

# LIQUIDATED DAMAGES



C.A.R.  
LEGAL  
TOOLS



# What are Liquidated Damages?

Liquidated Damages | li·qui·da·ted da·ma·ges

A contractually agreed upon amount the buyer will owe the seller in the event the buyer breaches the contract

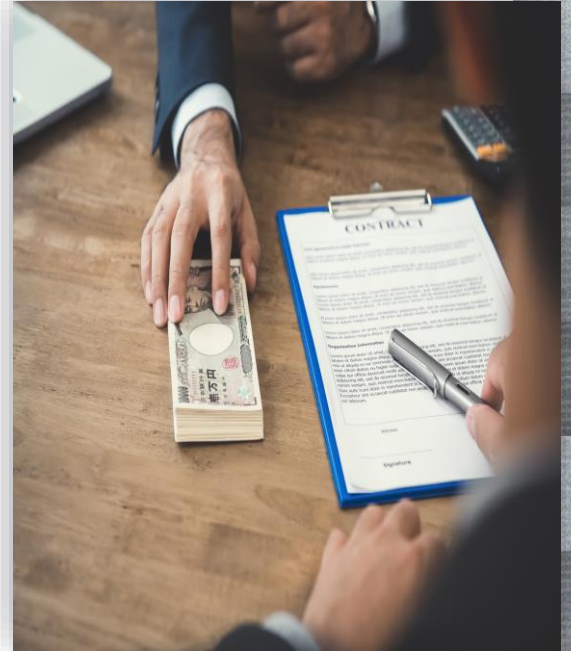
# Actual Damages vs. Liquidated Damages

## Actual Damages

The actual loss suffered by the non-breaching party (often specific amounts from receipts and invoices)

## Liquidated Damages

A contractually agreed upon estimate of actual damages





# Liquidated Damages Rules

1. Must be a reasonable estimation at the time of contract
2. Liquidated damages are the amount actually paid
3. Residential 1-4 where buyer intends to occupy, 3% or less is presumed valid
4. Provision must be separately signed/initialed
5. Provision must be 10-point bold type (or in red, 8-point bold type)
6. When multiple payments:
  - a. Total must satisfy #1, #2 and #3
  - b. Each payment must satisfy #4 and #5

# RPA-CA:, Paragraph 21B

## 21.REMEDIES FOR BUYER'S BREÁCH OF CONTRACT:

- A. Any clause added by the Parties specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase in violation of this Agreement shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.
- B. LIQUIDATED DAMAGES: If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. If the Property is a dwelling with no more than four units, one of which Buyer intends to occupy, then the amount retained shall be no more than 3% of the purchase price. Any excess shall be returned to Buyer. Except as provided in paragraph 14H, release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award. AT THE TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R. FORM RID).



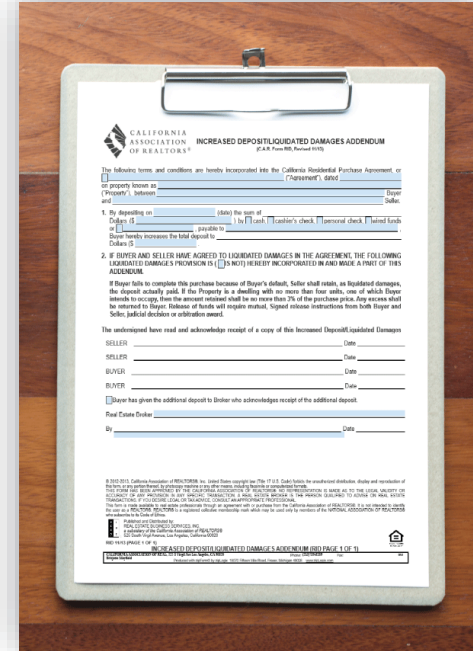
# Practice Notes

1. Liquidated damages limited to deposit actually paid. No deposit, no liquidated damages.
2. 3% Cap – If deposit is 3% or less, Seller gets deposit actually paid. If deposit is over 3%, Seller gets 3% and must return overage (unless Seller can prove validity of excess)



# C.A.R. Form RID

- ⊙ Used when Buyer increases deposit
- ⊙ Includes optional liquidated damages clause
- ⊙ Without this form, increased deposits are not subject to the liquidated damages provision!



# C.A.R. Counter Offer Language

## Paragraph 1A



1. When trying to include liquidated damages back into the contract, have all parties go back and initial in the purchase agreement.
2. Seller should return the purchase agreement with the counter offer so Buyer knows if it's being initialed. Seller should check the box accepting the purchase agreement subject to attached counter offer.



# Disputes

## What if the Seller/Buyer won't release the deposit?

**Buyers** – C.A.R. Sample Letter BDD in zipForm<sup>®</sup>, Demand for Deposit for Contingency Cancellation

**Sellers** – C.A.R. Sample Letter SDD in zipForm<sup>®</sup>, Demand for Deposit Buyer Failure to Close





# Practice Notes

1. Sample letters BDD and SDD demand release of the deposit, provide a deadline, and explain that a \$1,000 penalty may be awarded in addition to the deposit.
2. Both letters meet the small claims court requirement that a demand be made for the amount in dispute before filling a complaint.

# Disputes

## Can Escrow Help?

C.A.R. Form BDRD

Buyer Demand for Release of Deposit

C.A.R. Form SDRD

Seller Demand for Release of Deposit







# Practice Notes

1. Forms BDRD/SDRD make a written demand to escrow for the deposit per paragraph 14H of the RPA. Escrow then delivers notice of the demand to the other party. If the other party does not object to the demand within 10 days, escrow may disburse the deposit.
2. Escrows sometimes refuse to abide by this procedure, so the buyer/seller may still have to mediate and, if no settlement, then litigate or arbitrate to get the deposit released.

# ADDITIONAL RESOURCES

- ◎ Quick Guide – Liquidated Damages
- ◎ Legal Q&As – Liquidated Damages and Deposit Disputes
- ◎ C.A.R. Forms and Sample Letters
  - ◎ RPA-CA – California Residential Purchase Agreement and Joint Escrow Instructions
  - ◎ RID – Increased Deposit/Liquidated Damages Addendum
  - ◎ BDD- Demand for Deposit for Contingency Cancellation
  - ◎ SDD – Demand for Deposit Buyer Failure to Close
  - ◎ BDRD – Buyer Demand for Release of Deposit
  - ◎ SDRD – Seller Demand for Release of Deposit