

## C.A.R.'S NEW RESIDENTIAL PURCHASE AGREEMENT

Page 1 of 11

### Disclaimer & Advisory

The opinions and commentary provided herein in no manner address each particular situation that a Real Estate Licensee, Buyer and/or Seller may face while engaged in a real estate transaction. The foregoing is provided as a general overview and does not address numerous potential, likely factual scenarios that may arise within a real estate transaction. Therefore, the contents are in no means intended to provide specific, particular legal advice pertaining to a transaction. In the event a Real Estate Licensee, Buyer and/or Seller are engaged in an actual transaction and have questions relating to the Purchase Agreement and/or transaction related issues, they are urged to consult with legal counsel specifically sharing the various particular and unique aspects of their situation. For example a Real Estate Licensee should confer with their own counsel. Furthermore, a Real Estate Licensee shall advise the Buyer and/or Seller to review any legal questions with a duly qualified attorney of the Buyer/and/or Seller's selection for the following reason: A Real Estate Licensee cannot provide legal advice as doing so exceeds their background, training, education, experience, licensure and/or scope of agency. The reader of this understands that no attorney-client relationship has been formed through anything shared herein.

### Introduction

After two long years of diligent and earnest efforts, C.A.R. is releasing their new Residential Purchase Agreement. The roll out date is November 24, 2014. That's right, just in time for the holiday season. As rumors circulated over the past several months regarding changes, the anxiety of the Real Estate Licensee has increased. Because of this, we felt it appropriate to share our review of the changes. We want you to be at ease with the new RPA *before* it is released. After all, no one should be figuring out how to handle this new document over their Thanksgiving Holiday.

The following specifically addresses the changes to the RPA and provides limited review of some of the changes to corresponding CAR forms that are used in conjunction with the RPA during a transaction. Accordingly, the reader should also plan to spend some time reviewing the associated forms to ensure their familiarity with the same prior to embarking upon their new journey with the RPA.

### Page 1

**1, A – Offer / Identification of Buyer (“This is an offer from”):** If the Buyers have long names, Zipforms is designed to automatically stack them. If you run out of room there is the Additional Signatures Addendum (Form ASA). This is the time to confirm who the Buyer will be. As obvious as this sounds, will your client take title in their sole name? Will the purchase be in the name of a Trust or LLC in which case usage of the “Representative Capacity Signature Addendum” (form RCSA) may come into play.

Sunderland | McCutchan, LLP  
www.sunmclaw.com

## C.A.R.'S NEW RESIDENTIAL PURCHASE AGREEMENT

Page 2 of 11

**1E – Offer / “Brokers are not parties to agreement”**: While this is nothing new, it has been placed right up front and center to confirm this issue from the onset. As we know, Brokers and Agents representing their clientele are not parties to the RPA. After all, the Broker or Agent who is representing their principal is not the Seller or Buyer.

**2A – Agency / “Agency Disclosure has been given”**: This is pre-checked. Some may ask why? Because it is the law that the licensee disclose the agency relationship from the onset of the relationship. Just as with a Listing Agreement, the licensee representing a Buyer needs to confirm this before the contract is signed. Accordingly, complete and provide your AD before writing the offer. Note: The DA form is being eliminated.

**2B - Agency / “Agency Confirmation”**: Zipforms will not allow you to check “represents Seller” and “represents both parties”; it is watching out for you!

**2C – Agency / Possible Representation of More than One Buyer or Seller**: The Parties acknowledge receipt of a disclosure regarding “Possible Representation of More than One Buyer or Seller- Disclosure and Consent” (form PRBS) the box is pre-checked. There are also separate forms for Sellers (form PRMS) and for Buyers (form PRMB). Note: The form addresses the possibility that multiple Buyers may be represented by competing Agents within the same Brokerage.

**3A(1) - Finance Terms / Deposit**: The default is now that the Buyer is to deposit the check directly with escrow *via electronic funds transfer*. This approach seems to be favored by most licensees since it avoids having to deal with a Trust Log referencing the treatment of the check. There is still the option for the provision of the check to the Agent or Escrow but “Deposit checks given the agent shall be an original signed check and not a copy.”

**3C - All Cash Offer**: Provide Proof of Funds with offer (Notice to perform or cancel if not provided) Seller should read and approve the Verification of funds (VOF). This appears to be the first place in the RPA where the contract is tightened up, perhaps to address those “all cash Buyer” offers that are really going to be financed.

**3D – Finance Terms / Loan(s)**: Sub-paragraph D (3) regarding FHA/VA contracts include FHA or VA Notice and Addendum (form FVA) Also added is the FHA/VA Amendatory Clause (form FVAC). Note: Under the Amendatory Clause, the Buyer is entitled to a refund of any deposits paid if the Property fails to appraise for the contract purchase price. This addresses the issue up-front, avoiding situations where it is difficult to obtain a signature from the Seller later in the transaction.

**3F – Finance Terms / Balance of Down Payment or Purchase Price**: The language has been modified to read “pursuant to escrow holder instructions” in lieu of the previous “within sufficient time.” This tightens up the concept of constitutes sufficient time.

PAGE 2

**3(H) – Finance Terms / Verification of Down Payment and Closing Costs:** The default for the verification of down-payment and closing costs has been changed to 3 calendar days.

**3(I) – Finance Terms / Appraisal Contingency and Removal:** Separates removal of appraisal contingency (17 day default) from removal of loan contingency (J, 3) that has a 21 day default term. These two contingencies are mutually exclusive and independent from one another.

**3(J5) – Finance Terms / Loan Terms / Lender Limits on Buyer Credits:** This is a new paragraph pertaining to Lender limits regarding credits to the Buyer. If the agreed upon credits exceed the Lender approved maximum, the credits will be reduced to the Lender's approved limit. Furthermore, the purchase price will *not* automatically adjust to reflect a reduction for any disapproved credits. Note: This is the first place in the RPA where we see an approach that addresses credits and the Lender's role regarding the same.

**3(K) – Buyer Stated Financing:** This is a new paragraph clarifying that the Seller shall rely upon the Buyer's stated source of purchase funds whether all cash, or financed. This would come into play when, perhaps, an "all cash Buyer" offer is eventually determined by the Seller to be a Buyer actually seeking purchase financing. This paragraph addresses the Seller's obligation, or lack thereof, to provide appraiser access and/or an extension of the closing to facilitate the loan related issues.

**4A - Sale of Buyer's Property:** The default is that the Buyer does not have a property they must sell. If 4(B) is checked, form COP comes into play. The COP form has been changed and only applies to the sale of the Buyer's property. The Seller's Purchase of Replacement Property form (form SPRP) applies to Sellers who make a purchase of a replacement or other property a contingency.

**5 - Addenda and Advisories:**

**Seller Property Questionnaire (form SPO) Supplemental Statutory and Contractual Disclosures (form SSD) - Where Are You?:** Not to fret, these have not been eliminated. Rather, they are addressed later within Paragraph 10 where they are addressed as a contractual obligation.

## C.A.R.'S NEW RESIDENTIAL PURCHASE AGREEMENT

Page 4 of 11

**Wood Destroying Pest Inspection and Allocation of Cost Addendum (form WPA) - R.I.P:** Yes, after a long life, and countless transactions, the WPA has been put to rest. Yes, that is correct, it is *gone*. It is no longer in the RPA and it is no longer in Zipforms! In what some may view as revolutionary or significantly daunting, the termite issue is going to be addressed in a different manner. We will get to this in Paragraph 7 - Allocation of Costs.

**Back-Up Offer (form BUO) and Court Confirmation Addendum (form CCA):** The BUO and CCA are now addressed in this paragraph. Previously, these two forms were addressed within the Purchase Agreement Addendum (form PAA); however, the PAA has gone to the CAR forms cemetery, resting alongside our dear old friend, the WPA.

Note: When checking off any Addenda, Zipforms is designed to automatically populate and bring up the corresponding form. However, you need to update your templates.

**BIA - Buyers Inspection Advisory:** The box is pre-checked for the BIA. Note: The BIA has been reduced to a single page.

**7 - Allocation of Costs - More on the WPA:** As mentioned, the WPA is gone! The forms now address the Wood Destroying Pest Inspection (Section I & II) as follows: The Buyer can specify within this paragraph who pays for the Report. Paragraph 7, A (2) or (3) may be used to add in who shall provide and pay for the “Wood Destroying Pest Inspection (Section I & II).”

Note: This paragraph does *not* address who will actually pay for the corrective Section I and/or II work. Payment of the required repairs may be addressed within the Repair Request (form RR). The RR has also changed, including language regarding Section I & II termite.

### Page 3

**7, B (1) – Government Requirements and Retrofit / Carbon Monoxide Detectors:** CO2 detectors have been added within this paragraph to address the law that has required CO2 detectors for some time.

**7, B (2) ii - Government Requirements and Retrofit / Payment for Inspection & Report:** This addresses who will pay for the inspection and report. It does *not* address who will pay for the work.

**C.A.R.'S NEW RESIDENTIAL PURCHASE AGREEMENT**

*Page 5 of 11*

**7, B (2) iii - Government Requirements and Retrofit / Payment for Mandatory Retrofit:** This deals with governmental inspections that are required within certain cities, counties and/or municipalities.

**7, C (1) (c) – Escrow & Title /Return of Escrow Instructions:** The default time for the Parties to return escrow instructions is 5 days.

**7D (5) – Other Costs / Provision of HOA Documents:** Requires the Seller to pay for required HOA documents per Civil Code (Pursuant to Civil Code Section 4525). There has been a tremendous uproar with some HOA's who aggressively price their documents. HOA's are not permitted to bundle and to charge for additional documents beyond those required by the Code.

**7D (9) - Other Costs / Home Warranty:** A drop-down menu for CAR's preferred providers is included. This does not mean you are required to use any company included in the menu; freedom of choice remains in our world. Additionally, there is a box addressing a Buyer's waiver of home warranty, this is included as a box to be checked.

**8B(2) - Items Included and Excluded From Purchase Price / Items Included in Sale:** The language regarding fixtures has been revised to include water features/fountains. There is also a checkbox for "all" regarding items such as stoves, refrigerators, washers/dryers and there is a blank for "except" such as washer in outdoor storage container).

**8B(3) - Items Included and Excluded From Purchase Price / Items Included in Sale:** "Integrated phone and home automation systems (excluding non-dedicated items such as mobile phones and computers) and a box for "are not" included. Buyer's ability or willingness to assume these is a contingency in accord with paragraph 14B.

**8B(4) - Items Included and Excluded From Purchase Price / Items Included in Sale:** Leased or Liened Systems (such as solar, water softeners, etc.) shall be disclosed to the Buyer. Seller is required to provide Buyer with all written material, such as a copies of leases, (such as leases) given to Buyer. The Buyer's ability or willingness to assume these is a contingency in accord with paragraph 14B and the items are transferred without warranty.

**8(C) - Items Included and Excluded From Purchase Price / Items Excluded From Sale:** Items such as flat screen TVs are excluded. All brackets (earthquake bracing, flat screen mounts, etc.) attached to the wall are included in the sale. However, the Seller can remove and take the brackets if they patch the holes and the Seller is not required to plain the patchwork.

**C.A.R.'S NEW RESIDENTIAL PURCHASE AGREEMENT**

*Page 6 of 11*

**Page 4**

**9B – Closing and Possession / Seller-Occupied or Vacant Property:** The default time for the provision of possession on the day of closing has been changed from 5 pm to 6 pm. Yes, the default provides one more hour.

**9C - Closing and Possession / Seller Remaining in Possession After Close of Escrow:** There are forms for this. For less than 30 days, there is the Seller in Possession (form SIP). For more than 30 days, there is the Residential Lease After Sale (form RLAS).

**9D - Closing and Possession / Tenant Occupied Property:** There is the check box if the Tenant is to remain after close and this triggers the Tenant in Possession (form TIP). Otherwise, the default is that the Tenant shall vacate 5 days prior to the Close of Escrow.

**10 - Statutory and Other Disclosures:**

**10A(1) – Statutory and Other Disclosures / Seller Required Documents:** Lead paint disclosure to be completed according to the time frame specified in paragraph 14A.

**10A(2) – Statutory and Other Disclosures / Seller Required Documents:** “Fully completed” means both the Seller and Listing Agent have fully completed and executed the related documents.

**10A(4) – Statutory and Other Disclosures / Seller Required Documents :** As noted, the Sellers Property Questionnaire (form SPQ) is contractually required or the Supplemental Contractual and Statutory Disclosure (form SSD) is required if the box is checked.

**10B - Statutory and Other Disclosures /Natural and Environmental Hazard Disclosures and Other Booklets:** The Home Energy Rating booklets are included along with the existing items such as environmental hazards.

**C.A.R.'S NEW RESIDENTIAL PURCHASE AGREEMENT**

Page 7 of 11

**Page 5**

**10F - Statutory and Other Disclosures /Condominium/Planned Unit Development Disclosures:** Language has been added to confirm that the party paying for the HOA documents is required to place sufficient proceeds into Escrow to cover the cost. Note: This prevents Escrow from using the Buyer's deposit monies to pay for the documents

**11 - Condition of Property:** There are no substantive changes within this paragraph. Rather, the RPA reminds the Property is sold in "as-is" condition subject to full disclosure and the Buyer's various inspection rights. As-Is merely means the Seller is not obligated to provide for the payment of repairs unless otherwise statutorily or contractually agreed upon.

**12A - Buyer's Investigation of Property and Matters Affecting Property:** This paragraph confirms that the Buyer's acceptance of condition of property is a contingency of the transaction. Language previously found within the WPA is used to describe the termite as one of the conditions that the Buyer may inspect for.

**13A – Title and Vesting:** Language is added confirming that the company providing the Preliminary Title Report will conduct a search of the General Index prior to issuing the Report. Note: Banks and other institutional lenders are exempt. Note: As a practical matter, the Seller will need to provide a Statement of Identity to Escrow early so they can search the General Index and provide the Preliminary Title Report.

**Page 6**

**13E – Title Policy:** This specifies that title policy will be a Homeowner's policy and if not available, the Buyer shall be informed.

**14B – Time Periods, Removal of Contingencies; Cancellation Rights - More on Termite in the Post WPA World:** This paragraph includes language stating how the Buyer's requests for the repairs are to be performed.

The Request for Repairs & Termite in the New Era (form RR): On the Request for Repair (form RR), requests will be treated as follows:

RR Form – Paragraph 1(a): Provides space for a list of requested repairs;

**C.A.R.'S NEW RESIDENTIAL PURCHASE AGREEMENT**

*Page 8 of 11*

RR Form - Paragraph 1(b): Refers to the Pest Control Report and breaks out Section I and Section II;

RR Form - Paragraph 1(c): Refers to credits; and/or

RR Form - Paragraph 1(d): Refers to a price reduction.

Note: The signature line for the Seller in the Request for Repairs (form RR) has been eliminated. Instead, the Seller will respond to the RR form with a Seller Response and Buyer Reply to Requested Repairs (form RRRR).

Seller Response and Buyer Reply to Request for Repair (form RRRR): The Seller shall complete the Seller Response and Buyer Reply to Requested Repairs (form RRRR). The Buyer has the option to agree to the RRRR, reject it withdrawing from the sale due to non-agreement, wherein they would invoke their inspection contingency if applicable, or perhaps, the Buyer would issue a second Request for Repairs (numbering it Request for Repairs No. 2).

**14C – Time Periods, Removal of Contingencies, Cancellation Rights - Seller Right to Cancel**: This portion lists the Buyer's various obligations and the Seller's right to issue a Notice to Buyer to Perform (form NBP) requesting the removal of the applicable contingency. Consistent with the previous language, the Seller maintains the right to cancel the Agreement and to authorize the return of the Buyer's deposit.

**14C2 vii - Time Periods, Removal of Contingencies; Cancellation Rights – Seller Right to Cancel**: This particular sub-paragraph addresses the Seller's right to cancel when a Buyer is purchasing through a trust or business and the Buyer fails to timely provide the proof of authority as a representative to sign (such as required under paragraph 19).

**14D - Time Periods, Removal of Contingencies; Cancellation Rights – Notice to Buyer or Seller to Perform**: The default language confirms that the noticing party shall provide the recipient with two Days to respond. The form shall not be transmitted to the other side any sooner than two days prior to the deadline for the particular under paragraph 30F. This paragraph refers to the Notice to Buyer to Perform (form NBP) or Notice to Seller to Perform (form NSP).

**14G - Time Periods, Removal of Contingencies; Cancellation Rights**: If either party fails to sign the CC, the other party can make a demand for the deposit using the Buyer Demand for Release of Deposit (form BDRD) or Seller Demand for Release of Deposit (SDRD). Ten days after such demand, escrow can comply and parties are precluded from objecting. However, Escrow can still insist on mutual cancellation instructions at their discretion.



**C.A.R.'S NEW RESIDENTIAL PURCHASE AGREEMENT**

Page 9 of 11

**Page 7**

**16i – Repairs:** This paragraph now states that the seller is to provide invoices and *paid receipts* for work performed by others.

18B which relates to the scope of agent's duties has been moved here from page 2 of Buyer's Inspection Advisory (BIA) which is now only one page.

**19 - Representative Capacity:** This is a new paragraph. If either Buyer or Seller is signing for another entity, indicate that in paragraph 31 for Buyers or paragraph 32 for Sellers AND attach a Representative Capacity Signature Addendum (form RCSA). This paragraph also requires the provision of the evidence of authority to Escrow within 3 Days after acceptance.

**20A – Joint Escrow Instructions to Escrow Holder:** The last portion of this paragraph refers to the obligation for the appropriate party to pay to Escrow or the HOA for the fees noted under paragraphs 7 and 10 (e.g., HOA documentation, Termite Report...)

**20B – Joint Escrow Instructions to Escrow Holder** of Joint Escrow Instructions “If Seller delivers an affidavit to the escrow holder to satisfy the Seller’s FIRPTA obligation, the escrow holder shall deliver to the Buyer a Qualified Substitute statement that complies with federal law.

**Page 8**

**21A – Remedies for Buyer’s Breach of Contract:** The release of proceeds or forfeiture of deposit such as a non-refundable deposit is invalid unless it independently meets the liquidated damages requirements set forth under the Civil Code. The Parties cannot contract under the legal restrictions imposed through a valid liquidated damages clause.

**21B – Remedies for Buyer’s Breach of Contract / Liquidated Damages:** Always remember that if the Parties want any additional deposit(s) to fall within the Liquidated Damages, the Parties must execute a Request for Increased Deposit/Liquidated Damages form (form RID).

**22B – Dispute Resolution / Mediation:** Language has been added including reference to the CAR Real Estate Mediation Center for consumers ([www.consumermediation.org](http://www.consumermediation.org)). As always, this provision is automatically included within the RPA. While many people think they “initialed Mediation & Arbitration”, that is incorrect. Mediation is already included regardless of whether the Buyer and Seller opt for Arbitration which does in fact require initialing by *all parties*. Note: A Buyer’s or Seller’s failure to timely request mediation or to respond to request has consequences. See paragraph 25 regarding the forfeiture of the right to recover attorney’s fees.

**C.A.R.'S NEW RESIDENTIAL PURCHASE AGREEMENT**

*Page 10 of 11*

**22C - Additional Mediation and Arbitration Terms:** This paragraph provides exceptions to the Mediation (and Arbitration if applicable) such as Small Claims Court matters.

**Page 9**

**26 - Assignment:** Previously, offers would be written “or Assignee.” This paragraph addresses how assignments shall be treated. The recipient of the assignment has to be a specific person to whom the seller agrees. A separate form, Assignment of Agreement Addendum (form AOAA) addresses this and includes query into if the assignee has been paid by the Buyer and it also states the assignee acknowledges and signs prior documents.

**31 - Expiration of Offer:** Note: If you write in the name of a specific agent, that specific agent must receive the executed Offer. Conversely, if you use the Brokerage’s name, anyone within the Brokerage may receive it. There is also an additional checkbox for the person acting in a representative capacity for the Buyer.

**Page 10**

**32 – Acceptance of Offer:** Note: Always remember to check “subject to attached counter” if you are countering the RPA. There is also an additional checkbox for the person acting in a representative capacity for the Seller.

Welcome to a few more Counter-Offer forms as well:

Seller Counter Offer (form SCO)

Seller Multiple Counter Offer (form SMCO)

Buyer Counter Offer (form BCO)

## C.A.R.'S NEW RESIDENTIAL PURCHASE AGREEMENT

*Page 11 of 11*

Note: How do I number the Counter-Offers? The seller's first counter would be SCO No. 1 and if the Buyer wants to counter the seller's counter, the Buyer would do so with BCO No. 1.

**32 – Acceptance of Offer / Broker's Signature Section:** If Listing Agent and Selling Agent are not both members of the same or a reciprocal MLS, the Brokers/Agents need to use a Cooperating Broker Compensation form (form CBC).

### **Disclaimer & Advisory**

The opinions and commentary provided herein in no manner address each particular situation that a Real Estate Licensee, Buyer and/or Seller may face while engaged in a real estate transaction. The foregoing is provided as a general overview and does not address numerous potential, likely factual scenarios that may arise within a real estate transaction. Therefore, the contents are in no means intended to provide specific, particular legal advice pertaining to a transaction. In the event a Real Estate Licensee, Buyer and/or Seller are engaged in an actual transaction and have questions relating to the Purchase Agreement and/or transaction related issues, they are urged to consult with legal counsel specifically sharing the various particular and unique aspects of their situation. For example, a Real Estate Licensee should confer with their own counsel. Furthermore, a Real Estate Licensee shall advise the Buyer and/or Seller to review any legal questions with a duly qualified attorney of the Buyer/and/or Seller's selection for the following reason: A Real Estate Licensee cannot provide legal advice as doing so exceeds their background, training, education, experience, licensure and/or scope of agency. The reader of this understands that no attorney-client relationship has been formed through anything shared herein.