

New C.A.R.  
Coronavirus Addendum/Amendment  
(C.A.R. Form CVA)  
... and other related issues



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# Where to find the new form

- a) <https://www.car.org/riskmanagement/Interim-Coronavirus-Addendum-Amendment>
  
- b) zipForms, C.A.R. Standard Forms Library, available now



# Why the need?



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# Contractual risk shifting



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# Force Majeure

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Unforeseeable circumstances  
that prevent someone from  
fulfilling a contractual  
obligation



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## Civil Code § 1511

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**The want of performance of an obligation, or of an offer of performance, in whole or in part, or any delay therein, is excused by the following causes, to the extent to which they operate:**

1. When such performance or offer is prevented or delayed by the act of the creditor, or by the operation of law, even though there may have been a stipulation that this shall not be an excuse; however, the parties may expressly require in a contract that the party relying on the provisions of this paragraph give written notice to the other party or parties, within a reasonable time after the occurrence of the event excusing performance, of an intention to claim an extension of time or of an intention to bring suit or of any other similar or related intent, provided the requirement of such notice is reasonable and just;
2. When it is prevented or delayed by an irresistible, superhuman cause, or by the act of public enemies of this state or of the United States, unless the parties have expressly agreed to the contrary;



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# What could these laws mean?

- a. If thing to be done is not naturally or necessarily impossible under all circumstances, positive contract to do it is binding, though performance is rendered impracticable, or even impossible, by some unforeseen cause over which promisor has no control but against which he might have provided in his contract. [Selby v. Battley \(App. 1957\) 149 Cal.App.2d 659, 309 P.2d 120.](#)
- b. ... defense to enforcement generally excuses the performance of a promisor when that performance has been made impossible or impracticable through the action of a government entity - especially through the enactment of a statute after the entry into the contract that effectively prohibits the breaching party's performance. [Industrial Development & Land Co. v. Goldschmidt \(1922\) 56 Cal.App. 507, 509](#)
- c. ... the test is whether under the particular circumstances there is such an insuperable interference occurring without the party's intervention as could not have been prevented by prudence, diligence and care. [Pacific Vegetable Oil Corporation v. C. S. T., Ltd. \(1946\) 29 Cal.2d 228](#)



# Uncertainty

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Given the uncertainty, Buyer and seller are encouraged to discuss alternatives to timely performance and reach a voluntary amendment during this period of State and national emergency



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**CORONAVIRUS ADDENDUM/AMENDMENT**  
(C.A.R. Form CVA, 3/20)

The following terms and conditions are hereby incorporated in and made a part of, as applicable, an amendment to, the Purchase Agreement or  Other \_\_\_\_\_ dated \_\_\_\_\_ (the "Agreement") on property known as \_\_\_\_\_ ("Property") in which \_\_\_\_\_ is referred to as Buyer and \_\_\_\_\_ is referred to as Seller.

From time to time, events overtake the ability of the parties to a contract to allocate the risk of nonperformance. Such events are often addressed by a "Force Majeure Clause" allowing a party to suspend or terminate performance when circumstances which the parties could not have anticipated, or which are beyond their control make performance of the contract impossible or impracticable.

The current world-wide Coronavirus (COVID-19) pandemic has had unprecedented impacts on real estate transactions, including, but not limited to, travel restrictions, self-imposed and governmentally required isolations, and closures of both governmental and private offices required to fund, close and record real estate transactions.

Accordingly, in the event complying with the Close Of Escrow is not possible or practical as a result of unforeseen circumstances related to the COVID-19, such as Buyer's or Seller's inability to travel to sign documents, closings or delays in related government and business services, including for example delays by or closing of lenders, title/escrow, county assessor/recorder, or otherwise (hereinafter "Unforeseen Circumstances") the Parties Agree as follows. All other provisions of the Agreement remain in full force and effect:

1. Buyer and Seller agree to postpone Close Of Escrow by up to 30 or \_\_\_\_\_ Days to accommodate Unforeseen Circumstances, after which either Party may cancel the Agreement and Buyer's deposit shall be returned to Buyer, minus fees and costs incurred by Buyer. No notice to Buyer or Seller to Perform (C.A.R. Forms NSP and NSP) nor Demand to Close Escrow (C.A.R. Forms DCE) shall be required.
2.  If checked: Buyer and Seller agree notwithstanding that Buyer may have removed their loan contingency, if Buyer's inability to fund their loan and Close Escrow is due to Buyer's loss of income from COVID-19 related issues, then either Party may cancel the Agreement and Buyer's deposit shall be returned to Buyer, minus fees and costs incurred by Buyer. No NSP or DCE shall be required.
3.  If checked: Buyer and Seller agree to mutually cancel the Agreement and Buyer's deposit shall be returned to Buyer, minus fees and costs incurred by Buyer.
4. Other: \_\_\_\_\_

By signing below, Buyer and Seller each acknowledge that they have read, understand, accept and have received a copy of the Addendum.

Date \_\_\_\_\_ Date \_\_\_\_\_  
Buyer \_\_\_\_\_ Seller \_\_\_\_\_  
Buyer \_\_\_\_\_ Seller \_\_\_\_\_

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CVA 3/20 (PAGE 1 OF 1)



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# **OPEN HOUSES AND SHOWINGS**

## **COVID-19 Guide for Open Houses and Showings**

How do the “shelter in place” orders affect open houses, showings and real estate transactions in general?

May I ask clients at an open house or others I interact with in my real estate business if they have a cold, flu or other respiratory illness or whether they have recently traveled abroad?

What do I do if the client refuses to allow an open house or showings?

What if I do not want to conduct an open house?



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# How do the “shelter in place” orders affect open houses, showings and real estate transactions in general?

Temporary orders in the Bay Area and northern California

All businesses with a facility in the County, except Essential Businesses,... are required to cease all activities... except Minimum Basic Operations

Transacting real estate does not come within the definition of “Essential Businesses”

Under these orders, open houses and showings are precluded

CAR is right now trying very hard to persuade all county recorders to facilitate closings remotely



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# **May I ask clients at an open house or others I interact with in my real estate business if they have a cold, flu or other respiratory illness or whether they have recently traveled abroad?**

It is allowable to ask if the person has a cold, influenza or other contagious respiratory illness. Questions must be directed at all clients equally.

It is allowable to ask if a person has traveled abroad recently within the last 14 days based on information from the CDC. Questions must be directed at all clients equally.

Right now, the CDC has issued a level 2 advisory to travelers returning from anywhere in the world.



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# What do I do if the client refuses to allow an open house or showings?

Inform a seller that their wishes will be honored.

Have an open and honest conversation about the possible impact that limiting access to the listed property could have on the amount of time it will take to sell, the eventual purchase price, and the marketing plan. Discuss feasible alternatives such as three-dimensional interactive property scans, video tours and other methods to virtually tour a property.

Ask the seller to put the instructions in writing, or the licensee should document the discussion and instruction and provide a copy to the seller.

If the broker has a marketing plan and the broker's right to conduct open houses is an integral part of that marketing plan, that plan should be amended, in writing, following a property owner's instruction to limit access to the property.



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# What if I do not want to conduct an open house?

Paragraph 7A of the RLA authorizes the broker to market the property by any method selected by broker, unless seller gives broker written instructions to the contrary.

The broker is agreeing under the terms of the RLA to exercise reasonable effort and due diligence to achieve the purpose of the listing — which is to sell the property. If the broker is not holding an open house then you should discuss alternative ways to market the property.

In paragraph 7B, the seller agrees to make the property available for showings, but that obligation is limited by the seller's duty to act in good faith to accomplish the sale of the property.



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# LANDLORD TENANT ISSUES



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# Eviction Moratoria?

## Where?

-As of 3/17 LA County, San Francisco, Culver City, Santa Monica, San Jose

-Not a statewide ban

-Counties/cities considering similar ban as of 3/17: Counties of Santa Cruz, San Mateo; Cities of San Mateo, San Diego, Sacramento, Oakland, Hayward, Fresno

-Just announced HUD props also suspending evictions until at least end of April

-Even without a ban, local UD courts may not be operational as non-essential and local sheriffs may not execute writ of possession



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## Details:

### LA County Example based on Gov Newsom's Executive Order

- eviction for nonpayment of rent as related to Covid-19
- March 4 to May 31, unless extended
- Tenants have 6 months after the expiration (12/31) to repay back any due rent
- Residential & Commercial
- Check local order for specific details



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## Repairs Allowed?

Even in the most restrictive jurisdictions with Shelter In Place orders, work for sanitation and safety are considered essential and permissible.



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**NEW** C.A.R. Covid Updates website!

Thursday, March 19<sup>th</sup> go to [www.car.org](http://www.car.org) and look for the big banner that will take you to the site.

**Here's the types of information you'll find:**

**Coronavirus Updates**

Every time C.A.R. releases new information, it will be posted here.

**Overview**

General information about COVID-19

**Coronavirus Weekly Recap**

Archives of our weekly newsletter. The first issue is posted already; subsequent issues will be posted after they are distributed on Tuesdays.

**Meetings & Events**

A log of the current status on C.A.R. meetings and events planned for the year.



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### **FAQs:**

- The Market
- Property Management
- Health & Safety
- Open Houses & Showings
- Transactions/Legal

### **Talking Points:**

- For Renters
- For Buyers
- For Sellers

### **Best Practices:**

- Travel
- Business Continuity
- Remote Work
- Open Houses

### **For Association Executives:**

- Template News Release: Open Houses
- FAQs
- Force Majeure Clauses
- Conducting Virtual Board Meetings
- Issues Related to Employment Law

### **For the Media:**

News releases from C.A.R.

### **Glossary:**

List of terms.

### **Resources:**

Links to C.A



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# DEVELOPMENTS DEMAND FLEXIBILITY



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# Can you close without closing?

Maybe.

If your recorder's office is not open for live or electronic recordings ...

Talk to your title company about gap insurance.

Probably will need to sign additional documentation.



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# QUESTIONS



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