of title	closing disclosure	impound account
amendment to escrow instructions	closing statement	lender appraisal
American Land Title Association (ALTA) beneficiary statement	credits	marketable title
bilateral instructions	debits	nonrecurring costs
California Land Title Association (CLTA)	deed of reconveyance	preliminary title report
California Residential Purchase Agreement and Joint Escrow Instructions	demand statement	prorating
closing costs	eagle title policy	recurring costs
	earnest deposit	Residential Listing Agreement
	escrow	structural report
	escrow licensing	title insurance
	escrow instructions	title plant
	good funds	unilateral instructions
	HUD-1 Settlement Statement	

## Chapter Overview

In this chapter, readers will learn:

- What escrow is and why it should be used
- The requirements for licensed escrow agents
- How to select an escrow agent
- How escrow is opened
- The basic steps to executing escrow instructions
- The important of title insurance in a real estate transaction
- How to close escrow
- A line-by-line explanation of the standard California Residential Purchase Agreement and Joint Escrow Instructions form

## Escrow

**Escrow** – also referred to as an escrow holder or escrow agent – is an entity that acts as a neutral third party between principals in a real estate transaction. Its primary responsibility is to execute escrow instructions as set forth in a purchase agreement.

The California Financial Code officially defines escrow as:

- *“A grant may be deposited by the grantor with a third person, to be delivered on the performance of a condition, and, on delivery by the depositary, it will*

*take effect. While in the possession of the third person, and subject to condition, it is called an escrow.”*

and

- *“...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.”*

## Why Use 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.

A knowledgeable and experienced escrow company minimizes risk and maximizes the chances of successfully closing a transaction. Escrow protects the interests of all principals by enforcing a purchase agreement's mutually agreed-upon conditions and only distributing consideration when those conditions have been met. This helps prevent instances of theft and fraud.

The state of California does not require a buyer and a seller to use an escrow for the transfer of property; however, it is strongly advised that they do so.

## Escrow Agents

### Duties

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

An escrow prepares and distributes all necessary escrow paperwork and accepts and holds all required funds in a transaction. Unless given authorization by the principals, an escrow agent may only accept claims, funds, or documents that are laid out in the escrow instructions.

Only after all terms and conditions of a purchase agreement have been met does an escrow release a buyer's funds to a seller and the seller's property deed to the buyer.

Escrows are privileged and confidential in nature. An escrow agent must maintain the privacy of all principals and never disclose information to third parties without a principal's approval. An escrow must also remain a neutral third party on behalf of a buyer and a seller.

An escrow agent must communicate all acquired knowledge relating to the escrow process to the principals. This includes any detrimental or new material information that might affect a principal's decision regarding the pending transaction.

Escrow agents must retain copies of all vital documents from current and previous transactions.

An escrow agent may not 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
- Get involved in the financial details of the transaction
- Send or accept signed blank documents. All fields must be filled in before principals or their agents/brokers sign.
- Use deceptive language in escrow documents that prevents a principal's understanding of fees or conditions.
- Send, release, or execute the transfer of documents or consideration in a manner that delay or prevents the escrow process.
- Work on behalf of another escrow agent or pay another escrow agent to perform work on its behalf. An employee of the selected escrow company must perform all work.
- Implement escrow instructions that are illegal

## Licensing

**Escrow licensing** depends on who is representing the escrow company. Agents are licensed as companies, not individuals. These companies are either licensed or non-licensed (controlled).

In California, licensed escrow agents handle the overwhelming majority of real estate transactions. 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.* Licensed escrow companies must have a \$10,000 surety bond and purchase a minimum \$125,000 bond per employee.
- *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.
- *Have a signed affidavit from the applicant.* This states that the applicant understands the laws and regulations that guide the escrow industry.
- *File a branch location application.*

Non-licensed escrow agents are not required to have as much experience as licensed escrow agents. Non-licensed escrow agents include:

- Title Insurance Companies
- Banks
- Attorneys
- Brokers
- Trust Companies

An 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 is also prohibited from paying referral fees to other businesses for referring clients who need escrow services to the agent/broker.

## **Liability**

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

## **Escrow Instructions**

### **Selecting an Escrow Agent**

As a buyer typically initiates a real estate transaction, he or she is generally responsible

for finding an escrow agent. An escrow agent must be submitted with a purchase agreement. If a seller accepts a buyer's offer, the seller accepts the escrow company.

Principals may opt to select an escrow agent together, however.

Agents may recommend an escrow agent, but they cannot select one on behalf of their principals.

## Opening Escrow

After a seller has accepted a buyer's offer and both parties have signed a purchase agreement, escrow typically opens immediately.

The conditions set forth in the purchase agreement become escrow instructions. Using the existing terms of the purchase agreement significantly reduces wasted efforts by all parties. A buyer and seller's agents send the details of the purchase agreement to the escrow agent. Upon verification of these details, the escrow agent will prepare escrow instructions.

## Perfecting Escrow Instructions

**Escrow instructions** indicate the duties and obligations that all principals must perform in order to close escrow.

A principal is responsible for dictating instructions to an escrow agent. Any party who submits escrow instructions is considered a principal. Therefore, a buyer, a seller, and any lender that provides buyer financing are considered principals. Lenders send their own escrow instructions.

Properly drawn escrow instructions should be clear as to the intentions of the principals, the duties of the escrow agent, and the fact that it is the principals themselves who must perform the agreed-upon escrow instructions.

There are two types of escrow instructions:

- bilateral
- unilateral

**Bilateral instructions** refer to the directions that apply to both a buyer and a seller.

**Unilateral instructions** refer to separate instructions for a buyer and a seller.

In order to make escrow valid, all principals must sign the same escrow instructions. When this is completed, escrow is perfected.

If either principal wants to amend an aspect of the escrow instructions, both parties must consent. Any alteration is referred to as an **amendment to escrow instructions**. The escrow agent must be made aware of any changes immediately.

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

## Agent's Role in Escrow

As a representative of a buyer or a seller, an agent's role during escrow is significant. Agents must be aware of all aspects of the transaction. They must stay in constant communication with the escrow agent; ensure that a buyer's financing status and payments remain on schedule; and verify that all escrow paperwork has been submitted, signed, and executed.

Real estate transactions are contingent on deadlines. Therefore, an agent must be proactive and assertive to avoid delays. Failure to meet a deadline can result in the termination of the transaction and result in wasted efforts by all parties.

If there are two agents involved in the transaction, both agents should be in constant communications with one another.

## Executing Escrow Instructions

The following are the basic steps involved in executing escrow instructions

1. The escrow agent collects the buyer's initial deposit.
2. If applicable, the borrower/buyer's lender performs an appraisal of the subject property to verify that the listing price and appraised value are similar.
3. The escrow agent provides a preliminary title report.
4. The escrow agent will order and review vital documentation, including: beneficiary statement, demand statement, deed of reconveyance, and structural reports and inspections.
5. The escrow agent verifies a buyer's loan approval and that all terms of a mortgage are correct. Buyer will receive a HUD-1 Settlement Statement indicating all costs associated with obtaining financing.
6. All vital documentation relating to the transaction is sent to the title insurance company to be recorded.

7. Buyer is advised to perform another round of inspections.
8. The escrow agent receives lender funds (if a buyer is using financing) or the remainder of buyer funds (if it's an all-cash offer)
9. The escrow agent verifies all closing statements and closing costs, including agent/broker commissions, lender points, and escrow fees.
10. If all escrow instructions have been met, escrow closes.
11. The escrow agent releases the consideration held in escrow to the appropriate parties.

## Buyer's Initial Deposit

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

## Lender Appraisal

Lenders will conduct an appraisal of a subject property prior to providing a borrower/buyer with a loan.

If the appraised value is less than the listing price, a lender will not fund the entire loan, but rather, the maximum LTV based on the appraised value. In this case, the buyer must come up with the difference between the listing price and maximum loan amount the lender will provide.

Oftentimes, a lender's initial appraisal is wrong. If a buyer believes that the lender's appraisal is incorrect, the buyer or the buyer's agent should prepare a list of recently sold comparables that help prove the value of the property. The buyer may also request another appraisal.

## Title Insurance

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 people who have, or claim to have, an interest in the property. This is known as an abstract of title.

An **abstract of title** – or simply, an abstract – is a title chain that 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 verify the marketability of a property and its title.

An abstract and title plant will verify whether a property has a **marketable title**, or a “clean” title with no other competing interests.

However, using an abstract as the primary form of protection against lien holders is not advised. Buyers are strongly encouraged to purchase title insurance.

**Title insurance** is indemnity insurance that protects a buyer in a real estate transaction from financial loss in the event that previously undisclosed title defects, encumbrances, or additional liens are discovered. Title defects refer to mistakes made by the title insurance company.

Title insurance protects a buyer’s interests. In the event that 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.

It is customary for a buyer to pay for his or her own title insurance policy. However, a buyer and a seller may also choose to negotiate who pays.

Once an insurance policy has been purchased, it is the title insurer’s responsibility to pay the costs of curing any defects, claiming legal action, or paying for the losses of the title agent.

### **California Land Title Association (CLTA)**

The **California Land Title Association (CLTA)** is a trade association that represents title companies throughout the state of California. A CLTA 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 CLTA standard coverage 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

### **American Land Title Association (ALTA)**

An **American Land Title Association (ALTA)** extended coverage policy offers greater coverage than a CLTA policy. It insures risks beyond the scope of standard title policy, including those that were not known, or discovered, at the time a buyer purchased the property.

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

An ALTA policy is typically purchased to protect a lender's interests. It ensures that a lender has a valid claim to a property with an enforceable lien and protects the lender's original loan amount in the event that another lien holder claims an interest in the property.

As an ALTA policy is intended to protect the interests of a lender, a buyer may have to purchase additional insurance if he or she wants additional coverage. An **eagle title policy** covers additional title risks, such as encumbrances or new liens that emerge during ownership.

## Preliminary Title Report

A **preliminary title report** – or “prelim” – provides a summary of the terms and conditions a title insurer is willing to offer in a final policy.

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. It is created once escrow is opened.

The report includes all current title agents, land records, and parties who claim to have an interest in the property. The report also contains a list of liens, defects, and encumbrances. These items will be excluded from coverage. Liens that are not covered will be labeled below the “exception” section of the report.

A property should not be bought until other lien holders are cleared, otherwise a buyer may not be entitled to full ownership rights upon the purchase. Therefore, a seller must settle all liens on a property prior to its sale (except for primary and secondary mortgage loans).

In some cases, a buyer may agree to buy a property with its liens. If this occurs, the seller will likely offer the buyer a discount on the purchase price.

An escrow agent will continually run a property’s title until the close of a transaction to ensure that no new liens are placed on the property. If new liens are found, the sale will be halted until the seller settles with the lien holder.

Before issuing a final insurance policy, a title insurer will conduct a final title report to verify that there are no additional recordings that affect a buyer’s ownership claim. This report is intended to give clients the opportunity to review and fix any errors prior to the close of escrow.

## Beneficiary Statement

A **beneficiary statement** is a written disclosure that provides the status of a seller’s (or current borrower’s) mortgage. It includes the loan balance, interest rate, and conditions of the loan secured for a transaction.

A lender is required to supply a borrower with a beneficiary statement.

## Demand Statement

A **demand statement** is a form that states the total amount a lender is due. It also includes the terms of an existing mortgage, such as rates, loan balance, and total loan (including prepayment penalties).

## Deed of Reconveyance

When a borrower pays off his or her mortgage debt, a lender will issue a deed of reconveyance. A **deed of reconveyance** indicates that a borrower's mortgage debt has been paid off. It releases the title of a subject property back to a borrower and verifies that the borrower is the sole legal owner of the property.

## Structural Reports and Inspections

Common reports and inspections – including soil, mold, plumbing, and other specific reports that relate to the property – should be included in the escrow instructions.

## HUD-1 Settlement Statement

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.

Prior to the HUD-1 Settlement Statement being required, lenders used their own unique forms. The lack of uniformity created confusion and misunderstanding among borrowers.

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. 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.						
<b>C. Note:</b> 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			
<b>100. Gross Amount Due from Borrower</b> 101. Contract sales price 102. Personal property 103. Settlement charges to borrower (line 1400) 104. 105. <b>Adjustment for items paid by seller in advance</b> 106. City/town taxes to 107. County taxes to 108. Assessments to 109. 110. 111. 112. <b>120. Gross Amount Due from Borrower</b> <b>200. Amount Paid by or in Behalf of Borrower</b> 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. <b>Adjustments for items unpaid by seller</b> 210. City/town taxes to 211. County taxes to 212. Assessments to 213. 214. 215. 216. 217. 218. 219. <b>220. Total Paid by/for Borrower</b> <b>300. Cash at Settlement from/to Borrower</b> 301. Gross amount due from borrower (line 120) 302. Less amounts paid by/for borrower (line 220) ( ) <b>303. Cash <input type="checkbox"/> From <input type="checkbox"/> To Borrower</b>				<b>400. Gross Amount Due to Seller</b> 401. Contract sales price 402. Personal property 403. 404. 405. <b>Adjustment for items paid by seller in advance</b> 406. City/town taxes to 407. County taxes to 408. Assessments to 409. 410. 411. 412. <b>420. Gross Amount Due to Seller</b> <b>500. Reductions in Amount Due to Seller</b> 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. <b>Adjustments for items unpaid by seller</b> 510. City/town taxes to 511. County taxes to 512. Assessments to 513. 514. 515. 516. 517. 518. 519. <b>520. Total Reduction Amount Due Seller</b> <b>600. Cash at Settlement to/from Seller</b> 601. Gross amount due to seller (line 420) 602. Less reductions in amounts due seller (line 520) ( ) <b>603. Cash <input type="checkbox"/> To <input type="checkbox"/> From Seller</b>			

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			
<b>700. Total Real Estate Broker Fees</b>			
Division of commission (line 700) as follows:			
701. \$	to		Paid From Borrower's Funds at Settlement
702. \$	to		
703. Commission paid at settlement			
704.			
<b>800. Items Payable in Connection with Loan</b>			
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.			
<b>900. Items Required by Lender to be Paid in Advance</b>			
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.			
<b>1000. Reserves Deposited with Lender</b>			
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			-\$
<b>1100. Title Charges</b>			
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.			
<b>1200. Government Recording and Transfer Charges</b>			
1201. Government recording charges			(from GFE #7)
1202. Deed \$	Mortgage \$	Release \$	
1203. Transfer taxes			(from GFE #6)
1204. City/County tax/stamps	Deed \$	Mortgage \$	
1205. State tax/stamps	Deed \$	Mortgage \$	
1206.			
<b>1300. Additional Settlement Charges</b>			
1301. Required services that you can shop for			(from GFE #6)
1302.	\$		
1303.	\$		
1304.			
1305.			
<b>1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)</b>			

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

## Send Documentation to Title Company

An escrow agent must immediately forward any document that is to be recorded to the title company (i.e. property deed, loan). Copies are to be furnished to the appropriate principals so that the validity of the document can be confirmed.

This step helps to avoid delays in closing escrow.

## 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 all closing statements and pay closing costs.

### Closing Statement & Costs

A **closing statement** indicates the closing date and all of the costs required to successfully close escrow in addition to a property’s purchase price. These are known as **closing costs**.

The escrow agent creates the closing costs as stated in the purchase agreement. Costs depend on a property’s purchase price, location, and the lender financing the new primary loan. Some fees are negotiable, while others are not.

A **recurring cost** is a cost that a buyer continues to incur after the close of escrow. This includes mortgage payments, property taxes, H.O.A. fees, and title insurance fees. A **nonrecurring cost** is a one-time fee that a buyer or a seller is responsible for paying. This includes escrow fees, lender points, and agent/broker commissions.

A buyer and a seller typically split a transaction’s closing costs. A buyer may pay for more line item costs, although a seller typically pays for the agent/broker commission.

The costs commonly paid by a buyer include:

- Appraisal fee
- Loan origination fee
- Credit report fee
- Recording fee
- Notary fee
- Title insurance fee
- Escrow fees
- Lender points
- Cost of drawing up and executing the property deed

- Structural reports and inspection fees

The costs typically paid by a seller include:

- Back property taxes
- Agent/broker commission
- Liens and judgments
- Loan prepayment penalty
- Loan payoff

The closing statement also reflects a buyer and a seller's credits and debits. **Debits** are the amount a party owes; **credits** are the amount a party is owed. The debit and credit amounts must be the same dollar amount. For example, if a buyer has a total debit of \$520,050, then a seller's credit must amount to \$520,050.

The most common escrow question that principals have is about credits and debits. If a buyer or seller's agent is uncertain about the credit and debit amounts, he or she should verify the terms with the escrow agent.

An escrow agent cannot disburse funds from an escrow account until the closing date.

Below you will find an example of a mortgage closing statement.

## Closing Disclosure

*This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.*

Closing Information		Transaction Information		Loan Information	
Date Issued	4/15/2013	Borrower	Michael Jones and Mary Stone 123 Anywhere Street Anytown, ST 12345	Loan Term	30 years
Closing Date	4/15/2013	Seller	Steve Cole and Amy Doe 321 Somewhere Drive Anytown, ST 12345	Purpose	Purchase
Disbursement Date	4/15/2013	Lender	Ficus Bank	Product	Fixed Rate
Settlement Agent	Epsilon Title Co.			Loan Type	<input checked="" type="checkbox"/> Conventional <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/>
File #	12-3456			Loan ID #	123456789
Property	456 Somewhere Ave Anytown, ST 12345			MIC #	000654321
Sale Price	\$180,000				

Loan Terms	Can this amount increase after closing?	
Loan Amount	\$162,000	NO
Interest Rate	3.875%	NO
Monthly Principal & Interest <small>See Projected Payments below for your Estimated Total Monthly Payment</small>	\$761.78	NO
Does the loan have these features?		
Prepayment Penalty	YES	• As high as \$3,240 if you pay off the loan during the first 2 years
Balloon Payment	NO	

Projected Payments	Years 1-7	Years 8-30
Payment Calculation		
Principal & Interest	\$761.78	\$761.78
Mortgage Insurance	+ 82.35	+ —
Estimated Escrow <small>Amount can increase over time</small>	+ 206.13	+ 206.13
Estimated Total Monthly Payment	\$1,050.26	\$967.91
Estimated Taxes, Insurance & Assessments <small>Amount can increase over time See page 4 for details</small>	\$356.13 a month	<p><b>This estimate includes</b></p> <p><input checked="" type="checkbox"/> Property Taxes <input checked="" type="checkbox"/> Homeowner's Insurance <input checked="" type="checkbox"/> Other: Homeowner's Association Dues</p> <p><i>See Escrow Account on page 4 for details. You must pay for other property costs separately.</i></p>

Costs at Closing	
Closing Costs	\$9,712.10 Includes \$4,694.05 in Loan Costs + \$5,018.05 in Other Costs – \$0 in Lender Credits. See page 2 for details.
Cash to Close	\$14,147.26 Includes Closing Costs. See Calculating Cash to Close on page 3 for details.

**Closing Cost Details**

Loan Costs	Borrower-Paid		Seller-Paid		Paid by Others
	At Closing	Before Closing	At Closing	Before Closing	
<b>A. Origination Charges</b>	<b>\$1,802.00</b>				
01 0.25 % of Loan Amount (Points)	\$405.00				
02 Application Fee	\$300.00				
03 Underwriting Fee	\$1,097.00				
04					
05					
06					
07					
08					
<b>B. Services Borrower Did Not Shop For</b>	<b>\$236.55</b>				\$405.00
01 Appraisal Fee to John Smith Appraisers Inc.					
02 Credit Report Fee to Information Inc.		\$29.80			
03 Flood Determination Fee to Info Co.	\$20.00				
04 Flood Monitoring Fee to Info Co.	\$31.75				
05 Tax Monitoring Fee to Info Co.	\$75.00				
06 Tax Status Research Fee to Info Co.	\$80.00				
07					
08					
09					
10					
<b>C. Services Borrower Did Shop For</b>	<b>\$2,655.50</b>				
01 Pest Inspection Fee to Pests Co.	\$120.50				
02 Survey Fee to Surveys Co.	\$85.00				
03 Title - Insurance Binder to Epsilon Title Co.	\$650.00				
04 Title - Lender's Title Insurance to Epsilon Title Co.	\$500.00				
05 Title - Settlement Agent Fee to Epsilon Title Co.	\$500.00				
06 Title - Title Search to Epsilon Title Co.	\$800.00				
07					
08					
<b>D. TOTAL LOAN COSTS (Borrower-Paid)</b>	<b>\$4,694.05</b>				
Loan Costs Subtotals (A + B + C)	\$4,664.25	\$29.80			
<b>Other Costs</b>					
<b>E. Taxes and Other Government Fees</b>	<b>\$85.00</b>				
01 Recording Fees Deed: \$40.00 Mortgage: \$45.00	\$85.00				
02 Transfer Tax to Any State			\$950.00		
<b>F. Prepads</b>	<b>\$2,120.80</b>				
01 Homeowner's Insurance Premium ( 12 mo.) to Insurance Co.	\$1,209.96				
02 Mortgage Insurance Premium ( mo.)	\$279.04				
03 Prepaid Interest (\$17.44 per day from 4/15/13 to 5/1/13)	\$631.80				
04 Property Taxes ( 6 mo.) to Any County USA					
05					
<b>G. Initial Escrow Payment at Closing</b>	<b>\$412.25</b>				
01 Homeowner's Insurance \$100.83 per month for 2 mo.	\$201.66				
02 Mortgage Insurance per month for mo.					
03 Property Taxes \$105.30 per month for 2 mo.	\$210.60				
04					
05					
06					
07					
08 Aggregate Adjustment	- 0.01				
<b>H. Other</b>	<b>\$2,400.00</b>				
01 HOA Capital Contribution to HOA Acre Inc.	\$500.00				
02 HOA Processing Fee to HOA Acre Inc.	\$150.00				
03 Home Inspection Fee to Engineers Inc.	\$750.00				
04 Home Warranty Fee to XYZ Warranty Inc.			\$450.00		
05 Real Estate Commission to Alpha Real Estate Broker			\$5,700.00		
06 Real Estate Commission to Omega Real Estate Broker			\$5,700.00		
07 Title - Owner's Title Insurance (optional) to Epsilon Title Co.	\$1,000.00				
08					
<b>I. TOTAL OTHER COSTS (Borrower-Paid)</b>	<b>\$5,018.05</b>				
Other Costs Subtotals (E + F + G + H)	\$5,018.05				
<b>J. TOTAL CLOSING COSTS (Borrower-Paid)</b>	<b>\$9,712.10</b>				
Closing Costs Subtotals (D + I)	\$9,682.30	\$29.80	\$12,800.00	\$750.00	\$405.00
Lender Credits					

Calculating Cash to Close		Use this table to see what has changed from your Loan Estimate.		
		Loan Estimate	Final	Did this change?
Total Closing Costs (J)		\$8,054.00	\$9,712.10	YES • See Total Loan Costs (D) and Total Other Costs (I)
Closing Costs Paid Before Closing		\$0	-\$29.80	YES • You paid these Closing Costs <b>before closing</b>
Closing Costs Financed (Paid from your Loan Amount)		\$0	\$0	NO
Down Payment/Funds from Borrower		\$18,000.00	\$18,000.00	NO
Deposit		-\$10,000.00	-\$10,000.00	NO
Funds for Borrower		\$0	\$0	NO
Seller Credits		\$0	-\$2,500.00	YES • See Seller Credits in <b>Section L</b>
Adjustments and Other Credits		\$0	-\$1,035.04	YES • See details in <b>Sections K and L</b>
<b>Cash to Close</b>		<b>\$16,054.00</b>	<b>\$14,147.26</b>	

Summaries of Transactions		Use this table to see a summary of your transaction.		
BORROWER'S TRANSACTION		SELLER'S TRANSACTION		
<b>K. Due from Borrower at Closing</b>		<b>\$189,762.30</b>		<b>\$180,080.00</b>
01 Sale Price of Property		\$180,000.00		\$180,000.00
02 Sale Price of Any Personal Property Included in Sale				
03 Closing Costs Paid at Closing (J)		\$9,682.30		
04				
<b>Adjustments</b>				
05				
06				
07				
<b>Adjustments for Items Paid by Seller in Advance</b>				
08 City/Town Taxes to				
09 County Taxes to				
10 Assessments to				
11 HOA Dues 4/15/13 to 4/30/13		\$80.00		\$80.00
12				
13				
14				
15				
<b>L. Paid Already by or on Behalf of Borrower at Closing</b>		<b>\$175,615.04</b>		<b>\$115,665.04</b>
01 Deposit		\$10,000.00		
02 Loan Amount		\$162,000.00		
03 Existing Loan(s) Assumed or Taken Subject to				
04				
05 Seller Credit		\$2,500.00		
<b>Other Credits</b>				
06 Rebate from Epsilon Title Co.		\$750.00		
07				
<b>Adjustments</b>				
08				
09				
10				
11				
<b>Adjustments for Items Unpaid by Seller</b>				
12 City/Town Taxes 1/1/13 to 4/14/13		\$365.04		\$365.04
13 County Taxes to				
14 Assessments to				
15				
16				
17				
<b>CALCULATION</b>				
Total Due from Borrower at Closing (K)		\$189,762.30		\$180,080.00
Total Paid Already by or on Behalf of Borrower at Closing (L)		-\$175,615.04		-\$115,665.04
<b>Cash to Close <input checked="" type="checkbox"/> From <input type="checkbox"/> To Borrower</b>		<b>\$14,147.26</b>		<b>\$64,414.96</b>

### Prorating

**Prorating** is the process of distributing property expenses among principals in accordance with their respective periods of ownership. This makes expenses between principals more equitable.

Proration is based on a transaction's closing date.

Common prorated expenses include:

- Property Taxes
- Property Insurance
- Rental Payments

A property tax bill begins on July 1st and ends on June 30th of the following year. A seller is responsible for all property taxes until he or she has sold the property. If a buyer purchases a property prior to the end of the tax period, taxes will be prorated and the property tax bill will be split between the buyer and the seller according to the date of the sale.

Some property insurance policies require the insured party to pay for a full year in advance. In the event that an insured property is sold, the costs of insurance are prorated and the seller would be credited for the unused portion of the property insurance.

In order to determine a prorated rental payment, a principal must divide a property's monthly rent by the number of days left in the month, and then multiply this number by the days left in the month. Assuming a tenant does not pay rent on the first or middle of the month, this formula can be used to determine how much a tenant owes in rent.

### 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, including mortgage payments, property taxes, title insurance payments, and H.O.A. fees.

Lenders use these accounts to divide a borrower's annual payment into more manageable monthly payments. This increases the likelihood that a borrower will stay current on all payments and not be subject to foreclosure, which protects the lender's investment.

In California, it is illegal for lenders to require single-family residence borrowers to

have impound accounts, except in the following circumstances:

- A borrower has failed to make two consecutive tax payments
- The loan is a government-backed loan, such as a FHA or VA loan

## **Closing Day**

On the agreed-upon closing date, escrow officially closes.

California law requires that the new property deed be recorded prior to the disbursement of good funds.

**Good funds** refer to money that is immediately available to escrow upon deposit. Some



funds are acceptable to open escrow (i.e. personal and cashier's checks, wire transfers), but not to close escrow (i.e. personal checks). Depending on the method in which the funds were deposited, there may be a waiting period before the funds can be disbursed.

At this point, the escrow agent releases the consideration held in escrow to the appropriate parties – a buyer's funds to a seller and the seller's property deed to the buyer – and the transaction is complete.

Conversely, if a transaction fails to close, both parties must agree to accept the return of funds back to the other party, minus costs already incurred (i.e. appraisal, inspections).

Both parties must release the other, unless one party believes that the other has not abided by the terms of the agreement. In this case, the party who has broken the agreement may be subject to a penalty.

## **California Residential Purchase Agreement and Joint Escrow Instructions**

The standard agreement used for residential real estate in California is the **California Residential Purchase Agreement and Joint Escrow Instructions**. The agreement includes all components of a real estate transaction on a single form.

It is possible to have a purchase agreement and escrow instructions that are separate from one another, however.

The following is an explanation of each paragraph of the California Residential Purchase Agreement and Joint Escrow Instructions.

- *Paragraph 1. Offer.* Includes the name of the buyer or buyers; the address and legal description of the subject property, including the parcel number; the purchase price; and the escrow's closing date, assuming a seller accepts the offer.
- *Paragraph 2. Finance Terms.* The longest paragraph in the agreement, it provides details relating to the loan used for the purchase of the property.
  - *Initial Deposit.* Includes the initial deposit amount, who it is for, and directions about when a check can be deposited.
  - *Increased Deposit.* Allows a buyer to increase the deposit amount after the acceptance of an offer.
  - *Loan.* Indicates that the purchase or the property is contingent upon the buyer getting approved for a loan. A buyer should put a higher interest rate than what he or she may get in the "maximum interest rate of" area to avoid losing out on a deal if interest rates increase.
  - *Additional Financing Terms.* Allows an agent to provide information relating to the loan, including information about interest rates, mortgage programs, payments, and balloon payments.
  - *Balance of Purchase Price.* Provides information relating to the purchase price and the amounts that must be deposited prior to close.
  - *Purchase Price.* Provides space for a buyer to indicate how much he or she wants to purchase the property for.
  - *Loan Prequalification.* Within a specified time period after acceptance, a buyer must provide a seller with a loan prequalification letter to indicate that the buyer can access capital for the purchase of the property.
  - *Verification of Down Payment.* Verifies that a buyer has the necessary down payment to purchase the property.
  - *Loan Contingency Removal.* Within a specified time period, a buyer will remove the loan contingency.
  - *Appraisal Contingency.* States that loan approval is contingent upon the property being appraised for an amount that is either equal to or greater than the purchase price.
  - *No Loan Contingency.* If the box is checked, the purchase of the property is not contingent upon a loan approval.
  - *All-Cash Offer.* If a buyer checks this box, he or she indicates that the purchase of the property is an all-cash offer and not contingent on a loan.
- *Paragraph 3: Closing and Occupancy.*
  - *Primary Residence.* States that a buyer is purchasing the property as a primary residence.

- *Seller-occupied or vacant property.* Indicates the date that a property must be given to a buyer. If the transfer of title and occupancy do not occur at the same time, a buyer and a seller should contact their insurance companies regarding the specifics of home insurance.
- *Tenant-occupied property.* Indicates the date that a property must be vacant, unless both parties have agreed to a specific date in writing in another agreement. If the seller does not vacate the property within the designated time period, the buyer has the right to revoke the purchase agreement.
- *Warranty Rights.* States that a seller assigns warranty rights for items included with the purchase of the property.
- *Home Access.* Upon the close of escrow, a seller must provide keys, openers, and required passwords or passcodes to access the property.
- *Paragraph 4. Allocation of Costs.* Determines who is responsible for costs relating to the purchase of the property, such as inspections, reports, retrofitting, and escrow and title costs.
- *Paragraph 5. Statutory Disclosures.* Requires a seller to provide all disclosures to the buyer, including hazard disclosures, transfer disclosures, lead-based disclosures, and any other disclosures that may affect the buyer's decision to purchase the property.
- *Paragraph 6. Condominium/Planned Unit Development Disclosures.* Requires a seller to disclose the number of parking spaces and storage included in the purchase. Also requires a seller to disclose information relating to the H.O.A., including the price of H.O.A. payments, the H.O.A. contact person, and whether there is any pending litigation against the H.O.A.
- *Paragraph 7. Conditions Affecting Property.*
  - *Physical Condition.* Indicates that the property will be transferred in the condition it is in at the time of the agreement. A seller's personal items must be removed from the property, however.
  - *Disclosures.* States that the seller must disclose all known material facts relating to the condition of the property, including defects.
  - *Investigations.* Advises a buyer to thoroughly investigate the property's conditions prior to close.
  - *Inspections.* States that a buyer has the right to conduct investigations on the property and to cancel the agreement based on the findings of those inspections.

- *Paragraph 8. Items Included and Excluded.* States that the fixtures attached to the property are included in the sale of the property. Line C provides a space for a seller to indicate which items are not included in the transfer. For example, a seller may exclude a plasma TV that has been mounted to the wall from the sale.
- *Paragraph 9. Buyer's Investigation of Property and Matters Affecting Property.* Gives a buyer the right to conduct inspections of the property, including for pests, lead-based paint, or zoning discrepancies. A buyer will pay for inspections unless otherwise indicated.
- *Paragraph 10. Repairs.* States that a seller must perform repairs in good faith, provide receipts of work performed, and be lawful of any government zoning policies.
- *Paragraph 11. Buyer Indemnity and Seller Protection for Entry upon Property.* A buyer must protect a seller from any new liens that result from an inspection of the property, and is responsible for any damages that result from inspections.
- *Paragraph 12. Title and Vesting.*
  - *Preliminary Title Report.* A buyer will be provided with a current preliminary title report.
  - *Condition.* The purchase of a property includes all liens and encumbrances, whether documented or not.
  - *Seller Duty.* A seller has the responsibility to disclose all information pertaining to title, whether documented or not.
  - *Close of Escrow.* Upon the close of escrow, a buyer will receive a grant deed indicating the transfer of ownership. A buyer is advised to consult with a legal and tax professional.
  - *Title Insurance.* A buyer shall receive a homeowner's policy of title insurance.
- *Paragraph 13. Sale of Buyer's Property.* If the provided box is checked, the sale of a property is contingent on a buyer selling his or her current property.
- *Paragraph 14. Time Periods; Removal of Contingencies; Cancellation Rights.* States that any modification regarding contingencies must be made in writing. If a buyer does not remove contingencies within a specified time period, a seller has the right to cancel the agreement. Failure by a buyer or a seller to close escrow on time may constitute a breach of the agreement. In the event that a buyer and a seller agree to cancel the agreement, both parties must sign for the release of consideration.

- *Paragraph 15. Final Verification of Condition.* States that a buyer has the right to make a final inspection of the property within an allotted time period prior to the close. A seller's property must be properly maintained and all agreed-upon repairs made.
- *Paragraph 16. Liquidated Damages.* States that if a buyer fails to purchase the property because of the buyer's default, the seller shall receive the full sum of the deposit as liquidated damages. If the property is one to four units and the buyer intends to use one of the units as a principal residence, the liquidated damages cannot exceed 3% of the original sales price. Any excess funds must be returned to the buyer.
- *Paragraph 17. Dispute Resolution.* States that in the event of a dispute between a buyer and a seller, both parties agree to mediate the dispute before resorting to arbitration or court action. If a buyer and a seller do not attempt to mediate the dispute, they will not be entitled to recover attorney fees or associated costs with legal proceedings.
- *Paragraph 18. Proration of Property Taxes and Other Items.* Property taxes will be prorated based on a 30-day month. Once escrow closes, local government will reassess the property for property taxes.
- *Paragraph 19. Withholding Taxes.* States that a buyer and a seller agree to abide by all state (withholding law) and federal (FIRPTA) law.
- *Paragraph 20. Multiple Listing Service ("MLS").* Gives an agent/broker the authorization to submit information about the property to MLS, such as an update about the impending sale.
- *Paragraph 21. Equal Housing Opportunity.* States that the sale complies with federal, state, and local anti-discrimination laws.
- *Paragraph 22. Attorney's Fees.* In the event of a lawsuit, the guilty party is responsible to compensate the winner for attorney fees.
- *Paragraph 23. Selection of Service Providers.* Any services recommended by an agent/broker are not guaranteed. A buyer has the right to use any service he or she chooses.
- *Paragraph 24. Time of Essence; Entire Contract; Changes.* States that the purchase agreement is the complete agreement and may not be contradicted by prior agreements, written or verbal. Any future agreements must be changed in writing and signed by both the buyer and the seller.

- *Paragraph 25. Other Terms and Conditions.* Explains that other terms and conditions can be added to the contract.
- *Paragraph 26. Definitions.* Provides definitions of important terms used in the purchase agreement.
- *Paragraph 27. Agency.* Confirms that a buyer and a seller have received “Disclosure Regarding Real Estate Agency Relationships”, or C.A.R Form AD. It also affirms that a seller understands that his or her agent/broker has the right to represent other sellers who may be competing for the same property.
- *Paragraph 28. Joint Escrow Instructions to Escrow Holder.* States that the agreement constitutes the joint escrow instructions of a buyer and a seller to the escrow agent. After a seller accepts an offer, the purchase agreement must be submitted to the escrow agent.
- *Paragraph 29. Broker Compensation from Buyer.* If agreed-upon, the purchase agreement grants a buyer the right to pay an agent/broker in another agreement.
- *Paragraph 30. Terms and Conditions of Offer.* Terms and conditions are only valid if initialed by a buyer and a seller. A seller has the right to continue listing a property for sale until the seller initials the agreement. If both parties have agreed to the conditions of an agreement and the buyer defaults, the buyer may be responsible for the agent/broker’s compensation.
- *Paragraph 31. Expiration of Offer.* Provides a definitive expiration date to the agreement. If the transaction is not completed by this date, a seller has the right to continue with or revoke the agreement.
- *Paragraph 32. Broker Compensation from Seller.* States that a seller is responsible to pay compensation to his or her agent/broker upon close of the transaction.
- *Paragraph 33. Acceptance of Offer.* States that a seller is the owner of the property and can make decisions in regards to its transfer. It also indicates that the seller is accepting the terms of the agreement found in paragraphs 1-32.



**RESIDENTIAL LISTING AGREEMENT**  
**(Exclusive Authorization and Right to Sell)**  
 (C.A.R. Form RLA, Revised 6/17)

**Date Prepared:****1. EXCLUSIVE RIGHT TO SELL:**

hereby employs and grants  
 beginning (date) and ending at 11:59 P.M. on (date)  
 the exclusive and irrevocable right to sell or exchange the real property described as  
 , situated in  
 (County), California, (Zip Code), Assessor's Parcel No.

("Seller")  
 ("Broker")  
 ("Listing Period")  
 ("City").  
 ("Property").

This Property is a manufactured (mobile) home. See addendum for additional terms.

This Property is being sold as part of a probate, conservatorship or guardianship. See addendum for additional terms.

**2. LISTING PRICE AND TERMS:**

A. The listing price shall be:

Dollars (\$ ).

B. Listing Terms:

**3. COMPENSATION TO BROKER:**

**Notice: The amount or rate of real estate commissions is not fixed by law. They are set by each Broker individually and may be negotiable between Seller and Broker (real estate commissions include all compensation and fees to Broker).**

A. Seller agrees to pay to Broker as compensation for services irrespective of agency relationship(s), either percent of the listing price (or if a purchase agreement is entered into, of the purchase price), or \$ , AND

(1) If during the Listing Period, or any extension, Broker, cooperating broker, Seller or any other person procures a ready, willing, and able buyer(s) whose offer to purchase the Property on any price and terms is accepted by Seller, provided the Buyer completes the transaction or is prevented from doing so by Seller. (Broker is entitled to compensation whether any escrow resulting from such offer closes during or after the expiration of the Listing Period, or any extension.)

**OR (2)** If within calendar days (a) after the end of the Listing Period or any extension; or (b) after any cancellation of this Agreement, unless otherwise agreed, Seller enters into a contract to sell, convey, lease or otherwise transfer the Property to anyone ("Prospective Buyer") or that person's related entity: (i) who physically entered and was shown the Property during the Listing Period or any extension by Broker or a cooperating broker; or (ii) for whom Broker or any cooperating broker submitted to Seller a signed, written offer to acquire, lease, exchange or obtain an option on the Property. Seller, however, shall have no obligation to Broker under paragraph 3A(2) unless, not later than the end of the Listing Period or any extension or cancellation, Broker has given Seller a written notice of the names of such Prospective Buyers.

**OR (3)** If, without Broker's prior written consent, the Property is withdrawn from sale, conveyed, leased, rented, otherwise transferred, or made unmarketable by a voluntary act of Seller during the Listing Period, or any extension.

B. If completion of the sale is prevented by a party to the transaction other than Seller, then compensation which otherwise would have been earned under paragraph 3A shall be payable only if and when Seller collects damages by suit, arbitration, settlement or otherwise, and then in an amount equal to the lesser of one-half of the damages recovered or the above compensation, after first deducting title and escrow expenses and the expenses of collection, if any.

C. In addition, Seller agrees to pay Broker:

D. Seller has been advised of Broker's policy regarding cooperation with, and the amount of compensation offered to, other brokers.

(1) Broker is authorized to cooperate with and compensate brokers participating through the multiple listing service(s) ("MLS") by offering to MLS brokers out of Broker's compensation specified in 3A, either percent of the purchase price, or \$

(2) Broker is authorized to cooperate with and compensate brokers operating outside the MLS as per Broker's policy.

E. Seller hereby irrevocably assigns to Broker the above compensation from Seller's funds and proceeds in escrow. Broker may submit this Agreement, as instructions to compensate Broker pursuant to paragraph 3A, to any escrow regarding the Property involving Seller and a buyer, Prospective Buyer or other transferee.

F. (1) Seller represents that Seller has not previously entered into a listing agreement with another broker regarding the Property, unless specified as follows:

(2) Seller warrants that Seller has no obligation to pay compensation to any other broker regarding the Property unless the Property is transferred to any of the following individuals or entities:

(3) If the Property is sold to anyone listed above during the time Seller is obligated to compensate another broker: (i) Broker is not entitled to compensation under this Agreement; and (ii) Broker is not obligated to represent Seller in such transaction.



Property Address:

Date:

- 4. A. ITEMS EXCLUDED AND INCLUDED:** Unless otherwise specified in a real estate purchase agreement, all fixtures and fittings that are attached to the Property are included, and personal property items are excluded, from the purchase price.

**ADDITIONAL ITEMS EXCLUDED:****ADDITIONAL ITEMS INCLUDED:**

Seller intends that the above items be excluded or included in offering the Property for sale, but understands that: (i) the purchase agreement supersedes any intention expressed above and will ultimately determine which items are excluded and included in the sale; and (ii) Broker is not responsible for and does not guarantee that the above exclusions and/or inclusions will be in the purchase agreement.

- B. (1) Leased Or Not Owned Items:** The following items are leased or not owned by Seller:

Solar power system  Alarm system  Propane tank  Water Softener

Other

- (2) Liened Items:** The following items have been financed and a lien has been placed on the Property to secure payment:

Solar power system  Windows or doors  Heating/Ventilation/Air conditioning system

Other

Seller will provide to Buyer, as part of the sales agreement, copies of lease documents, or other documents obligating Seller to pay for any such leased or liened item.

**5. MULTIPLE LISTING SERVICE:**

- A. Broker is a participant/subscriber to**  **Multiple Listing Service (MLS) and possibly others. Unless otherwise instructed in writing the Property will be listed with the MLS(s) specified above. That MLS is (or if checked is not) the primary MLS for the geographic area of the Property. All terms of the transaction, including sales price and financing, if applicable, (i) will be provided to the MLS in which the property is listed for publication, dissemination and use by persons and entities on terms approved by the MLS and (ii) may be provided to the MLS even if the Property was not listed with the MLS.**

**BENEFITS OF USING THE MLS; IMPACT OF OPTING OUT OF THE MLS; PRESENTING ALL OFFERS**

**WHAT IS AN MLS?** The MLS is a database of properties for sale that is available and disseminated to and accessible by all other real estate agents who are participants or subscribers to the MLS. Property information submitted to the MLS describes the price, terms and conditions under which the Seller's property is offered for sale (including but not limited to the listing broker's offer of compensation to other brokers). It is likely that a significant number of real estate practitioners in any given area are participants or subscribers to the MLS. The MLS may also be part of a reciprocal agreement to which other multiple listing services belong. Real estate agents belonging to other multiple listing services that have reciprocal agreements with the MLS also have access to the information submitted to the MLS. The MLS may further transmit listing information to Internet sites that post property listings online.

**EXPOSURE TO BUYERS THROUGH MLS:** Listing property with an MLS exposes a seller's property to all real estate agents and brokers (and their potential buyer clients) who are participants or subscribers to the MLS or a reciprocating MLS.

**CLOSED/PRIVATE LISTING CLUBS OR GROUPS:** Closed or private listing clubs or groups are not the same as the MLS. The MLS referred to above is accessible to all eligible real estate licensees and provides broad exposure for a listed property. Private or closed listing clubs or groups of licensees may have been formed outside the MLS. Private or closed listing clubs or groups are accessible to a more limited number of licensees and generally offer less exposure for listed property. Whether listing property through a closed, private network - and excluding it from the MLS - is advantageous or disadvantageous to a seller, and why, should be discussed with the agent taking the Seller's listing.

**NOT LISTING PROPERTY IN A LOCAL MLS:** If the Property is listed in an MLS which does not cover the geographic area where the Property is located then real estate agents and brokers working that territory, and Buyers they represent looking for property in the neighborhood, may not be aware the Property is for sale.

**OPTING OUT OF MLS:** If Seller elects to exclude the Property from the MLS, Seller understands and acknowledges that: (a) real estate agents and brokers from other real estate offices, and their buyer clients, who have access to that MLS may not be aware that Seller's Property is offered for sale; (b) information about Seller's Property will not be transmitted from the MLS to various real estate Internet sites that are used by the public to search for property listings; (c) real estate agents, brokers and members of the public may be unaware of the terms and conditions under which Seller is marketing the Property.

**REDUCTION IN EXPOSURE:** Any reduction in exposure of the Property may lower the number of offers and negatively impact the sales price.

**PRESENTING ALL OFFERS:** Seller understands that Broker must present all offers received for Seller's Property unless Seller gives Broker written instructions to the contrary.

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Broker's/Agent's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

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RESIDENTIAL LISTING AGREEMENT - EXCLUSIVE (RLA PAGE 2 OF 5)

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 [www.zipLogix.com](http://www.zipLogix.com)

Property Address:

Date:

- B. MLS rules generally provide that residential real property and vacant lot listings be submitted to the MLS within 2 days or some other period of time after all necessary signatures have been obtained on the listing agreement. Broker will not have to submit this listing to the MLS if, within that time, Broker submits to the MLS an appropriate form signed by Seller.
- Seller elects to exclude the Property from the MLS as provided by C.A.R. Form SELM or the local equivalent form.
- C. MLS rules allow MLS data to be made available by the MLS to additional Internet sites unless Broker gives the MLS instructions to the contrary. Seller acknowledges that for any of the below opt-out instructions to be effective, Seller must make them on a separate instruction to Broker signed by Seller. Specific information that can be excluded from the Internet as permitted by (or in accordance with) the MLS is as follows:
- (1) **Property Availability On The MLS; Address On the MLS:** Seller can instruct Broker to have the MLS not display the Property or the Property address on the Internet. Seller understands that either of these opt-outs would mean consumers searching for listings on the Internet may not see the Property or Property's address in response to their search.
- (2) **Feature Opt-Outs:** Seller can instruct Broker to advise the MLS that Seller does not want visitors to MLS Participant or Subscriber Websites or Electronic Displays that display the Property listing to have the features below. Seller understands (i) that these opt-outs apply only to Websites or Electronic Displays of MLS Participants and Subscribers who are real estate broker and agent members of the MLS; (ii) that other Internet sites may or may not have the features set forth herein; and (iii) that neither Broker nor the MLS may have the ability to control or block such features on other Internet sites.
- (a) **Comments And Reviews:** The ability to write comments or reviews about the Property on those sites; or the ability to link to another site containing such comments or reviews if the link is in immediate conjunction with the Property display.
- (b) **Automated Estimate Of Value:** The ability to create an automated estimate of value or to link to another site containing such an estimate of value if the link is in immediate conjunction with the Property display. Seller elects to opt out of certain Internet features as provided by C.A.R. Form SELI or the local equivalent form.
6. **SELLER REPRESENTATIONS:** Seller represents that, unless otherwise specified in writing, Seller is unaware of: (i) any Notice of Default recorded against the Property; (ii) any delinquent amounts due under any loan secured by, or other obligation affecting, the Property; (iii) any bankruptcy, insolvency or similar proceeding affecting the Property; (iv) any litigation, arbitration, administrative action, government investigation or other pending or threatened action that affects or may affect the Property or Seller's ability to transfer it; and (v) any current, pending or proposed special assessments affecting the Property. Seller shall promptly notify Broker in writing if Seller becomes aware of any of these items during the Listing Period or any extension thereof.
7. **BROKER'S AND SELLER'S DUTIES:**
- A. Broker agrees to exercise reasonable effort and due diligence to achieve the purposes of this Agreement. Unless Seller gives Broker written instructions to the contrary, Broker is authorized, but not required, to (i) order reports and disclosures including those specified in 7C as necessary, (ii) advertise and market the Property by any method and in any medium selected by Broker, including MLS and the Internet, and, to the extent permitted by these media, control the dissemination of the information submitted to any medium; and (iii) disclose to any real estate licensee making an inquiry the receipt of any offers on the Property and the offering price of such offers.
- B. Seller agrees to consider offers presented by Broker, and to act in good faith to accomplish the sale of the Property by, among other things, making the Property available for showing at reasonable times and, subject to paragraph 3F, referring to Broker all inquiries of any party interested in the Property. Seller is responsible for determining at what price to list and sell the Property.
- C. **Investigations and Reports:** Seller agrees, within 5 (or ) Days of the beginning date of this Agreement, to pay for the following pre-sale reports: Structural Pest Control General Property Inspection Homeowners Association Documents Other
- D. Seller further agrees to indemnify, defend and hold Broker harmless from all claims, disputes, litigation, judgments attorney fees and costs arising from any incorrect or incomplete information supplied by Seller, or from any material facts that Seller knows but fails to disclose including dangerous or hidden conditions on the Property..
8. **DEPOSIT:** Broker is authorized to accept and hold on Seller's behalf any deposits to be applied toward the purchase price.
9. **AGENCY RELATIONSHIPS:**
- A. **Disclosure:** The Seller acknowledges receipt of a X "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD).
- B. **Seller Representation:** Broker shall represent Seller in any resulting transaction, except as specified in paragraph 3F.
- C. **Possible Dual Agency With Buyer:** Depending upon the circumstances, it may be necessary or appropriate for Broker to act as an agent for both Seller and buyer, exchange party, or one or more additional parties ("Buyer"). Broker shall, as soon as practicable, disclose to Seller any election to act as a dual agent representing both Seller and Buyer. If a Buyer is procured directly by Broker or an associate-licensee in Broker's firm, Seller hereby consents to Broker acting as a dual agent for Seller and Buyer. In the event of an exchange, Seller hereby consents to Broker collecting compensation from additional parties for services rendered, provided there is disclosure to all parties of such agency and compensation. Seller understands and agrees that: (i) Broker, without the prior written consent of Seller, will not disclose to Buyer that Seller is willing to sell the Property at a price less than the listing price; (ii) Broker, without the prior written consent of Buyer, will not disclose to Seller that Buyer is willing to pay a price greater than the offered price; and (iii) except for (i) and (ii) above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the Property to both parties.
- D. **Confirmation:** Broker shall confirm the agency relationship described above, or as modified, in writing, prior to or concurrent with Seller's execution of a purchase agreement.

Seller's Initials ( ) ( ) ( )

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RESIDENTIAL LISTING AGREEMENT - EXCLUSIVE (RLA PAGE 3 OF 5)

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**Property Address:**

Date:

**E. Potentially Competing Sellers and Buyers:** Seller understands that Broker may have or obtain listings on other properties, and that potential buyers may consider, make offers on, or purchase through Broker, property the same as or similar to Seller's Property. Seller consents to Broker's representation of sellers and buyers of other properties before, during and after the end of this Agreement. Seller acknowledges receipt of a *X* "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

**10. SECURITY, INSURANCE, SHOWINGS, AUDIO AND VIDEO:** Broker is not responsible for loss of or damage to personal or real property, or person, whether attributable to use of a keysafe/lockbox, a showing of the Property, or otherwise. Third parties, including, but not limited to, appraisers, inspectors, brokers and prospective buyers, may have access to, and take videos and photographs of, the interior of the Property. Seller agrees: (i) to take reasonable precautions to safeguard and protect valuables that might be accessible during showings of the Property; and (ii) to obtain insurance to protect against these risks. Broker does not maintain insurance to protect Seller. Persons visiting the Property may not be aware that they could be recorded by audio or visual devices installed by Seller (such as "nanny cams" and hidden security cameras). Seller is advised to post notice disclosing the existence of security devices.

## 11. PHOTOGRAPHS AND INTERNET ADVERTISING:

- A. In order to effectively market the Property for sale it is often necessary to provide photographs, virtual tours and other media to buyers. Seller agrees (or  checked, does not agree) that Broker may photograph or otherwise electronically capture images of the exterior and interior of the Property ("Images") for static and/or virtual tours of the Property by buyers and others for use on Broker's website, the MLS, and other marketing materials and sites. Seller acknowledges that once Images are placed on the Internet neither Broker nor Seller has control over who can view such Images and what use viewers may make of the Images, or how long such Images may remain available on the Internet. Seller further assigns any rights in all Images to the Broker and agrees that such Images are the property of Broker and that Broker may use such Images for advertising, including post sale and for Broker's business in the future.
  - B. Seller acknowledges that prospective buyers and/or other persons coming onto the property may take photographs, videos or other images of the property. Seller understands that Broker does not have the ability to control or block the taking and use of Images by any such persons. (If checked ) Seller instructs Broker to publish in the MLS that taking of Images is limited to those persons preparing Appraisal or Inspection reports. Seller acknowledges that unauthorized persons may take images who do not have access to or have not read any limiting instruction in the MLS or who take images regardless of any limiting instruction in the MLS. Once Images are taken and/or put into electronic display on the Internet or otherwise, neither Broker nor Seller has control over who views such Images nor what use viewers may make of the Images.

**12. KEYSAFE/LOCKBOX:** A keysafe/lockbox is designed to hold a key to the Property to permit access to the Property by Broker, cooperating brokers, MLS participants, their authorized licensees and representatives, authorized inspectors, and accompanied prospective buyers. Broker, cooperating brokers, MLS and Associations/Boards of REALTORS® are not insurers against injury, theft, loss, vandalism or damage attributed to the use of a keysafe/lockbox. Seller does (or if checked does not) authorize Broker to install a keysafe/lockbox. If Seller does not occupy the Property, Seller shall be responsible for obtaining occupant(s)' written permission for use of a keysafe/lockbox (C.A.R. Form KLA).

**13. SIGN:** Seller does (or if checked does not) authorize Broker to install a FOR SALE/SOLD sign on the Property.

**14. EQUAL HOUSING OPPORTUNITY:** The Property is offered in compliance with federal, state and local anti-discrimination laws.

**15. ATTORNEY FEES:** In any action, proceeding or arbitration between Seller and Broker to enforce the compensation provisions of this Agreement, the prevailing Seller or Broker shall be entitled to reasonable attorney fees and costs from the non-prevailing Seller or Broker, except as provided in paragraph 19A.

**16. ADDITIONAL TERMS:** REO Advisory Listing (C.A.R. Form REOL) Short Sale Information and Advisory (C.A.R. Form SSIA)  
Trust Advisory (C.A.R. Form TA)

**17. MANAGEMENT APPROVAL:** If an associate-licensee in Broker's office (salesperson or broker-associate) enters into this Agreement on Broker's behalf, and Broker or Manager does not approve of its terms, Broker or Manager has the right to cancel this Agreement, in writing, within 5 Days After its execution.

**18. SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon Seller and Seller's successors and assigns, surviving, within 5 Days After its execution.

## 18. SUCCESSORS AND ASSIGNEES

**A. MEDIATION:** Seller and Broker agree to mediate any dispute or claim arising between them regarding the obligation to pay compensation under this Agreement, before resorting to arbitration or court action. 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. **Exclusions from this mediation agreement are specified in paragraph 19B.**

Seller's Initials ( ) ( )

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RESIDENTIAL LISTING AGREEMENT - EXCLUSIVE (RLA PAGE 4 OF 5)

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## Property Address:

Date:

- B. ADDITIONAL MEDIATION TERMS:** The following matters shall be excluded from mediation: (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; (iii) the filing or enforcement of a mechanic's lien; and (iv) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court. 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, shall not constitute a waiver or violation of the mediation provisions.
- C. ADVISORY:** If Seller and Broker desire to resolve disputes arising between them through arbitration rather than court, they can document their agreement by attaching and signing an Arbitration Agreement (C.A.R. Form ARB).
- 20. ENTIRE AGREEMENT:** All prior discussions, negotiations and agreements between the parties concerning the subject matter of this Agreement are superseded by this Agreement, which constitutes the entire contract and a complete and exclusive expression of their agreement, 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. This Agreement and any supplement, addendum or modification, including any photocopy or facsimile, may be executed in counterparts.
- 21. OWNERSHIP, TITLE AND AUTHORITY:** Seller warrants that: (i) Seller is the owner of the Property; (ii) no other persons or entities have title to the Property; and (iii) Seller has the authority to both execute this Agreement and sell the Property. Exceptions to ownership, title and authority are as follows:

**REPRESENTATIVE CAPACITY:** This Listing Agreement is being signed for Seller by an individual acting in a Representative Capacity as specified in the attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-S). 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. Seller (i) represents that the entity for which the individual is signing already exists and (ii) shall Deliver to Broker, within 3 Days After Execution of this Agreement, evidence of authority to act (such as but not limited to: applicable trust document, or portion thereof, letters testamentary, court order, power of attorney, resolution, or formation documents of the business entity).

**By signing below, Seller acknowledges that Seller has read, understands, received a copy of and agrees to the terms of this Agreement.**

Seller

Date

Address  
Telephone

Fax

City

E-mail

State

Zip

Seller

Date

Address  
Telephone

Fax

City

E-mail

State

Zip

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

Real Estate Broker (Firm)  
Address

City

CalBRE Lic. #  
State

Zip

By

Tel.

E-mail

CalBRE Lic. #

Date

By

Tel.

E-mail

CalBRE Lic. #

Date

Two Brokers with different companies are co-listing the Property. Co-listing Broker information is on the attached Additional Broker Acknowledgement (C.A.R. Form ABA).

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