California 45-Hour Real Estate Practices

November 2023 – Updates Errata

Chapter 2: Ethics, Fair Housing and Trust Accounts

Page 7, Law Reading Assignments

Business and Professional Code

Go to:

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=BPC&sectionNum=125.6

Title 10. Investment Chapter 6. Real Estate Commissioner

(https://dre.ca.gov/files/pdf/relaw/2023/regs.pdf)

Article 10. Discrimination and Panic Selling

Article 15. Trust Fund Accounts

California Real Estate Law - Real Estate Law, Subdivided Lands Law and Vacation Ownership and Time Share Act of 2004 as amended and in effect Ja. 1, 2023

(https://dre.ca.gov/files/pdf/relaw/2023/relaw.pdf)

Section 10145, pg. 31

Section 10148, pg. 34

Section 10176, pg. 60

For information on California Laws and regulations, you can go to:

http://www.dre.ca.gov/Publications/RealEstateLaw.html

Page 7 - NAR Code of Ethics

To read the Code of Ethics in its entirety go to:

https://www.nar.realtor/about-nar/governing-documents/code-of-ethics/2023-code-of-ethics-standards-of-practice

Page 11, Fair Housing Enforcement

For more information about penalties for violations of the Federal Fair Housing Acts visit the Department of Justice website at https://www.justice.gov/crt/fair-housing-act-1.

Chapter 3: Agency and Other Mandatory Disclosure

Page 17, Law Reading Assignments

CA Civil Code Section

Section 1102.1 - 1102.6:

https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CIV&division=2.&title=4.&part=4.&chapter=2.&article=1.5

Section 1103:

https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CIV&division=2.&title=4.&part=4.&chapter=2.&article=1.7

Section 1710.2: https://codes.findlaw.com/ca/civil-code/civ-sect-1710-2.html

Section 2079.1 - 2079.15:

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=2079.&lawCode=CIV

Section 2937: https://codes.findlaw.com/ca/civil-code/civ-sect-2937.html

Section 2956 -2963:

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=2956.&lawCode=CIV

Business and Professions Code (https://dre.ca.gov/files/pdf/relaw/2023/relaw.pdf)
Section 10176, pg. 60
Section 11018.1 - 11018.6, pg. 117
California Health and Safety Code
Section 35800:
https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=HSC&division=24.&title=&part=6.&chapter=1.&article=

Page 20 Agency Disclosure
Go to this web site address to read the statute covering the Disclosure Regarding Real Estate Agency Relationships
(https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=2079.16&lawCode=CIV)

Page 20 Real Estate Transfer Disclosure Statement
Go to this web site address to print a copy of this form. Real Estate Transfer Disclosure Statement*
https://s3.amazonaws.com/vc5-course-documents/courses/78956/TransferDisclosureStatement-Gen.pdf

Page 21, Residential Earthquake Hazards Report
To view or download the CSSC's "Homeowners Guide to Earthquake Safety":
(https://earthquake.ca.gov/wp-content/uploads/sites/8/2022/12/20-01_hog-1.pdf)

Page 21, Natural Hazard Disclosure Statement
Go to this web site address to print a copy of this form Natural Hazard Disclosure Statement
https://s3.amazonaws.com/vc5-course-documents/courses/78956/NaturalHazardDisclosure_Gen.pdf

Page 23, Right to Rescind
For More information on timeshare recissions, (https://dre.ca.gov/Developers/Timeshares.html)
For More information on Undivided interest recission,
(https://dre.ca.gov/files/pdf/relaw/2023/relaw.pdf)

Page 24; REAL ESTATE SETTLEMENT PROCEDURES ACT
The federal Real Estate Settlement Procedures Act, also known as RESPA, was passed by Congress in 1974 and implemented as Regulation X. Its goal is to protect consumers by requiring lenders to promptly disclose actual closing costs in a timely manner. Such disclosure can help consumers become better shoppers for settlement services. In addition, RESPA requires lenders to provide borrowers with a special information booklet to educate borrowers about the loan process.
The Consumer Financial Protection Bureau enforces RESPA provisions, which apply to any federally related mortgage loan secured by a first or subordinate lien on a residential real property designed for one to four families. RESPA does NOT apply to loans used to finance the purchase of 25 acres or more, loans for the purchase of vacant land, or transactions where the buyer takes over (or assumes) an existing first lien loan.

Page 24, FINANCING DISCLOSURES
Real Estate Settlement Procedures Act and TILA/RESPA Integrated Disclosure Rule (TRID)
The Real Estate Settlement Procedures Act (RESPA) requires that borrowers receive various disclosures regarding the proposed loan transaction. TRID requires the following:

For federally-related loans, lenders must give a copy of the booklet, "Your home loan toolkit" to every person at the time of application for a loan.
The lender or mortgage broker must furnish a **Loan Estimate** of closing costs within three days of the loan application and provide a copy of the booklet Your Home Loan Toolkit published by the Consumer Financial Protection Bureau (CFPB).
At least three business days before the settlement or the anticipated close of the loan escrow, the borrower must receive a copy of the **Closing Disclosure** form which details all the closing costs.
RESPA also requires that borrowers receive disclosures about business relationships that may exist among lenders/creditors and settlement service providers.

Page 26, Conclusion - Financing Disclosures

The Real Estate Settlement Procedures Act (RESPA):
The lender or mortgage broker must furnish a **Loan Estimate** of closing costs within three days of the loan application and provide a copy of the booklet Your Home Loan Toolkit published by the Consumer Financial Protection Bureau (CFPB).
At least three business days before the settlement or the anticipated close of the loan escrow, the borrower must receive a copy of the **Closing Disclosure** form which details all the closing costs.

Chapter 6: Listing Contracts

Page 37 - Law Reading Assignments

(https://dre.ca.gov/files/pdf/relaw/2023/relaw.pdf)
Section 10142 pg. 30
Section 10176(f) pg. 60

Page 38, Exclusive-Authorization-to-Acquire-Property

Go to this web site address to print a copy of the Buyer-Broker Agreement*.
https://s3.amazonaws.com/vc5-course-documents/courses/78956/BRBC_6-2023_silent.pdf

Page 38, Residential Listing Agreement

Go to the web site address below to view the **Residential Listing Agreement***. Print off a copy to look at as we go over the listing form by paragraphs.
https://s3.amazonaws.com/vc5-course-documents/courses/78956/RLA_6-2023.pdf

Pages 38-39, Headlines for Form Paragraph numbers have changed

~~Paragraph 2~~ Paragraph 4 - Items Included and Excluded
~~Paragraph 3~~ Paragraph 2 - Listing Price and Terms
~~Paragraph 4~~ Paragraph 3 - Compensation to Broker
~~Paragraph 5~~ Paragraph 24 - Ownership, Title and Authority
~~Paragraph 6~~ Paragraph 5 - Multiple Listing Service
~~Paragraph 7~~ Paragraph 9 - Seller Representations
~~Paragraph 8~~ Paragraph 10 - Broker's and Seller's Duties
~~Paragraph 9~~ Paragraph 11 – Deposit
~~Paragraph 10~~ Paragraph 12 - Agency Relationships
~~Paragraph 11~~ Paragraph 13 - Security and Insurance
~~Paragraph 12~~ Paragraph 15 - Keysafe/Lockbox
~~Paragraph 13~~ Paragraph 16 - Sign

~~Paragraph 14~~ Paragraph 17 - Equal Housing Opportunity
~~Paragraph 15~~ Paragraph 18 - Attorney Fees
~~Paragraph 16~~ Paragraph 19 - Additional Terms
~~Paragraph 17~~ Paragraph 20 - Management Approval
~~Paragraph 18~~ Paragraph 21 - Successors and Assigns
~~Paragraph 19~~ Paragraph 22 - Dispute Resolution
~~Paragraph 20~~ Paragraph 23 - Entire Contract

Note: new items in the form are:
Paragraph 6 - Benefits of Using the MLS
Paragraph 7 - Public Marketing of Property
Paragraph 8 - MLS Data on the Internet
Paragraph 14 - Photographs and Internet Advertising
These are all clauses that say that you'll lose some aspects of privacy by publicly listing with the MLS, but the benefits are that it will make the house considerably easier to sell. Paragraph 6 is deemed important enough that they ask the parties to sign their initials.

Chapter 8: Advertising

Page 49, Law Reading Assignments
Overview of California Real Estate Law - Refer to: http://www.dre.ca.gov/Publications/RealEstateLaw.html

Business and Professions Code located at: https://dre.ca.gov/files/pdf/relaw/2023/relaw.pdf
Section 10131, pg. 22
Section 10139 – 10140, pg. 28
Section 10235, pg. 79
Section 10236.1, pg. 80
Regulations of the Real Estate Commission located at: https://dre.ca.gov/files/pdf/relaw/2023/regs.pdf
Article 9, Section 2770-2770.1, pg. 199
California Financial Code
Section 17200 located at: https://california.public.law/codes/ca_fin_code_section_17200
Section 17403-17403.4 located at: https://california.public.law/codes/ca_fin_code_section_17403

Chapter 10: Writing the Offer and Closing the Sale

Page 63, Writing the Offer
Go to this web site address to print a copy of the California Residential Purchase Agreement* form.
https://s3.amazonaws.com/vc5-course-documents/courses/78956/RPA_12-2022_silent.pdf

See attached CH 10 pages for updated content on the Residential Purchase Agreement

Chapter 13: Financing: The Process

Page 82 – Loan Brokerage / Requirements
Mortgage Loan Disclosure Statement*
https://www.dre.ca.gov/files/pdf/forms/re883.pdf

Chapter 14, Escrow and Title Insurance

Page 90, Settlement Charges
HUD-1 image no longer valid

Chapter 15: Using Real Estate Assistants

Page 95, Law Reading Assignments
Business and Professions Code located at: https://dre.ca.gov/files/pdf/relaw/2023/relaw.pdf
Section 10137, pg. 28

Chapter 16: Real Estate Taxation

Page 99, Law Reading Assignments
California Revenue and Tax Code
Section 205.5 – go to:
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=RTC&sectionNum=205.5
Section 11911 – go to:
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=11911.&lawCode=RTC

Chapter 18: Business Sale, Property management and Leasing

Page 109, Law Reading Assignments
Business and Professions Code accessible at this web site address:
https://dre.ca.gov/files/pdf/relaw/2023/relaw.pdf
Section 10030 pg. 14
CA Civil Code
789-789.3
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=789&lawCode=CIV
1942
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV&sectionNum=1942
1950.5
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1950.5.&lawCode=CIV
1950.6
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1950.6.&lawCode=CIV
1954
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1954.&lawCode=CIV

Page 112, the Management Contract
Property Management Agreement *
https://s3.amazonaws.com/vc5-course-documents/courses/78956/PMA_6-2023.pdf

Book 113, Residential Leasing
Landlord tenant laws are constantly changing. The California Department of Consumer Affairs offers a handbook for tenants and landlords. Be familiar with the latest edition of this handbook which may be located at:
https://www.achhd.org/documents/California-Tenants-Guide.pdf or
https://www.courts.ca.gov/documents/California-Tenants-Guide.pdf

Chapter 19: Practice Course Review

Book Page 119 – Ethics / NAR Code of Ethics

To view the current NAR Code of Ethics go to: https://www.nar.realtor/about-nar/governing-documents/code-of-ethics/2023-code-of-ethics-standards-of-practice

Page 122 Agency Disclosure
Disclosure Regarding Real Estate Agency Relationships
(https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=2079.16&lawCode=CIV)

Page 124 Real Estate Transfer Disclosure Statement*
https://s3.amazonaws.com/vc5-course-documents/courses/78956/TransferDisclosureStatement-Gen.pdf

Page 128 Buyer-Broker Agreement*
https://s3.amazonaws.com/vc5-course-documents/courses/78956/BRBC_6-2023_silent.pdf

Page 128 Residential Listing Agreement*
https://s3.amazonaws.com/vc5-course-documents/courses/78956/RLA_6-2023.pdf

Page 128
~~Paragraph 2~~ Paragraph 4 - Items Included and Excluded
~~Paragraph 3~~ Paragraph 2 - Listing Price and Terms
~~Paragraph 4~~ Paragraph 3 - Compensation to Broker
~~Paragraph 4~~ Paragraph 3 - Compensation to Broker

Page 129
~~Paragraph 5~~ Paragraph 24 - Ownership, Title and Authority
~~Paragraph 6~~ Paragraph 5 - Multiple Listing Service
~~Paragraph 7~~ Paragraph 9 - Seller Representations
~~Paragraph 8~~ Paragraph 10 - Broker's and Seller's Duties
~~Paragraph 9~~ Paragraph 11 – Deposit
~~Paragraph 10~~ Paragraph 12 - Agency Relationships
~~Paragraph 11~~ Paragraph 13 - Security and Insurance
~~Paragraph 12~~ Paragraph 15 - Keysafe/Lockbox
~~Paragraph 13~~ Paragraph 16 - Sign
~~Paragraph 14~~ Paragraph 17 - Equal Housing Opportunity
~~Paragraph 15~~ Paragraph 18 - Attorney Fees
~~Paragraph 16~~ Paragraph 19 - Additional Terms
~~Paragraph 17~~ Paragraph 20 - Management Approval
~~Paragraph 18~~ Paragraph 21 - Successors and Assigns
~~Paragraph 19~~ Paragraph 22 - Dispute Resolution
~~Paragraph 20~~ Paragraph 23 - Entire Contract

Page 137 California Residential Purchase Agreement
https://s3.amazonaws.com/vc5-course-documents/courses/78956/RPA_12-2022_silent.pdf

Page 143 Mortgage Loan Disclosure Statement
https://www.dre.ca.gov/files/pdf/forms/re883.pdf

CHAPTER 10

WRITING THE OFFER AND CLOSING THE SALE

CHAPTER OVERVIEW

In this chapter we'll be covering closing a sale and writing a purchase offer. At the end of this chapter, you will be able to:

- Discuss selling strategies.
- Describe how to get an offer.
- List some common closing techniques.
- Fill out a residential purchase contract.

Let's get started!

SELLING STRATEGIES

There is a wealth of information about sales techniques in the marketplace - books, audiotapes and CDs, seminars and courses. Most resources describe in great detail a set of selling steps. Each author puts a little different spin on the basics to try to make it his or her own.

Regardless of what method you use, there are some important aspects of selling that are embedded in every approach. Selling always involves and depends on:

- Knowing your product.
- Communicating information effectively.
- Establishing rapport with the buyer.
- Identifying and handling objections.
- Asking for the sale.

KNOWING YOUR PRODUCT

It can't be stressed enough just how important it is to know everything you can about the available inventory. This inventory includes not only your listings and your firm's listings, but also comparable properties in the Multiple Listing Service.

Not only must you know the features of the properties that may be of interest to a particular buyer, but you also need to know information about:

- The neighborhood
- Recreational opportunities
- Schools
- Community activities

COMMUNICATING INFORMATION EFFECTIVELY

In most situations we communicate best with those persons who share our interests and with whom we have similar backgrounds and goals. That's why we get along so well with our friends!

But agents deal with a wide variety of prospects, and making an instant connection with a prospect happens only occasionally. When dealing with prospects, it's important to:

- Make sure **you** understand clearly what message you want to get across.
- Get your facts straight and provide clear information to the prospects.
- Avoid using confusing jargon and terms.
- Use visual aids - graphs, charts, photos - to help communicate the message.

ESTABLISHING RAPPORT

Get to know your prospects. Buying a home is a very emotional process; so it's critical for you to understand the buyers' motivations.

The best way to learn about your buyers is to ask **open-ended** questions, rather than **closed-ended** (yes or no) questions. An open-ended question gets buyers talking about their needs, wants and desires and gives you the opportunity to collect critical information.

For example, ask, "What features are you looking for in your next kitchen?" rather than "Do you want an eat-in kitchen?"

Listen carefully to everything your prospects say and repeat some specifics back at appropriate times so that they know you have ***heard*** what they said.

There are several things that can be helpful in establishing rapport with your buyers. Here are some tips to follow.

- Be open.
- Address the buyers by name.
- Look buyers in the eye when speaking to them.
- Don't be judgmental.
- Stay upbeat and use humor occasionally.

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- Be patient and allow the buyers time to think and respond to questions.
- Always be respectful.
- Be sensitive to the buyers' mood.
- Know when to be quiet and listen.
- Don't project your likes and dislikes onto the buyers.
- Relax and be yourself.

Why Buyers Buy

Everything you do with your prospects is in preparation for getting them to make an offer. So it's important to understand why people buy property. There are a number of reasons.

- A home provides shelter and satisfies the need for survival.
- A home provides security and offers the owner a place to invite and entertain family and friends.
- Owners want to provide desirable opportunities for their families in the form of good schools, recreation and convenient shopping.
- Buyers want their homes to be in safe areas that are environmentally "healthy."
- Many buyers see a home as an investment that will appreciate over time and give them some future financial rewards.
- Home ownership provides certain tax advantages that appeal to buyers.

All of the points listed previously are valid reasons why prospects buy. But probably the most important thing to keep in mind is that **a home purchase is based just as much (if not more) on emotion as it is on facts**.

Your buyers will look at all of the factual information about a property - number of rooms, size of lot, special amenities, etc. - and even though a property may appear to meet all of their stated needs, the decision to buy will most likely be based on their emotional needs. Facts will make buyers think that a property is a good fit for them, but emotion is what will motivate them to buy.

Emotional reasons buyers purchase property include such things as safety, security, pride, comfort, status and trust in the agent representing them.

If you watch carefully and ask probing questions when showing homes to your buyers, you can observe what emotional needs the buyers have and be able to choose properties that will fit those emotional needs.

Picking Up on Buying Signals

As you get more familiar with your buyers and their emotional needs, you'll start to pick up on signals the buyers send that indicate they may be ready to buy. These signals, along with some examples, include:

- ***Actions -*** Buyers request a second showing on a home or want to take pictures or measurements before they leave.
- ***Words -*** A buyer asks about a closing date or wants details on closing costs. Or the buyers start talking about how their furniture will fit into the rooms.
- ***Body language -*** Buyers signal each other with a smile or become wide-eyed when seeing a special feature. Or they move closer to you so they can get a better view.

When you notice a signal, take advantage of it and ask for the sale. We'll talk about asking for the sale a bit later in this chapter.

HANDLING OBJECTIONS

When working with your buyers, be ready to handle any objections they may raise about properties.

- View objections as the buyers' attempt to gain more information about the property or a specific feature. Objections can help you determine what the buyers are thinking.
- Don't discount or dismiss the objection. Give it the consideration it needs before formulating an answer.
- Delve deeper into the objection by asking more questions. For example, if a buyer says the price of a property is too high, ask why and then ask what the buyer thinks would be a fair price. If you determine it's reasonable, you could suggest that the buyer make an offer at that price.
- Use the "yes-but" technique to turn a negative into a positive. For example, if a buyer objects to a property being too close to a major highway, you could say, "Yes, but just think how much more quickly you can get to work."

ASKING FOR THE SALE

Asking for the sale is another term for closing the sale. ***Closing the sale means getting the buyers to make an offer.*** If you have worked with your buyers consistently and effectively, closing the sale should take place smoothly and naturally. Don't ever try to pressure your prospects into signing an offer before they are ready or it will mean problems down the road.

Once you have identified a property that your buyers seem excited about and you have addressed any objections they may have had, you can attempt to close the sale. Focus your attention on talking about the things the buyers like or that they feel are important.

CLOSING TECHNIQUES

There are a number of closing techniques that you can use when the time is right. We'll talk about some common ones.

- Assumptive Close
- Alternative Close
- Bonus Close
- Ownership Close
- Standing-Room-Only Close

Assumptive close means acting as if the person has already made the decision to buy. This technique is a natural when a buyer shows one of those buying signals we talked about earlier. For example, if the buyer says, "Could we close by March 1?" your reply would be, "Would you like to close by March 1?"

The ***alternative close*** works by offering more than one alternative to the prospects and having them choose. For example, you could pose this question: "If the seller is willing to replace the patio door, would you prefer a sliding door or an atrium style?"

The ***bonus close*** offers an inducement for the sale. For example, "If you buy now, the seller is willing to leave all of the appliances, including the washer and dryer." **Note:** Use this close carefully and always be sure to have the seller's approval beforehand.

The ***ownership close*** is similar to the assumptive close, except that you act as if they already own it and you talk about how it will fit into their lives. For example: "So where will you set up all your power tools?" or "Which one of the children gets the basement bedroom with the private entrance?"

The ***standing-room-only*** close plays on the prospects' fears of losing a property that they may not have an opportunity to buy again. A good example of this is the situation of the last home in a development being for sale.

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Once this home is sold there may not be any more being built by that developer for that price. **Note:** Use this technique only if what you say is true. People tend to be distrusting of "scare" tactics, especially if they have been shown to be untrue in the past.

CLOSING THE SALE

Regardless of which closing technique you use, **you need to ask for the sale**. Many buyers will buy if the agent just asks them. As you gain more experience in getting offers, it will become easier for you to know the appropriate time to ask.

Not every closing technique will work with every buyer. If you try a particular closing and it doesn't work, take a step back and talk about the benefits of the property again. Try to schedule another showing of the property and then try another closing technique.

Sometimes all a buyer needs is a little more time to make the decision; so don't assume that if your first attempt at closing didn't work, you've failed. Regroup and try again!

CHECK YOUR UNDERSTANDING (10-1)

Answer the questions, and then check the answers.

1. What are the five aspects that are involved in any selling approach?
2. When establishing rapport, what's one of the best ways to get to know your buyers?
3. What signals do buyers use to indicate they may be willing to make a purchase?
4. What's a bonus closing and what's important to keep in mind about this technique?

Check your answers in the Check Your Understanding - Answers section in the back of this textbook.

WRITING THE OFFER

Once your prospects have agreed to make an offer, it's time to do the paperwork. If you gave the prospects a copy of a blank form at your initial meeting, the process of filling things out should go smoothly.

Many California agents use CAR's purchase contract form titled ***California Residential Purchase Agreement and Joint Escrow Instructions***. Because this form is so widely used, we'll take the time to go over each of its sections.

Go to this web site address to print a copy of the California Residential Purchase Agreement* form. https://s3.amazonaws.com/vc5-course-documents/courses/78956/RPA_12-2022_silent.pdf

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PURCHASE AGREEMENT

IDENTIFYING THE BUYER AND PROPERTY

California law requires licensees in a residential real estate transaction to provide the buyer and seller with information about agency and inform the parties, in writing, which party they represent.

Before signing the purchase agreement, the parties must confirm, in writing, that they have received all the appropriate agency disclosures. This written confirmation does not need to be on a separate form; it is typically contained in the purchase agreement.

In Paragraph 2A of the purchase agreement form, the parties acknowledge receipt of the agency disclosure form (C.A.R. Form AD, Disclosures Regarding Real Estate Agency Relationships). The buyer must receive this form before signing an offer; a seller must receive this form before being presented with an offer.

In Paragraph 2B, both the listing agent and selling agent fill in the names of their firms and indicate whom they represent (seller, buyer, or both).

Paragraph 2C is used if either the seller or the buyer is represented by more than one brokerage (such as when a property is being co-listed with another broker). In this situation, C.A.R. Form ABA, Additional Broker Acknowledgement should be completed and included.

In Paragraph 2D, the parties acknowledge receipt of a form stating that their brokers may represent other buyers or sellers with competing interests.

TERMS OF PURCHASE

Paragraph 3 of the C.A.R. purchase agreement form is a chart containing many of the agreement's contractual terms. It may appear at first glance to be lengthy (about two and a half pages) but this section condenses all of the form's most important subjects and narrows them down to boxes that may or may not need to be checked off. It essentially serves as an organized, easier-to-read summary of the various terms discussed in the referenced paragraphs.

The first part of Paragraph 3 addresses the buyer's financing. The blank in Paragraph 3A is used to state the offered purchase price of the property.

The good faith deposit is credited against the purchase price at closing, so the purchase price should include the amount of the deposit. If the buyer is assuming any mortgages or other liens, they should also be included in the purchase price.

If the buyer isn't using a loan to purchase the property, they can check the box in Paragraph 3A to indicate that it is an all-cash offer. Note that within three days of the seller's acceptance, the buyer must provide verification that they have the funds to close.

Closing Date

The blank in Paragraph 3B is for the closing date. This is the date that title transfers to the buyer, documents are recorded, and the sale proceeds are deposited into the seller's bank account. You have the choice of filling in either a specific calendar date or a certain number of days after acceptance of the offer.

Before you choose a closing date, you need to think about all the conditions that must be met before closing. Choose a closing date that gives the parties enough time to meet all their obligations and fulfill all the contract conditions, like inspections, repairs, and arranging for financing.

Expiration of Offer

A purchase agreement form typically includes space for the buyer to state when the purchase offer will expire. It's always best to include a definite termination date in an offer to purchase.

Paragraph 3C of this form lets you set a deadline for acceptance as either three days after the buyer's signatures on the offer, or a filled in date and time.

The referenced provision (Paragraph 32) states that acceptance doesn't occur until the buyer or the buyer's agent receives a signed copy of the offer. Any offer that isn't accepted in this manner expires when the deadline passes.

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GOOD FAITH DEPOSIT

Paragraph 3D(1) concerns the amount and handling of the **good faith deposit** (called the initial deposit). Fill in the amount of the deposit on the line indicated. (The form also asks you to fill in the percentage of the purchase price that the deposit represents.)

According to the referenced provision (Paragraph 5A(1)), the deposit must be given directly to the person who's handling escrow. The default form of deposit is wire transfer. Although the buyer may indicate that the deposit will be in an alternate form, the escrow holder may notify the buyer that wire transfer is required.

The buyer must give the escrow holder the deposit within three business days after acceptance, unless otherwise agreed.

Increased Deposit

In certain situations, your buyer may want to offer a lower good faith deposit initially, and then increase the deposit later.

In this situation, you would use the Increased Deposit provision in Paragraph 3D(2) of the purchase agreement form. Indicate the amount of the increased deposit, and when it is to be given to the escrow holder (most commonly, either upon removal of all contingencies, or on a specific date). The increased deposit must be delivered in the same manner as the initial deposit.

Note that if the buyer fails to make the increased deposit, the seller can cancel the agreement.

LOAN TERMS

Although an all-cash offer is possible, the buyer's offer is often contingent on the buyer obtaining financing. In Paragraph 3E(1) of the purchase agreement form, the buyer can state the loan amount and terms that they must obtain for the sale to take place.

First, fill in the loan amount (including what percentage of the purchase price it represents). The form's default provision is fixed-rate financing; if the loan will have an adjustable rate, indicate this by checking the appropriate box.

Regarding the loan type, the form also defaults to conventional financing; check the appropriate box if the buyer will seek an FHA or VA loan (or seller financing) instead.

If the buyer wants the transaction to be contingent on receiving a second loan as well, indicate this in Paragraph 3E(2). As with the first loan, check which type of loan it is, and specify the loan amount and maximum interest rate and points.

In Paragraph 3E(3), indicate whether the property will be a primary residence, secondary residence, or an investment.

In Paragraph 3F, you'll fill in the balance of the down payment amount that the closing agent must receive prior to closing. Don't include any loan fees or other closing costs in this balance amount.

On the next line, fill in the total purchase price. Make sure the amount of the good faith deposit and the amount you fill in for the balance of the purchase price add up to the total purchase price.

Paragraph 3G(1) is used if the seller is offering any credit to the buyer. Fill in the amount and indicate whether the credit is to be applied towards closing costs or another cost.

If the parties have any additional finance terms they wish to make part of the contract, use Paragraph 3G(2).

BROKER COMPENSATION

The listing agreement contains a provision in which the seller agrees to pay a commission. And if the buyer signs a representation agreement, that agreement contains a provision in which the buyer promises to pay compensation if a commission split isn't available. The purchase agreement (in Paragraph 18) instructs the escrow agent to pay the broker(s) at closing as specified in these representation agreements.

In some transactions, the seller agrees to pay whatever compensation the buyer owed to the buyer's agent. In this situation, check Paragraph 3G(3), and use the Seller's Payment to Buyer's Broker form to indicate the amount of compensation the buyer is asking the seller to pay the buyer's broker.

Verification of Funds

If the buyer is making an all cash offer, Paragraph 3H(1) obligates them to provide written verification that they have the funds needed.

Otherwise, Paragraph 3H(2) requires the buyer to provide written verification of the funds for the down payment and closing costs. Paragraph 3H(3) requires the buyer to provide a letter from a lender or loan broker stating that the buyer is preapproved or prequalified for the loan described in Paragraph 3E(1).

The buyer must provide verification within three days after acceptance (or a different number of days that the parties choose).

Final Verification of Condition

Paragraph 3J (which references Paragraph 16) of the purchase agreement gives the buyer the right to inspect the property one last time during the five days (unless otherwise specified) prior to closing.

This inspection is not a contingency, so it doesn't confer a right of cancellation; however, if the buyer determines that the condition or repairs are not as agreed, the buyer may delay closing.

Assignment

According to Paragraph 3K (which references Paragraph 23), any assignment request must be given to the seller within 17 (or a different chosen number of) days after acceptance. The assignee must give the seller a prequalification or preapproval letter to verify their creditworthiness.

LOAN CONTINGENCY

Paragraph 3L(1), together with referenced Paragraph 8A, is used to make the buyer's ability to obtain financing a contingency. Using a loan contingency allows the buyer to cancel the contract if they are unable to obtain the financing they applied for. (However, this doesn't necessarily apply to financing that failed due to a low appraisal.)

The form's wording makes clear that "financing" doesn't include the cash needed for the down payment and closing costs. So if the buyer is unable to gather the cash for the down payment and closing, they couldn't use that fact as justification for canceling the contract.

Paragraph 3L(1) also determines the financing contingency period: typically, the buyer has 17 days after acceptance either to remove the loan contingency and proceed with the sale, or to cancel the agreement. Once the loan contingency is removed, the buyer is obligated to purchase the property even if they are eventually unable to obtain a loan.

If the buyer wants, they can substitute a longer or shorter loan contingency period. They can even specify that the contingency will remain in effect until the loan is actually funded. In this situation, if at any point the financing falls through, the buyer is entitled to a return of their good faith deposit.

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Appraisal Contingency

Paragraph 3L(2), together with referenced Paragraph 8B, makes the agreement contingent on the completion of an appraisal showing that the property is worth at least the offered purchase price (or a stated amount). This protects the buyer from having to go through with the purchase after finding out that the house is worth less than they thought.

At the end of the appraisal contingency period, which is usually 17 days after acceptance, the buyer must either remove the contingency or cancel the agreement. If the buyer is confident of the property's value, and can finance the purchase without a lender-required appraisal, they can check the box in Paragraph 3L(2) and waive the appraisal contingency altogether.

Investigation of Property Contingency

It's always best for a buyer to inspect a property thoroughly before purchasing it. And, not surprisingly, most buyers want to be able to back out of a transaction if an inspection reveals serious flaws.

So Paragraph 3L(3), together with Paragraphs 8C and 12 of the purchase agreement form, gives the buyer the right to investigate the property, and makes the buyer's offer contingent on their approval of the property's condition. Unless otherwise specified, the buyer has 17 days from acceptance to complete their inspections and then either remove the contingency or cancel the agreement.

ADDITIONAL CONTINGENCIES

Paragraphs 3L(4) through 3L(7) (which reference Paragraphs 8D-G, 9B(6), 11L, 13A, and 14A) make the agreement contingent on the buyer's review and approval of applicable seller documents. This includes reports, documents, and disclosures regarding (among other things) tenant-occupied property, leased/liened items and systems, payment for recommended repairs and required inspections, reinspection fees, smoke and carbon monoxide alarms, water heater bracing, home warranty plans; required statutory disclosures, and any legally authorized signer authority. It also includes preliminary title and common interest disclosures.

The form gives the buyer 17 days after acceptance or five days after delivery (whichever is later) to return signed copies of these documents and disclosures to the seller, indicating that they have read and reviewed them. These are only the default time limits; they may be changed.

Any of these contingencies may be waived by checking the appropriate box in Paragraph 3L (or by using the Buyer Contingency Removal forms (C.A.R. Form CR-B).

Sale of Buyer's Property Contingency

Often, the buyer needs to sell their current home in order to have the money to purchase a new home. The buyer will not want to be obligated to go through with the transaction if they are unable to sell their current home.

In this situation, the buyer can make the purchase agreement contingent on the sale of their current home. To do this, check the box in Paragraph 3L(8) and fill out and attach the proper contingency addendum form, the Contingency for Sale of Buyer's Property form (C.A.R. Form COP).

A similar form exists that can be used to make the sale contingent on the seller's purchase of a replacement home.

POSSESSION

The next section of the purchase agreement, Paragraph 3M, deals with transfer of possession of the property from the seller to the buyer when the sale closes.

If possession will simply transfer when the change in title is recorded, Paragraph 3M(1) applies, and the rest of Paragraph 3M may be left blank. More commonly, however, the parties will choose a time and date on which possession will transfer.

If the property is currently vacant or occupied by the seller, use Paragraph 3M(2), which references Paragraph 7C, to indicate the date possession will transfer. If that transfer date is after closing, use either Form SIP, Seller License to Remain in Possession Addendum (for periods shorter than 30 days), or Form RLAS, Residential Lease After Sale Addendum (for longer periods). These forms are essentially rental agreements used to establish the dates of occupancy, the rental rate, the amount of any security deposit, and other terms for the seller's occupancy.

If, on the other hand, the property is currently occupied by anyone other than the seller, regardless of whether the occupant is paying rent, the seller must check the box in Paragraph 3M(3) (referencing Paragraph 7A) and provide C.A.R.® Form TOPA, Tenant Occupied Property Addendum.

This seller uses this form to indicate whether the current occupants will remain (and if so, establishes the lease terms). Alternatively, the seller may agree to deliver the property vacant; if the seller is unable to remove the occupants by closing, the buyer is entitled to cancel the contract.

Documents/Fees/Compliance Deadlines

The next section of Paragraph 3's summary grid contains various deadlines related to matters discussed in greater depth elsewhere in the purchase agreement, including the delivery of inspection reports and disclosures, signing and returning escrow instructions, and installing smoke detectors and water heater bracing.

Paragraphs 3N(1) through 3N(5) set default deadlines, but the parties can negotiate changes if they wish.

Items Included and Excluded

Paragraph 3P (referencing Paragraph 9) of the purchase agreement form is used to indicate what items are either included or not included in the sale. The purchase agreement form states that all fixtures and items attached to the property are included.

Paragraphs 3P(1) and 9B list included items, which are included in the sale unless otherwise noted in the agreement. If there are any items listed in Paragraph 9B that the seller wants to exclude from the sale, you may cross those out and have the parties initial the change.

If the buyer and seller want to include any other items in the sale that would not normally be included, there is a space on Paragraph 3P(1) where they can write those in. The seller warrants that the items included in the sale actually belong to the seller.

Even when a specific item is not listed in Paragraphs 3P(1) and 9B, the seller may want to make it absolutely clear that it will be excluded from the sale. In that case, you can write the exclusion in Paragraph 3P(2).

CLOSING COSTS

A real estate transaction involves a number of closing costs, such as escrow, inspection, and title insurance fees.

Paragraph 3Q (referencing Paragraphs 10, 11, 13, and 19) of the purchase agreement allows the buyer and seller to identify which party will pay for each of these costs.

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Inspections and Reports

The law requires the listing agent to disclose if the property lies in a natural hazard zone, such as a high-fire or flood area. In Paragraph 3Q(1), indicate which party will pay for a natural hazard zone disclosure report, if one is ordered.

Paragraphs 3Q(2) and (3) can be used to designate other inspection reports the buyer wants—for example, a structural pest control inspection (which the buyer's lender often requires).

Government Requirements and Retrofit

The law requires that residential properties have smoke and carbon monoxide detectors, low-flow toilets, and properly braced water heaters. Before closing, the seller must provide the buyer with a written statement of compliance with these requirements.

In Paragraph 3Q(4), the parties can designate who will pay for any needed smoke or carbon monoxide detector installation, or water heater bracing.

Escrow Fee and Closing Agent

In Paragraph 3Q(7), fill in who will pay the escrow fee and the name of the escrow holder, commonly called the closing agent (or escrow holder). The closing agent performs various tasks in connection with closing a transaction, such as arranging for liens to be paid off or ordering title insurance. Closing agents also hold funds and documents in escrow and distribute them when all the conditions of the sale have been met.

Title Insurance

In Paragraphs 3Q(8) and (9), indicate who will pay for the owner's title insurance policy, the policy that protects the buyer.

Next, fill in the name of the title insurance company. As with the closing agent, always name a title insurance company. If the parties later decide they want a different title company, they can make that change.

Other Costs and Other Terms

Use the rest of Paragraph 3Q to indicate who will pay various other costs associated with the sale. This includes county and city transfer taxes, fees imposed by the homeowners association, and any private transfer fees. Space is provided to write in other costs that aren't already listed and allocate them between the parties.

Finally, while the C.A.R. purchase agreement form is obviously quite comprehensive, it does leave space at the end of Paragraph 3 for the parties to write in any additional terms that aren't covered elsewhere. Paragraph 3R is the final section of the grid in Paragraph 3.

CONDITION OF PROPERTY

Addenda

Now let's look at the remaining 13 pages of the C.A.R. purchase agreement form. Note that many of the provisions in these pages were already covered in our discussion of Paragraph 3; we'll limit our discussion to the clauses you need to be most familiar with.

The parties may indicate that various addenda are part of the agreement by checking the appropriate boxes in Paragraph 4.

Paragraph 4(C) can be used to indicate that the parties are receiving certain pre-printed advisories.

Condition of Property

Paragraph 7B concerns conditions affecting the property, such as physical defects. Like the section on statutory disclosures, this section contains general provisions that apply to any transaction. You should review this information with the buyer, but you won't need to fill anything in.

The form specifies that the property will be sold in the same condition it was in when the offer was accepted, unless otherwise agreed. The seller is responsible for maintaining the property in this condition. The seller must also remove all debris and personal property before closing, except for items that are included in the sale.

Paragraph 7D states that any third-party warranties for items included in the sale are automatically assigned to the buyer at closing, if the manufacturer allows assignment of the warranty, and if the warranty documentation is available.

Paragraph 7E states that the keys, codes, and/or remote openers to all locks, mailboxes, garage doors, and security systems are to be delivered to the buyer at closing.

DISCLOSURES

The seller in a residential transaction must make a number of disclosures to buyers. Some disclosures are statutory, meaning required by law; others are required by the purchase agreement form.

Paragraph 11 of the purchase agreement discusses how these disclosures are handled. You should go over the whole section with your buyer and make sure they understand its provisions.

First, the seller agrees that unless a statutory exemption applies, they will give the buyer a Real Estate Transfer Disclosure Statement, a Natural Hazard Disclosure Report, a Lead-based Paint Disclosure, and, if relevant, both a Home Fire Hardening Disclosure and Advisory, and a Defensible Space Disclosure and Addendum.

The seller will also disclose if they are aware that the property: 1) is subject to special taxes or assessments, or is in a Mello-Roos district; 2) was the site of a release of illegal controlled substances; or 3) is affected by industrial use or near a former military ordnance location.

Note that the buyer cannot waive the right to receive any of these statutory disclosures.

What happens if after making the required disclosures, the seller becomes aware of additional information that needs to be disclosed? The seller must make an amended or additional written disclosure (unless the new information is contained in a report that was ordered and paid for by the buyer).

Cancellation Window

If any of the statutory disclosures are given to the buyer after they sign the offer, the buyer has a window of time in which they may cancel the purchase agreement in writing (see Paragraph 3N(1)).

If the disclosures were delivered in person, the buyer has three days to cancel. If they were delivered by mail, they have five days to cancel. There is no cancellation window, however, if the buyer receives the disclosures before signing the offer.

Condominium/PUD and Other Disclosures

Other disclosures discussed in Paragraph 11 include the address of a state website containing the location of registered sex offenders, an affidavit regarding nonforeign status (to avoid FIRPTA withholdings), an earthquake guide, and a notice about gas pipelines.

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The seller must also disclose whether the property is in a condominium, planned unit development (PUD), or other common interest subdivision where they will pay dues to a homeowners association. If so, the seller must provide specific information about it so that potential buyers can make an informed decision.

Within three days of acceptance of the purchase agreement (unless another time period is selected), the seller must request certain disclosures from the HOA and deliver these to the buyer. This includes documents required by law (such as a condominium declaration), disclosure of any claims or litigation involving the HOA, minutes from recent HOA meetings, and HOA contact information.

The buyer's receipt and approval of these disclosures is a contingency of the agreement.

TITLE

A purchase agreement should include provisions that discuss the condition in which title to the property will be conveyed. According to Paragraph 13 of the C.A.R. form, the buyer will receive a recorded deed (typically a grant deed) and all oil, mineral, and water rights currently owned by the seller.

After the seller accepts the offer, the buyer will receive a **preliminary title report** from a title insurance company. The preliminary title report lists liens and other encumbrances on the property, as well as any defects in the seller's chain of title discovered during the title search. The report is also an offer by the title company to issue a policy of title insurance.

The purchase agreement is contingent on the buyer's approval of this report and any other matters affecting the title. The buyer must then either approve it and remove the contingency, or cancel the agreement.

The buyer takes title to the property subject to any encumbrances, easements, covenants, and other restrictions that exist at the time their offer is accepted. However, any liens against the property must be removed prior to closing, unless the buyer agrees otherwise in writing.

The seller must disclose to the buyer information about any matters affecting title, regardless of whether they appear in a title report. For example, if the seller is a party to some type of legal action, such as a divorce, a bankruptcy, or a foreclosure action, the seller may have trouble conveying clear title at closing. This fact must be disclosed to the buyer.

Section 13G deals with the title insurance policy that will be issued for the buyer. It will be ALTA homeowner's coverage, unless otherwise agreed.

DEADLINES

Many of the provisions we've discussed refer to deadlines for the buyer or seller to complete some tasks, such as performing inspections or removing a contingency. In this purchase agreement, Paragraph 14 (along with Paragraph 3) establishes the time periods that determine these deadlines. The time periods are generally calculated based on the date the offer is accepted.

Unless otherwise agreed, the seller has seven days from acceptance to give the buyer the disclosures and documents mentioned elsewhere in the purchase agreement, such as the lead-based paint disclosure form or a pest inspection report.

In turn — as we discussed in a previous chapter in our discussion of contingencies — the buyer has 17 days from acceptance (or five days after delivery, whichever is later) to review those disclosures and documents, to conduct her inspections, and to remove contingencies or cancel the agreement.

What happens if the buyer or seller misses a deadline?

If the seller fails to provide any required disclosures or reports within the specified time period, the buyer can remove the applicable contingency or cancel the agreement.

If the buyer fails either to remove contingencies or cancel the agreement after the specified deadline has passed, the seller may cancel the agreement and return the buyer's good faith deposit. But the seller must first give the buyer a written Notice to Buyer to Perform. This notice gives the buyer an additional two days to act, after which the seller can cancel the agreement if the buyer doesn't respond.

Similarly, if the seller fails to remove contingencies or cancel the agreement by the specified deadline (or misses any other deadlines), the buyer may deliver a written Notice to Seller to Perform. If the seller doesn't respond within two days, the buyer can cancel the agreement.

Return of Deposit

If the buyer or the seller cancels the purchase agreement, the buyer is entitled to receive her deposit back, minus any costs and fees. A notice of cancellation, along with mutually signed instructions to release the deposit, should be sent to the closing agent. At that point, the closing agent will release the funds.

REPAIRS

Paragraph 15 of the purchase agreement form addresses the issue of repairs. As you'll recall from our discussion of the investigation of property contingency, the buyers may make their offer contingent on their approval of the property's condition.

Often, the buyers' inspection will reveal some problems with the property. For example, the house may need a new roof and new exterior paint. The buyers must decide whether they want those problems corrected before they purchase the property.

In some cases, the buyers may be willing to continue with the transaction and make repairs later, and might be able to negotiate a lower sales price as a result.

More commonly, though, the buyers will want repairs completed before the close of escrow. If the buyers do want repair work completed, the parties must negotiate who will perform and pay for the repairs.

The buyer uses the Request for Repair form (C.A.R. Form RR) to ask the seller to make the repairs. Itemize the buyer's requests on the Request for Repair form itself or attach a list. You'll also want to attach any inspection reports or other documents that revealed the problems; this helps the seller understand what issues need to be addressed.

In response to the buyer's request, the seller can agree to all of the repairs, only some of them, or none at all. The buyer either accepts the seller's response, initiates further negotiation, or withdraws from the transaction.

If the parties agree that the repairs will be completed at the seller's expense, the seller can either make the repairs personally or have them done by a third party. The seller must give the buyer a written statement of the repairs and the dates they were performed, and also obtain receipts for any repairs made by third parties.

Naturally, all repairs must be completed with proper permits and in compliance with applicable building codes. The repairs must be finished before the buyer's final verification of the property's condition.

Prorations

When a property is sold, there are certain costs and fees associated with the property that the buyer will assume, such as property taxes, special assessments, interest, rents, and HOA dues.

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Since the seller will have already paid some of these costs, at closing they are prorated. In Paragraph 17, this purchase agreement provides that all prorations will be based on a 30-day month.

Any Mello-Roos special assessments and HOA special assessments due before closing will be paid by the seller; any of those assessments due after closing will be assumed by the buyer without any credit toward the purchase price.

ESCROW INSTRUCTIONS

An escrow holder or closing agent holds funds and documents for the buyer and seller. Those funds and documents are released to the parties according to specific escrow instructions.

Paragraph 19 of the purchase agreement tells the escrow agent where to find these instructions. The section identifies specific portions of the purchase agreement that make up the escrow instructions, such as Paragraphs 3D(1) and 5A(1), which discuss depositing funds with the escrow holder.

Unless the parties agree otherwise, a copy of the purchase agreement must be delivered to the escrow holder within three business days after acceptance.

In addition to following these instructions, the escrow agent may also be asked to distribute compensation to the brokers according to agreements between the parties and their brokers.

The brokers are parties to the escrow only to the extent that they are compensated out of the funds held in escrow. The escrow holder agrees to notify the brokers if the buyer fails to make a deposit as agreed, or if the buyer and seller cancel the escrow.

Selection of Service Providers

Paragraph 20 of the purchase agreement states that a broker who recommends a vendor (such as inspectors, repair contractors, or the title company) isn't guaranteeing the vendor's performance. The buyer and seller are free to choose any vendor or service provider for the transaction.

Multiple Listing Service

In Paragraph 21, the parties authorize the brokers to report a pending sale to the multiple listing service, and to report the details of the transaction after it has closed. This provision enables other real estate licensees to track the status of properties listed with the MLS.

Attorney Fees

Paragraph 22 establishes that in an arbitration or legal action arising out of the purchase agreement, the prevailing party will be entitled to reasonable attorney fees and court costs.

Remember, though, that this provision does not apply if the winning party did not attempt to mediate the dispute first.

Equal Housing Opportunity

A number of state and federal laws prohibit discrimination in real estate transactions. In Paragraph 24 of the purchase agreement form, the buyer and seller affirm that the sale complies with these antidiscrimination laws.

TIME IS OF THE ESSENCE

Definitions

Paragraph 25 contains definitions of many of the key terms used in this purchase agreement form.

Make sure that you understand these terms and definitions and are familiar with how they are used. Explain to your buyer that regardless of any other meanings a term might have, the definitions in the form are the ones that apply to the agreement.

Terms and Conditions of Offer

Paragraph 26 clarifies that if there is a provision that has spaces for the parties' initials, but only one party has initialed that provision, no contract has yet formed. Both parties—or neither party—must initial such a provision in order to have an enforceable contract.

Time of Essence; Entire Contract

The first sentence of Paragraph 27 is an important one: "Time is of the essence."

This means that the parties are legally required to meet all deadlines set out in the purchase agreement. Performance on or before the exact dates is considered to be an essential term of the agreement. A failure to meet any deadline can be treated as a breach of the contract.

In addition, Paragraph 27 states that the purchase agreement contains the entire agreement between the buyer and the seller, and that any other previous agreements are no longer valid. This type of provision is called an integration clause. Any amendments to the contract must be in writing and signed by both parties to be valid.

Legally Authorized Signer

Paragraph 28 applies if the purchase agreement will be signed by a representative of an entity, such as a trust or corporation.

In this situation, evidence of authority to sign, in the form of, for example, a business formation document, a power of attorney, or a court order, must be delivered to the other party and to the closing agent by the deadline specified in Paragraph 3N(5).

LIQUIDATED DAMAGES

Section 29 of the purchase agreement addresses remedies if the buyer breaches the contract. Generally, the seller can keep the deposit as a remedy if the buyer defaults.

In this situation, the good faith deposit is treated as **liquidated damages**—a sum of money that the parties agree in advance will be the total compensation in the event of a breach. This means that the seller will not be able to pursue a different remedy, such as suing the buyer for the seller's actual damages. But most sellers prefer the ease and certainty of receiving a fixed amount (in the form of the good faith deposit) without having to file a lawsuit.

Under California law, if the property is a one- to four-unit residential building that the buyer intends to occupy, the amount kept as liquidated damages cannot be more than 3% of the purchase price. If the buyer's good faith deposit is more than 3% of the purchase price, the seller will have to return the excess.

To be enforceable, the liquidated damages provision in a purchase agreement must be initialed by the buyer and the seller.

Dispute Resolution

Paragraphs 30 and 31 of the purchase agreement form establish procedures to resolve disputes between the buyer and seller. The two methods of dispute resolution addressed in this section are mediation and arbitration.

In Paragraph 30, the buyer and seller agree to mediate any disputes before turning to arbitration or a lawsuit. (In mediation, a neutral third party attempts to help the parties reach a settlement of the dispute.) Under this agreement, the winning party at arbitration or in court is entitled to attorney fees—but only if they tried mediation first.

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Agreeing to use arbitration as a method of dispute resolution, on the other hand, is not a requirement of the form.

That's because unlike the Paragraph 30 mediation clause, the Paragraph 31 arbitration clause applies only if it is initialed by both the buyer and seller.

By initialing the arbitration clause, the parties agree in advance to arbitrate any disputes that have not been resolved through mediation.

Paragraph 31 of the purchase agreement includes a statutory notice that is required for enforceability of the arbitration provision. The notice tells both the buyer and the seller that if they agree to arbitration, they are giving up important legal rights, such as the right to file a lawsuit in court and the right to appeal a court's decision. It's important that the parties read and understand this notice.

If the buyer and seller are willing to arbitrate any future disputes, they should initial the form in the spaces provided. You should not advise either party on whether to initial this clause; if they have questions, refer them to an attorney for advice.

SIGNATURES

Buyer's Offer and Signature

Paragraph 32 specifies that acceptance occurs if the buyer (or the buyer's agent) receives a signed copy of the offer; if that doesn't occur by the deadline in Paragraph 3C, the offer expires.

If a legally authorized signer is involved, either complete Paragraph 32B or use C.A.R.® Form RCSD (Representative Capacity Signature Disclosure).

In Paragraph 32C, the buyer acknowledges that they have received, read, and understood all 16 pages of the purchase agreement. Below, the buyer signs and dates the offer. This section, and everything above it, constitutes the offer.

Seller's Acceptance and Signature; Counteroffer and Back-Up Offer

The seller signs in Paragraph 33 to accept the buyer's offer. By signing, the seller agrees to sell the property according to the exact terms of the buyer's offer. The seller also acknowledges reading and receiving a copy of the purchase agreement, and authorizes the broker to deliver a signed copy to the buyer.

Again, if a legally authorized signer is involved, either complete Paragraph 33B or use C.A.R.® Form RCSD.

If the seller wants to make changes to the offer's terms, he should still sign and date the form, but also check the appropriate box in Paragraph 33A and attach a **counteroffer** form. Instead of an acceptance, he is now making a counteroffer.

Similarly, if the seller is willing to accept the offer, but only as a back-up to a previously accepted offer, check the box in Paragraph 33A and attach a back-up offer addendum (most likely C.A.R.® Form BUO). Back-up offers are discussed in greater detail in Chapter 6.

Licensee Signatures

The agents responsible for the sale should also sign the purchase agreement and provide the names and contact information of their brokerages. The listing broker agrees to pay the cooperating broker (selling broker) out of the listing broker's proceeds in escrow.

The cooperating broker's compensation may be determined by MLS rules, or the brokers may specify the amount of compensation in a separate written agreement.

Escrow Holder Acknowledgment

The final section of the purchase agreement form is for the escrow agent's signature. Here the escrow agent acknowledges receiving a copy of the agreement (and any counteroffers) and agrees to act as the escrow holder. If he has received the buyer's good faith deposit, that should be indicated here as well.

Write in the date of the confirmation of acceptance, then add the escrow agent's name, the escrow number, and the escrow agent's contact information.

CHECK YOUR UNDERSTANDING (10-2)

Answer the questions, and then check the answers.

1. Why is it important for the buyers to indicate whether or not they intend to occupy the property?
2. What's important to know about the Liquidated Damages paragraph?
3. What happens if the parties do not initial the section of dispute resolution that deals with binding arbitration?
4. Which section of the purchase agreement does not apply directly to the buyers and sellers?

Check your answers in the Check Your Understanding - Answers section in the back of this textbook.

CONCLUSION

Chapter 10: Writing the Offer and Closing the Sale Summary

Selling Strategies

- **Knowing Your Product**
  - Know everything you can about the available inventory - your and your firm's listings and comparable properties in the MLS.
  - You also need to know information about the neighborhood, recreational opportunities, schools and community activities.
- **Communicating Information Effectively**
  - Make sure you understand clearly what message you want to get across.
  - Get your facts straight and provide clear information to the prospects.
  - Use visual aids - graphs, charts, photos - to help communicate the message.
- **Establishing Rapport**
  - **Get to know your prospects**. Ask **open-ended** questions, rather than **closed-ended** (yes or no) questions.
  - **Listen carefully** to everything your prospects say and repeat some specifics back at appropriate times so that they know you have heard what they said.
    - Address the buyers by name and look them in the eye when speaking to them.
    - Don't be judgmental and know when to be quiet and listen.
    - Be patient and allow the buyers time to think and respond to questions.
  - **Why Buyers Buy**
    - A home provides shelter and security.
    - Buyers want their homes to be in safe areas that are environmentally "healthy."
    - Many buyers see a home as an investment, which provides tax advantages.
    - **A home purchase is based just as much on emotion as it is on facts**.
    - **Picking Up on Buying Signals**: Actions, Words and Body Language.

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- **Handling Objections**
  - View objections as the buyers' attempt to gain more information about the property or a specific feature.
  - Don't discount or dismiss the objection. Give it the consideration it needs before formulating an answer.
  - Delve deeper into the objection by asking more questions.
  - Use the "yes-but" technique to turn a negative into a positive.
  - **Asking for the sale** (Closing the sale)

Closing Techniques

- **Assumptive close** - acting as if the person has already made the decision to buy.
- **Alternative close** - offering more than one alternative to the prospects and having them choose.
- **Bonus close** - inducement for the sale.
- **Ownership close** is similar to the assumptive close, except that you act as if they already own it and you talk about how it will fit into their lives.
- **Standing-room-only close** plays on the prospects' fears of losing a property that they may not have an opportunity to buy again.

Regardless of which closing technique you use, you need to ask for the sale.

Writing the Offer - California Residential Purchase Agreement and Joint Escrow Instructions.

Paragraph 1 - Offer

- The purchase agreement must **identify all buyers and sellers** with certainty. The parties should always be identified by their full names, and each party must sign the agreement. A purchase agreement should include a full legal **description of the property.** Neither the street address nor the tax assessor's parcel number is an adequate property description for a purchase agreement.

Paragraph 2 – Agency Disclosure

- Before signing a purchase agreement, both the buyer and the seller must receive the required **agency disclosure** forms from the licensees involved in the transaction.

Paragraph 3 – Terms of Purchase

- The **closing date** is the date on which all documents are recorded and sale proceeds are released to the seller. Typically, it is also the date on which the buyer takes possession of the property.
- The purchase agreement normally contains a **loan contingency**. The specific financing terms to be obtained by the buyer should be stated in the written offer.
- A purchase agreement may also contain an **appraisal contingency**, which makes it contingent on the property's appraised value being at least equal to the offered price.
- The buyer and seller can specify in the purchase agreement whether the buyer will take possession of the property at closing, or on a different date. If the **transfer of possession** will take place either before or after the closing date, the parties need to execute a separate rental agreement.
- The buyer and seller can use the purchase agreement form to **allocate inspection fees and other closing costs** between them. Local custom may dictate which party usually pays each cost, but the buyer and seller are free to negotiate a different allocation.

Paragraph 7 - Conditions Affecting Property

- The property will be sold in the same condition it was in when the offer was accepted, unless otherwise agreed, and the seller is responsible for maintaining the property in this condition.

Paragraph 11 - Required Disclosures

- A residential seller is required by law to make a number of **statutory disclosures** to buyers about property defects and natural and environmental hazards. If the property is a condominium or PUD, additional disclosures are required, such as information about lawsuits filed by or against the homeowners association..

Paragraph 13 - Title and Vesting

- The purchase agreement should state the type of deed that will be used to convey **title**, and the type of title insurance the buyer will receive. If any nonfinancial encumbrances exist at the time of acceptance, the buyer will take title subject to those encumbrances. However, liens against the property must be removed prior to closing.

Paragraph 14 - Time Periods

- If the seller misses a deadline, the buyer may **cancel** the agreement. If the buyer misses a deadline, the seller first must give the buyer a notice to perform, and then may cancel the agreement if the buyer does not act within two days. When a purchase agreement is canceled, the buyer is entitled to a refund of the good faith deposit, less any costs and fees.

Paragraph 19 - Joint Escrow Instructions

- The parties' **escrow instructions** for the closing agent are made up of certain paragraphs in the purchase agreement. These paragraphs instruct the escrow holder as to how to handle the funds and documents in escrow.

Paragraph 27 - Time is of the Essence

- The **time is of the essence** clause makes performance on or before the purchase agreement deadlines an essential term of the agreement. A party that fails to meet a deadline will be in breach of the contract.

Paragraph 29 - Liquidated Damages

- The parties may agree to allow the seller to keep the good faith deposit as **liquidated damages** if the buyer defaults. For a one-to four-unit residential property the buyer intends to occupy, the liquidated damages cannot exceed 3% of the purchase price. To be enforceable, the liquidated damages clause must be initialed by both parties.

Paragraph 30 - Mediation

- The purchase agreement form requires the parties to attempt **mediation** if any disputes arise over the agreement. If mediation is unsuccessful, the parties can then proceed to arbitration or a civil lawsuit.

Paragraph 31 - Arbitration

- The parties may agree in advance to submit disputes to **arbitration**. By doing so, they give up their rights to litigate the dispute in a court of law..

Paragraph 33 - Acceptance of Offer

- By signing the purchase agreement, the seller accepts the buyer's offer on its exact terms. A binding agreement is created when the buyer or her agent receives a copy of the seller's signed **acceptance**.

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