

# Post-Closing Buyer/Seller Disputes





# What Do You Do When the Love is Gone?



# Help Identify the Problem, Don't Diagnose it



Ask questions: When was the issue discovered? What has been done about it? What is the cost to fix, remediate, cure, etc.? Has an expert been consulted? Do you have pictures?

Home warranty policy

Home inspector

Repair person during escrow

Title company

Read instruction manual

Ask the other party



# Potential Solutions



# Relevant Contract Terms



## CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (C.A.R. Form RPA-CA, Revised 12/18)

- Date Prepared: \_\_\_\_\_
1. OFFER:
- A. THIS IS AN OFFER FROM \_\_\_\_\_ ("Buyer").
- B. THE REAL PROPERTY to be acquired is \_\_\_\_\_, situated in \_\_\_\_\_ (City), \_\_\_\_\_ (County), California, \_\_\_\_\_ (Zip Code), Assessor's Parcel No. \_\_\_\_\_ ("Property").
- C. THE PURCHASE PRICE offered is \_\_\_\_\_ Dollars \$ \_\_\_\_\_.
- D. CLOSE OF ESCROW shall occur on \_\_\_\_\_ (date) or \_\_\_\_\_ Days After Acceptance.
- E. Buyer and Seller are referred to herein as the "Parties." Brokers are not Parties to this Agreement.
2. AGENCY:
- A. DISCLOSURE: The Parties each acknowledge receipt of a  "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD).
- B. CONFIRMATION: The following agency relationships are confirmed for this transaction:
- Seller's Brokerage Firm \_\_\_\_\_ License Number \_\_\_\_\_
- Is the broker of (check one):  the seller, or  both the buyer and seller. (dual agent)
- Seller's Agent \_\_\_\_\_ License Number \_\_\_\_\_
- Is (check one):  the Seller's Agent. (salesperson or broker associate)  both the Buyer's and Seller's Agent. (dual agent)

**RPA:** Property is sold "as-is"; required to disclose *known material facts* and defects



## REAL ESTATE TRANSFER DISCLOSURE STATEMENT (CALIFORNIA CIVIL CODE §1102, ET SEQ.) (C.A.R. Form TDS, Revised 4/14)

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, STATE OF CALIFORNIA, DESCRIBED AS \_\_\_\_\_.

THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH SECTION 1102 OF THE CIVIL CODE AS OF (date) \_\_\_\_\_. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

### I. COORDINATION WITH OTHER DISCLOSURE FORMS

This Real Estate Transfer Disclosure Statement is made pursuant to Section 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zone and purchase-money liens on residential property).

**Substituted Disclosures:** The following disclosures and other disclosures required by law, including the Natural Hazard Disclosure Report/Statement that may include airport annoyances, earthquake, fire, flood, or special assessment information, have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter

**TDS and SPQ:** Both ask if seller is "aware" of issues

# Relevant Contract Terms



## REQUEST FOR REPAIR No. [ ] (Or other Corrective Action) (C.A.R. Form RR, Revised 12/18)

Date Prepared: [ ]  
In accordance with the terms and conditions of the: Purchase Agreement or  Other [ ]  
("Agreement"), dated [ ], on property known as [ ] ("Property"),  
between [ ] ("Buyer"),  
and [ ] ("Seller").

**BUYER REQUEST (Check all that apply): (Note: Seller has no obligation to respond to Buyer request.)**  
1. (a)  Buyer requests that Seller, prior to final verification of condition, repair or take the other specified action for each item listed below or  on the attached list dated [ ]:


**RR:** Buyer releases seller from claims regarding disclosed condition



## CONTINGENCY REMOVAL No. [ ] (C.A.R. Form CR, Revised, 6/16)

In accordance with the terms and conditions of the:  Residential Purchase Agreement (C.A.R. Form RPA-CA),  Request For Repair (C.A.R. Form RR),  Response And Reply To Request For Repair (C.A.R. Form RRRR) or  Other [ ]  
dated [ ], on property known as [ ] ("Agreement"),  
between [ ] ("Buyer")  
and [ ] ("Seller").

### I. BUYER REMOVAL OF BUYER CONTINGENCIES:

1. With respect to any contingency and cancellation right that Buyer removes, unless otherwise specified in a separate written agreement between Buyer and Seller, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations and review of reports and other applicable information and disclosures; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and, expense, if any, for Repairs, corrections, or for the inability to obtain financing. Waiver of statutory disclosures is prohibited by law.
2. Buyer removes those contingencies specified below.
  - A. ONLY the following individually checked Buyer contingencies are removed:
    1.  Loan (Paragraph 3J)
    2.  Appraisal (Paragraph 3I)
    3. Buyer's Investigation Contingency (Paragraph 12)

**CR:** Buyer is deemed to have completed investigations related to removed contingencies



# Facilitate Communications

- ◆ Offer to transmit messages
- ◆ Do not guarantee results
- ◆ If dual agency, **DO NOT** take sides
- ◆ You are legally obligated to be neutral



# Elevate

Involve your office manager or broker early



Manage the risk by getting neutral help and ideas to resolve the dispute



# Dispute Resolution Alternatives

## ◆ **NEGOTIATE FIRST AND THEN:**

- ◆ Small Claims – claims up to \$10,000.00
- ◆ Mediate – [C.A.R. Real Estate Mediation Center for Consumers](#)

## ◆ **IF NO SETTLEMENT, THEN:**

- ◆ Arbitrate, if initialed by both parties in contract or
- ◆ Litigation





# Recommend Client Consult an Attorney

Real estate licensee should not speculate on who is right or wrong, or who will win or lose in court. Provide referral names but it is always best to give at least three options. Leave the choice up to the client!

# Additional Resources

## Quick Guides

- ◆ [Mediation v. Arbitration](#) ◆ [Mediation for the Consumer](#)
- ◆ [Transfer Disclosure Statement Law – Overview](#) ◆ [Seller Property Questionnaire](#) ◆ [Small Claims Court](#) ◆ [Contingencies and Contingency Removal](#) ◆ [Arbitration for the Consumer](#)
- ◆ [Buyer Requests for Repairs](#)

## Legal Q<sup>and</sup>As

- ◆ [Arbitration for the Consumer](#) ◆ [Mediation for the Consumer](#)
- ◆ [Contingencies and Contingency Removal](#) ◆ [Request for Repair and Use of the RR and RRRR Forms](#) ◆ [Seller Property Questionnaire: Summary of C.A.R. Form SPQ](#) ◆ [Statute of Limitations: Deadline on Time to Sue](#) ◆ [Use of an “As-Is” Clause](#) ◆ [Sales Disclosure Chart](#)

## Legal Tools: Small Claims

## Recorded Webinars

- ◆ [February 2020, So, you've been sued. What's next?](#) ◆ [January 2020, Disclosure Checklist](#)
- ◆ [July 2019 Electronic Legal Open Forum, Small Claims Court](#)