

## The Land Transaction

### A. *Introduction to Buying and Selling Real Estate*

While most real estate transactions share many elements in common, each deal presents its own complications and challenges. The following example illustrates the steps that will take place as Robert and Elizabeth Byar (which is to say, of course, Bob and Betty Byar) go about buying a home. The first step for the Byars is to assess how much they can afford to pay, given their income and savings (lenders frequently require borrowers to contribute 10 to 20 percent of the purchase price as a down payment). The Byars might also contact a mortgage bank or financial institution to pre-qualify for a loan. Then the search for properties will begin, perhaps with the Byars using an Internet site such as [www.realtor.com](http://www.realtor.com) to learn about the market. But eventually, if they are like most home buyers, the Byars will consult a broker with access to Multiple Listing Service (MLS) listings and happy to show a variety of homes. The commission for the broker will typically be paid for by the seller (see pages 562-563).

Once the Byars find a house they want to buy, they'll begin negotiating a purchase and sale agreement. Usually it's best to hire an attorney to do this, but in some states brokers are permitted to provide the service. In any event, the agreement will probably be done in terms of a form contract such as the one on pages 544-558, which we will be referring to from time to time. The contract will set forth the legal description of the property, its price, provision for an earnest money deposit, and the date for the closing or settlement (the transfer of title).

Real estate contracts are almost always executory, meaning that title is not transferred immediately upon signing the agreement, because both buyers and seller must do certain things during the time between the contract and closing. The buyer will need to obtain a title search to satisfy herself and her lender that the seller can convey good title to the property. The title search is conducted by a title company in some states, by attorneys in others. Most contracts of sale also contain a mortgage contingency, which provides that if the purchaser cannot obtain a mortgage loan within a given time, she can rescind the contract and get back her deposit. For an example of a mortgage contingency clause, see paragraph 11 in the form contract. A second contingency found in many contracts is a clause allowing the buyer to obtain an inspection of the property and rescind the contract if the cost of remedying the problem exceeds some







**CALIFORNIA  
RESIDENTIAL PURCHASE AGREEMENT  
AND JOINT ESCROW INSTRUCTIONS**  
(C.A.R. Form RPA-CA, Revised 12/15)

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 hereby confirmed for this transaction:  
Listing Agent \_\_\_\_\_ (Print Firm Name) is the agent of (check one):  
 the Seller exclusively; or  both the Buyer and Seller.  
Selling Agent \_\_\_\_\_ (Print Firm Name) (if not the same as the Listing Agent) is the agent of (check one):  the Buyer exclusively; or  the Seller exclusively; or  both the Buyer and Seller.
- C. **POTENTIALLY COMPETING BUYERS AND SELLERS:** The Parties each acknowledge receipt of a  "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

**3. FINANCE TERMS:** Buyer represents that funds will be good when deposited with Escrow Holder.

- A. **INITIAL DEPOSIT:** Deposit shall be in the amount of \_\_\_\_\_ \$  
(1) Buyer Direct Deposit: Buyer shall deliver deposit directly to Escrow Holder by electronic funds transfer,  cashier's check,  personal check,  other \_\_\_\_\_ within 3 business days after Acceptance (or \_\_\_\_\_);  
OR (2)  Buyer Deposit with Agent: Buyer has given the deposit by personal check (or \_\_\_\_\_) to the agent submitting the offer (or to \_\_\_\_\_), made payable to \_\_\_\_\_ . The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder within 3 business days after Acceptance (or \_\_\_\_\_).  
Deposit checks given to agent shall be an original signed check and not a copy.

(Note: Initial and increased deposits checks received by agent shall be recorded in Broker's trust fund log.)

- B. **INCREASED DEPOSIT:** Buyer shall deposit with Escrow Holder an increased deposit in the amount of \_\_\_\_\_ \$ within \_\_\_\_\_ Days After Acceptance (or \_\_\_\_\_).  
If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount in a separate liquidated damages clause (C.A.R. Form RID) at the time the increased deposit is delivered to Escrow Holder.
- C.  **ALL CASH OFFER:** No loan is needed to purchase the Property. This offer is NOT contingent on Buyer obtaining a loan. Written verification of sufficient funds to close this transaction IS ATTACHED to this offer or  Buyer shall, within 3 (or \_\_\_\_\_) Days After Acceptance, Deliver to Seller such verification.

**D. LOAN(S):**

- (1) **FIRST LOAN:** in the amount of \_\_\_\_\_ \$  
This loan will be conventional financing or  FHA,  VA,  Seller financing (C.A.R. Form SFA),  assumed financing (C.A.R. Form AFA),  Other \_\_\_\_\_. This loan shall be at a fixed rate not to exceed \_\_\_\_\_ % or,  an adjustable rate loan with initial rate not to exceed \_\_\_\_\_ %. Regardless of the type of loan, Buyer shall pay points not to exceed \_\_\_\_\_ % of the loan amount.
- (2) **SECOND LOAN** in the amount of \_\_\_\_\_ \$  
This loan will be conventional financing or  Seller financing (C.A.R. Form SFA),  assumed financing (C.A.R. Form AFA),  Other \_\_\_\_\_. This loan shall be at a fixed rate not to exceed \_\_\_\_\_ % or,  an adjustable rate loan with initial rate not to exceed \_\_\_\_\_ %. Regardless of the type of loan, Buyer shall pay points not to exceed \_\_\_\_\_ % of the loan amount.
- (3) **FHA/VA:** For any FHA or VA loan specified in 3D(1), Buyer has 17 (or \_\_\_\_\_) Days After Acceptance to Deliver to Seller written notice (C.A.R. Form FVA) of any lender-required repairs or costs that Buyer requests Seller to pay for or otherwise correct. Seller has no obligation to pay or satisfy lender requirements unless agreed in writing. A FHA/VA amendatory clause (C.A.R. Form FVAC) shall be a part of this Agreement.

**E. ADDITIONAL FINANCING TERMS:** \_\_\_\_\_

- F. **BALANCE OF DOWN PAYMENT OR PURCHASE PRICE** in the amount of \_\_\_\_\_ \$ to be deposited with Escrow Holder pursuant to Escrow Holder instructions.
- G. **PURCHASE PRICE (TOTAL):** \_\_\_\_\_ \$

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

© 1991-2015, California Association of REALTORS®, Inc.



RPA-CA REVISED 12/15 (PAGE 1 OF 10)

**CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 1 OF 10)**

Property Address: \_\_\_\_\_ Date: \_\_\_\_\_

**H. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS:** Buyer (or Buyer's lender or loan broker pursuant to paragraph 3J(1)) shall, within **3 (or \_\_\_\_\_) Days** After Acceptance, Deliver to Seller written verification of Buyer's down payment and closing costs. ( Verification attached.)

**I. APPRAISAL CONTINGENCY AND REMOVAL:** This Agreement is ( is NOT) contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the purchase price. Buyer shall, as specified in paragraph 14B(3), in writing, remove the appraisal contingency or cancel this Agreement within **17 (or \_\_\_\_\_) Days** After Acceptance.

**J. LOAN TERMS:**

**(1) LOAN APPLICATIONS:** Within **3 (or \_\_\_\_\_) Days** After Acceptance, Buyer shall Deliver to Seller a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in paragraph 3D. If any loan specified in paragraph 3D is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate. ( Letter attached.)

**(2) LOAN CONTINGENCY:** Buyer shall act diligently and in good faith to obtain the designated loan(s). Buyer's qualification for the loan(s) specified above is a **contingency** of this Agreement unless otherwise agreed in writing. If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan. Buyer's contractual obligations regarding deposit, balance of down payment and closing costs are **not contingencies** of this Agreement.

**(3) LOAN CONTINGENCY REMOVAL:**

Within **21 (or \_\_\_\_\_) Days** After Acceptance, Buyer shall, as specified in paragraph 14, in writing, remove the loan contingency or cancel this Agreement. If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.

**(4)  NO LOAN CONTINGENCY:** Obtaining any loan specified above is NOT a contingency of this Agreement. If Buyer does not obtain the loan and as a result does not purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.

**(5) LENDER LIMITS ON BUYER CREDITS:** Any credit to Buyer, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.

**K. BUYER STATED FINANCING:** Seller is relying on Buyer's representation of the type of financing specified (including but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to a specific closing date, purchase price and to sell to Buyer in reliance on Buyer's covenant concerning financing. Buyer shall pursue the financing specified in this Agreement. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in the Agreement and the availability of any such alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

**4. SALE OF BUYER'S PROPERTY:**

**A.** This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer.

**OR B.**  This Agreement and Buyer's ability to obtain financing are contingent upon the sale of property owned by Buyer as specified in the attached addendum (C.A.R. Form COP).

**5. ADDENDA AND ADVISORIES:**

**A. ADDENDA:**

<input type="checkbox"/> Addendum # _____ (C.A.R. Form ADM)	_____
<input type="checkbox"/> Back Up Offer Addendum (C.A.R. Form BUO)	<input type="checkbox"/> Court Confirmation Addendum (C.A.R. Form CCA)
<input type="checkbox"/> Septic, Well and Property Monument Addendum (C.A.R. Form SWPI)	_____
<input type="checkbox"/> Short Sale Addendum (C.A.R. Form SSA)	<input type="checkbox"/> Other _____

**B. BUYER AND SELLER ADVISORIES:**

<input type="checkbox"/> Buyer's Inspection Advisory (C.A.R. Form BIA)	_____
<input type="checkbox"/> Probate Advisory (C.A.R. Form PA)	<input type="checkbox"/> Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)
<input type="checkbox"/> Trust Advisory (C.A.R. Form TA)	<input type="checkbox"/> REO Advisory (C.A.R. Form REO)
<input type="checkbox"/> Short Sale Information and Advisory (C.A.R. Form SSIA)	<input type="checkbox"/> Other _____

**6. OTHER TERMS:**

\_\_\_\_\_  
\_\_\_\_\_

**7. ALLOCATION OF COSTS**

**A. INSPECTIONS, REPORTS AND CERTIFICATES:** Unless otherwise agreed in writing, this paragraph only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; it **does not determine who is to pay for any work recommended or identified in the Report.**

**(1)**  Buyer  Seller shall pay for a natural hazard zone disclosure report, including tax  environmental  Other: \_\_\_\_\_ prepared by \_\_\_\_\_.

**(2)**  Buyer  Seller shall pay for the following Report \_\_\_\_\_ prepared by \_\_\_\_\_.

**(3)**  Buyer  Seller shall pay for the following Report \_\_\_\_\_ prepared by \_\_\_\_\_.

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )



Property Address: \_\_\_\_\_ Date: \_\_\_\_\_

**B. GOVERNMENT REQUIREMENTS AND RETROFIT:**

- (1)  Buyer  Seller shall pay for smoke alarm and carbon monoxide device installation and water heater bracing, if required by Law. Prior to Close Of Escrow ("COE"), Seller shall provide Buyer written statement(s) of compliance in accordance with state and local Law, unless Seller is exempt.
- (2) (i)  Buyer  Seller shall pay the cost of compliance with any other minimum mandatory government inspections and reports if required as a condition of closing escrow under any Law.
- (ii)  Buyer  Seller shall pay the cost of compliance with any other minimum mandatory government retrofit standards required as a condition of closing escrow under any Law, whether the work is required to be completed before or after COE.
- (iii) Buyer shall be provided, within the time specified in paragraph 14A, a copy of any required government conducted or point-of-sale inspection report prepared pursuant to this Agreement or in anticipation of this sale of the Property.

**C. ESCROW AND TITLE:**

- (1) (a)  Buyer  Seller shall pay escrow fee \_\_\_\_\_.
- (b) Escrow Holder shall be \_\_\_\_\_.
- (c) The Parties shall, within **5 (or \_\_\_\_\_) Days** After receipt, sign and return Escrow Holder's general provisions.
- (2) (a)  Buyer  Seller shall pay for **owner's** title insurance policy specified in paragraph 13E \_\_\_\_\_.
- (b) Owner's title policy to be issued by \_\_\_\_\_.
- (Buyer shall pay for any title insurance policy insuring Buyer's **lender**, unless otherwise agreed in writing.)

**D. OTHER COSTS:**

- (1)  Buyer  Seller shall pay County transfer tax or fee \_\_\_\_\_.
  - (2)  Buyer  Seller shall pay City transfer tax or fee \_\_\_\_\_.
  - (3)  Buyer  Seller shall pay Homeowners' Association ("HOA") transfer fee \_\_\_\_\_.
  - (4) Seller shall pay HOA fees for preparing documents required to be delivered by Civil Code §4525.
  - (5)  Buyer  Seller shall pay HOA fees for preparing all documents other than those required by Civil Code §4525.
  - (6) Buyer to pay for any HOA certification fee.
  - (7)  Buyer  Seller shall pay for any private transfer fee \_\_\_\_\_.
  - (8)  Buyer  Seller shall pay for \_\_\_\_\_.
  - (9)  Buyer  Seller shall pay for \_\_\_\_\_.
  - (10)  Buyer  Seller shall pay for the cost, not to exceed \$ \_\_\_\_\_, of a standard (or  upgraded) one-year home warranty plan, issued by \_\_\_\_\_, with the following optional coverages:  Air Conditioner  Pool/Spa  Other: \_\_\_\_\_.
- Buyer is informed that home warranty plans have many optional coverages in addition to those listed above. Buyer is advised to investigate these coverages to determine those that may be suitable for Buyer.

**OR  Buyer waives the purchase of a home warranty plan. Nothing in this paragraph precludes Buyer's purchasing a home warranty plan during the term of this Agreement.**

**8. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:**

**A. NOTE TO BUYER AND SELLER:** Items listed as included or excluded in the MLS, flyers or marketing materials are **not** included in the purchase price or excluded from the sale unless specified in paragraph 8 B or C.

**B. ITEMS INCLUDED IN SALE:** Except as otherwise specified or disclosed,

- (1) All EXISTING fixtures and fittings that are attached to the Property;
- (2) EXISTING electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar power systems, built-in appliances, window and door screens, awnings, shutters, window coverings, attached floor coverings, television antennas, satellite dishes, air coolers/conditioners, pool/spa equipment, garage door openers/remote controls, mailbox, in-ground landscaping, trees/shrubs, water features and fountains, water softeners, water purifiers, security systems/alarms and the following if checked:  all stove(s), except \_\_\_\_\_;  all refrigerator(s) except \_\_\_\_\_;  all washer(s) and dryer(s), except \_\_\_\_\_;
- (3) The following additional items: \_\_\_\_\_.
- (4) Existing integrated phone and home automation systems, including necessary components such as intranet and Internet-connected hardware or devices, control units (other than non-dedicated mobile devices, electronics and computers) and applicable software, permissions, passwords, codes and access information, are (  are NOT) included in the sale.
- (5) **LEASED OR LIENED ITEMS AND SYSTEMS:** Seller shall, within the time specified in paragraph 14A, (i) disclose to Buyer if any item or system specified in paragraph 8B or otherwise included in the sale is leased, or not owned by Seller, or specifically subject to a lien or other encumbrance, and (ii) Deliver to Buyer all written materials (such as lease, warranty, etc.) concerning any such item. Buyer's ability to assume any such lease, or willingness to accept the Property subject to any such lien or encumbrance, is a contingency in favor of Buyer and Seller as specified in paragraph 14B and C.
- (6) Seller represents that all items included in the purchase price, unless otherwise specified, (i) are owned by Seller and shall be transferred free and clear of liens and encumbrances, except the items and systems identified pursuant to 8B(5) and \_\_\_\_\_, and (ii) are transferred without Seller warranty regardless of value.

**C. ITEMS EXCLUDED FROM SALE:** Unless otherwise specified, the following items are excluded from sale: (i) audio and video components (such as flat screen TVs, speakers and other items) if any such item is not itself attached to the Property, even if a bracket or other mechanism attached to the component or item is attached to the Property; (ii) furniture and other items secured to the Property for earthquake purposes; and (iii) \_\_\_\_\_

\_\_\_\_\_. **Brackets attached to walls, floors or ceilings for any such component, furniture or item shall remain with the Property (or  will be removed and holes or other damage shall be repaired, but not painted).**

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )





Property Address: \_\_\_\_\_

Date: \_\_\_\_\_

**9. CLOSING AND POSSESSION:**

- A. Buyer intends (or  does not intend) to occupy the Property as Buyer's primary residence.
  - B. **Seller-occupied or vacant property:** Possession shall be delivered to Buyer: (i) at 6 PM or (  AM/  PM) on the date of Close Of Escrow; (ii)  no later than \_\_\_\_\_ calendar days after Close Of Escrow; or (iii)  at  AM/  PM on \_\_\_\_\_.
  - C. **Seller remaining in possession After Close Of Escrow:** If Seller has the right to remain in possession after Close Of Escrow, (i) the Parties are advised to sign a separate occupancy agreement such as  C.A.R. Form SIP, for Seller continued occupancy of less than 30 days,  C.A.R. Form RLAS for Seller continued occupancy of 30 days or more; and (ii) the Parties are advised to consult with their insurance and legal advisors for information about liability and damage or injury to persons and personal and real property; and (iii) Buyer is advised to consult with Buyer's lender about the impact of Seller's occupancy on Buyer's loan.
  - D. **Tenant-occupied property: Property shall be vacant at least 5 (or \_\_\_\_\_) Days Prior to Close Of Escrow, unless otherwise agreed in writing. Note to Seller: If you are unable to deliver Property vacant in accordance with rent control and other applicable Law, you may be in breach of this Agreement.**
- OR  **Tenant to remain in possession (C.A.R. Form TIP).**
- E. At Close Of Escrow: Seller assigns to Buyer any assignable warranty rights for items included in the sale; and Seller shall Deliver to Buyer available Copies of any such warranties. Brokers cannot and will not determine the assignability of any warranties.
  - F. At Close Of Escrow, unless otherwise agreed in writing, Seller shall provide keys, passwords, codes and/or means to operate all locks, mailboxes, security systems, alarms, home automation systems and intranet and Internet-connected devices included in the purchase price, and garage door openers. If the Property is a condominium or located in a common interest subdivision, Buyer may be required to pay a deposit to the Homeowners' Association ("HOA") to obtain keys to accessible HOA facilities.

**10. STATUTORY AND OTHER DISCLOSURES (INCLUDING LEAD-BASED PAINT HAZARD DISCLOSURES) AND CANCELLATION RIGHTS:**

- A. (1) Seller shall, within the time specified in paragraph 14A, Deliver to Buyer: (i) if required by Law, a fully completed: Federal Lead-Based Paint Disclosures (C.A.R. Form FLD) and pamphlet ("Lead Disclosures"); and (ii) unless exempt, fully completed disclosures or notices required by sections 1102 et. seq. and 1103 et. seq. of the Civil Code ("Statutory Disclosures"). Statutory Disclosures include, but are not limited to, a Real Estate Transfer Disclosure Statement ("TDS"), Natural Hazard Disclosure Statement ("NHD"), notice or actual knowledge of release of illegal controlled substance, notice of special tax and/or assessments (or, if allowed, substantially equivalent notice regarding the Mello-Roos Community Facilities Act of 1982 and Improvement Bond Act of 1915) and, if Seller has actual knowledge, of industrial use and military ordnance location (C.A.R. Form SPQ or ESD).
  - (2) Any Statutory Disclosure required by this paragraph is considered fully completed if Seller has answered all questions and completed and signed the Seller section(s) and the Listing Agent, if any, has completed and signed the Listing Broker section(s), or, if applicable, an Agent Visual Inspection Disclosure (C.A.R. Form AVID). Nothing stated herein relieves a Buyer's Broker, if any, from the obligation to (i) conduct a reasonably competent and diligent visual inspection of the accessible areas of the Property and disclose, on Section IV of the TDS, or an AVID, material facts affecting the value or desirability of the Property that were or should have been revealed by such an inspection or (ii) complete any sections on all disclosures required to be completed by Buyer's Broker.
  - (3) **Note to Buyer and Seller:** Waiver of Statutory and Lead Disclosures is prohibited by Law.
  - (4) Within the time specified in paragraph 14A, (i) Seller, unless exempt from the obligation to provide a TDS, shall, complete and provide Buyer with a Seller Property Questionnaire (C.A.R. Form SPQ); (ii) if Seller is not required to provide a TDS, Seller shall complete and provide Buyer with an Exempt Seller Disclosure (C.A.R. Form ESD).
  - (5) Buyer shall, within the time specified in paragraph 14B(1), return Signed Copies of the Statutory, Lead and other disclosures to Seller.
  - (6) In the event Seller or Listing Broker, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer, Seller shall promptly provide a subsequent or amended disclosure or notice, in writing, covering those items. **However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies of which Buyer is otherwise aware, or which are disclosed in reports provided to or obtained by Buyer or ordered and paid for by Buyer.**
  - (7) If any disclosure or notice specified in paragraph 10A(1), or subsequent or amended disclosure or notice is Delivered to Buyer after the offer is Signed, Buyer shall have the right to cancel this Agreement within **3 Days** After Delivery in person, or **5 Days** After Delivery by deposit in the mail, by giving written notice of cancellation to Seller or Seller's agent.
- B. **NATURAL AND ENVIRONMENTAL HAZARD DISCLOSURES AND OTHER BOOKLETS:** Within the time specified in paragraph 14A, Seller shall, if required by Law: (i) Deliver to Buyer earthquake guide(s) (and questionnaire), environmental hazards booklet, and home energy rating pamphlet; (ii) disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; and Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.
  - C. **WITHHOLDING TAXES:** Within the time specified in paragraph 14A, to avoid required withholding, Seller shall Deliver to Buyer or qualified substitute, an affidavit sufficient to comply with federal (FIRPTA) and California withholding Law (C.A.R. Form AS or QS).
  - D. **MEGAN'S LAW DATABASE DISCLOSURE:** Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at [www.meganslaw.ca.gov](http://www.meganslaw.ca.gov). Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides. (Neither Seller nor Brokers are required to check this website. If Buyer wants further information, Broker recommends that Buyer obtain information from this website during Buyer's inspection contingency period. Brokers do not have expertise in this area.)
  - E. **NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES:** This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Web site.
  - F. **CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:**
    - (1) **SELLER HAS: 7 (or \_\_\_\_\_) Days** After Acceptance to disclose to Buyer if the Property is a condominium, or is located in a planned development or other common interest subdivision (C.A.R. Form SPQ or ESD).

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

**RPA-CA REVISED 12/15 (PAGE 4 OF 10)**

**CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 4 OF 10)**

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 [www.zipLogix.com](http://www.zipLogix.com)



Property Address: \_\_\_\_\_

Date: \_\_\_\_\_

(2) If the Property is a condominium or is located in a planned development or other common interest subdivision, Seller has **3 (or \_\_\_\_\_) Days** After Acceptance to request from the HOA (C.A.R. Form HOA1): **(i)** Copies of any documents required by Law; **(ii)** disclosure of any pending or anticipated claim or litigation by or against the HOA; **(iii)** a statement containing the location and number of designated parking and storage spaces; **(iv)** Copies of the most recent 12 months of HOA minutes for regular and special meetings; and **(v)** the names and contact information of all HOAs governing the Property (collectively, "CI Disclosures"). **(vi)** private transfer fees; **(vii)** Pet fee restrictions; and **(viii)** smoking restrictions. Seller shall itemize and Deliver to Buyer all CI Disclosures received from the HOA and any CI Disclosures in Seller's possession. Buyer's approval of CI Disclosures is a contingency of this Agreement as specified in paragraph 14B(3). The Party specified in paragraph 7, as directed by escrow, shall deposit funds into escrow or direct to HOA or management company to pay for any of the above.

**11. CONDITION OF PROPERTY:** Unless otherwise agreed in writing: **(i)** the Property is sold (a) "AS-IS" in its PRESENT physical condition as of the date of Acceptance and (b) subject to Buyer's Investigation rights; **(ii)** the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and **(iii)** all debris and personal property not included in the sale shall be removed by Close Of Escrow.

- A. Seller shall, within the time specified in paragraph 14A, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, and make any and all other disclosures required by law.
- B. Buyer has the right to conduct Buyer Investigations of the Property and, as specified in paragraph 14B, based upon information discovered in those investigations: (i) cancel this Agreement; or (ii) request that Seller make Repairs or take other action.
- C. **Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had permits issued.**

**12. BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:**

- A. Buyer's acceptance of the condition of, and any other matter affecting the Property, is a contingency of this Agreement as specified in this paragraph and paragraph 14B. Within the time specified in paragraph 14B(1), Buyer shall have the right, at Buyer's expense unless otherwise agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations"), including, but not limited to: **(i)** a general physical inspection; **(ii)** an inspection specifically for wood destroying pests and organisms. Any inspection for wood destroying pests and organisms shall be prepared by a registered Structural Pest Control company; shall cover the main building and attached structures; may cover detached structures; shall NOT include water tests of shower pans on upper level units unless the owners of property below the shower consent; shall NOT include roof coverings; and, if the Property is a unit in a condominium or other common interest subdivision, the inspection shall include only the separate interest and any exclusive-use areas being transferred, and shall NOT include common areas; and shall include a report ("Pest Control Report") showing the findings of the company which shall be separated into sections for evident infestation or infections (Section 1) and for conditions likely to lead to infestation or infection (Section 2); **(iii)** inspect for lead-based paint and other lead-based paint hazards; **(iv)** satisfy Buyer as to any matter specified in the attached Buyer's Inspection Advisory (C.A.R. Form BIA); **(v)** review the registered sex offender database; **(vi)** confirm the insurability of Buyer and the Property including the availability and cost of flood and fire insurance; and **(vii)** review and seek approval of leases that may need to be assumed by Buyer. Without Seller's prior written consent, Buyer shall neither make nor cause to be made: invasive or destructive Buyer Investigations, except for minimally invasive testing required to prepare a Pest Control Report; or inspections by any governmental building or zoning inspector or government employee, unless required by Law.
- B. Seller shall make the Property available for all Buyer Investigations. Buyer shall **(i)** as specified in paragraph 14B, complete Buyer Investigations and either remove the contingency or cancel this Agreement, and **(ii)** give Seller, at no cost, complete Copies of all such Investigation reports obtained by Buyer, which obligation shall survive the termination of this Agreement.
- C. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is made available to Buyer.
- D. **Buyer indemnity and seller protection for entry upon property:** Buyer shall: **(i)** keep the Property free and clear of liens; **(ii)** repair all damage arising from Buyer Investigations; and **(iii)** indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-Responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.

**13. TITLE AND VESTING:**

- A. Within the time specified in paragraph 14, Buyer shall be provided a current preliminary title report ("Preliminary Report"). The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. Buyer's review of the Preliminary Report and any other matters which may affect title are a contingency of this Agreement as specified in paragraph 14B. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities. Seller shall within 7 Days After Acceptance, give Escrow Holder a completed Statement of Information.
- B. Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: **(i)** monetary liens of record (which Seller is obligated to pay off) unless Buyer is assuming those obligations or taking the Property subject to those obligations; and **(ii)** those matters which Seller has agreed to remove in writing.
- C. Within the time specified in paragraph 14A, Seller has a duty to disclose to Buyer all matters known to Seller affecting title, whether of record or not.
- D. At Close Of Escrow, Buyer shall receive a grant deed conveying title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's leasehold interest), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's supplemental escrow instructions. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )  
RPA-CA REVISED 12/15 (PAGE 5 OF 10)

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

**CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 5 OF 10)**



Property Address: \_\_\_\_\_

Date: \_\_\_\_\_

- E. Buyer shall receive a CLTA/ALTA "Homeowner's Policy of Title Insurance", if applicable to the type of property and buyer. If not, Escrow Holder shall notify Buyer. A title company can provide information about the availability, coverage, and cost of other title policies and endorsements. If the Homeowner's Policy is not available, Buyer shall choose another policy, instruct Escrow Holder in writing and shall pay any increase in cost.
- 14. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS: The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).**
  - A. **SELLER HAS: 7 (or \_\_\_\_\_) Days** After Acceptance to Deliver to Buyer all Reports, disclosures and information for which Seller is responsible under paragraphs 5, 6, 7, 8B(5), 10A, B, C, and F, 11A and 13A. If, by the time specified, Seller has not Delivered any such item, Buyer after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP) may cancel this Agreement.
  - B. **(1) BUYER HAS: 17 (or \_\_\_\_\_) Days** After Acceptance, unless otherwise agreed in writing, to: **(i)** complete all Buyer Investigations; review all disclosures, reports, lease documents to be assumed by Buyer pursuant to paragraph 8B(5), and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property; and **(ii)** Deliver to Seller Signed Copies of Statutory and Lead Disclosures and other disclosures Delivered by Seller in accordance with paragraph 10A.
    - (2)** Within the time specified in paragraph 14B(1), Buyer may request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to (C.A.R. Form RRRR) Buyer's requests.
    - (3)** By the end of the time specified in paragraph 14B(1) (or as otherwise specified in this Agreement), Buyer shall Deliver to Seller a removal of the applicable contingency or cancellation (C.A.R. Form CR or CC) of this Agreement. However, if any report, disclosure or information for which Seller is responsible is not Delivered within the time specified in paragraph 14A, then Buyer has **5 (or \_\_\_\_\_) Days** After Delivery of any such items, or the time specified in paragraph 14B(1), whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.
    - (4) Continuation of Contingency:** Even after the end of the time specified in paragraph 14B(1) and before Seller cancels, if at all, pursuant to paragraph 14D, Buyer retains the right, in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to paragraph 14D(1).
    - (5) Access to Property:** Buyer shall have access to the Property to conduct inspections and investigations for **17 (or \_\_\_\_\_) Days** After Acceptance, whether or not any part of the Buyer's Investigation Contingency has been waived or removed.
  - C.  **REMOVAL OF CONTINGENCIES WITH OFFER: Buyer removes the contingencies specified in the attached Contingency Removal form (C.A.R. Form CR). If Buyer removes any contingency without an adequate understanding of the Property's condition or Buyer's ability to purchase, Buyer is acting against the advice of Broker.**
  - D. **SELLER RIGHT TO CANCEL:**
    - (1) Seller right to Cancel; Buyer Contingencies:** If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
    - (2) Seller right to Cancel; Buyer Contract Obligations:** Seller, after first delivering to Buyer a NBP, may cancel this Agreement if, by the time specified in this Agreement, Buyer does not take the following action(s): **(i)** Deposit funds as required by paragraph 3A, or 3B or if the funds deposited pursuant to paragraph 3A or 3B are not good when deposited; **(ii)** Deliver a notice of FHA or VA costs or terms as required by paragraph 3D(3) (C.A.R. Form FVA); **(iii)** Deliver a letter as required by paragraph 3J(1); **(iv)** Deliver verification, or a satisfactory verification if Seller reasonably disapproves of the verification already provided, as required by paragraph 3C or 3H; **(v)** In writing assume or accept leases or liens specified in 8B5; **(vi)** Return Statutory and Lead Disclosures as required by paragraph 10A(5); or **(vii)** Sign or initial a separate liquidated damages form for an increased deposit as required by paragraphs 3B and 21B; or **(viii)** Provide evidence of authority to sign in a representative capacity as specified in paragraph 19. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
  - E. **NOTICE TO BUYER OR SELLER TO PERFORM:** The NBP or NSP shall: **(i)** be in writing; **(ii)** be signed by the applicable Buyer or Seller; and **(iii)** give the other Party at least **2 (or \_\_\_\_\_) Days** After Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A NBP or NSP may not be Delivered any earlier than **2 Days** Prior to the expiration of the applicable time for the other Party to remove a contingency or cancel this Agreement or meet an obligation specified in paragraph 14.
  - F. **EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES:** If Buyer removes, in writing, any contingency or cancellation rights, unless otherwise specified in writing, Buyer shall conclusively be deemed to have: **(i)** completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; **(ii)** elected to proceed with the transaction; and **(iii)** assumed all liability, responsibility and expense for Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.
  - G. **CLOSE OF ESCROW:** Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a demand to close escrow (C.A.R. Form DCE). The DCE shall: **(i)** be signed by the applicable Buyer or Seller; and **(ii)** give the other Party at least **3 (or \_\_\_\_\_) Days** After Delivery to close escrow. A DCE may not be Delivered any earlier than **3 Days** Prior to the scheduled close of escrow.
  - H. **EFFECT OF CANCELLATION ON DEPOSITS:** If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to Sign mutual instructions to cancel the sale and escrow and release deposits, if any, to the party entitled to the funds, less fees and costs incurred by that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. Except as specified below, **release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award.** If either Party fails to execute mutual instructions to cancel escrow, one Party may make a written demand to Escrow Holder for the deposit. (C.A.R. Form BDRD or SDRD). Escrow Holder, upon receipt, shall promptly deliver notice of the demand to the other Party. If, within 10 Days After Escrow Holder's notice, the other Party does not object to the demand, Escrow Holder shall disburse the deposit to the Party making the demand. If Escrow Holder complies with the preceding process, each Party shall be deemed to have released Escrow Holder from any and all claims or liability related to the disbursement of the deposit. Escrow Holder, at its discretion, may nonetheless require mutual cancellation instructions. **A Party may be subject to a civil penalty of up to \$1,000 for refusal to sign cancellation instructions if no good faith dispute exists as to who is entitled to the deposited funds (Civil Code §1057.3).**

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )





Property Address:

Date:

**15. FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final verification of the Property within **5 (or \_\_\_\_\_) Days**

Prior to Close Of Escrow, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: **(i)** the Property is maintained pursuant to paragraph 11; **(ii)** Repairs have been completed as agreed; and **(iii)** Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).

**16. REPAIRS:** Repairs shall be completed prior to final verification of condition unless otherwise agreed in writing. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. It is understood that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: **(i)** obtain invoices and paid receipts for Repairs performed by others; **(ii)** prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and **(iii)** provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.

**17. PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless otherwise agreed in writing, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, rents, HOA regular, special, and emergency dues and assessments imposed prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special assessments that are now a lien but not yet due. Property will be reassessed upon change of ownership. Any supplemental tax bills shall be paid as follows: **(i)** for periods after Close Of Escrow, by Buyer; and **(ii)** for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information). TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be made based on a 30-day month.

**18. BROKERS:**

**A. COMPENSATION:** Seller or Buyer, or both, as applicable, agree to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.

**B. SCOPE OF DUTY:** Buyer and Seller acknowledge and agree that Broker: **(i)** Does not decide what price Buyer should pay or Seller should accept; **(ii)** Does not guarantee the condition of the Property; **(iii)** Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; **(iv)** Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; **(v)** Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Broker; **(vi)** Shall not be responsible for inspecting public records or permits concerning the title or use of Property; **(vii)** Shall not be responsible for identifying the location of boundary lines or other items affecting title; **(viii)** Shall not be responsible for verifying square footage, representations of others or information contained in Investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; **(ix)** Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; **(x)** Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and **(xi)** Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.

**19. REPRESENTATIVE CAPACITY:** If one or more Parties is signing this Agreement in a representative capacity and not for him/herself as an individual then that Party shall so indicate in paragraph 31 or 32 and attach a Representative Capacity Signature Disclosure (C.A.R. Form RCSD). Wherever the signature or initials of the representative identified in the RCSD appear on this Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Party acting in a representative capacity (i) represents that the entity for which that party is acting already exists and (ii) shall Deliver to the other Party and Escrow Holder, within **3 Days** After Acceptance, evidence of authority to act in that capacity (such as but not limited to: applicable portion of the trust or Certification Of Trust (Probate Code §18100.5), letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).

**20. JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:**

**A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder, which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: paragraphs 1, 3, 4B, 5A, 6, 7, 10C, 13, 14G, 17, 18A, 19, 20, 26, 29, 30, 31, 32 and paragraph D of the section titled Real Estate Brokers on page 10. If a Copy of the separate compensation agreement(s) provided for in paragraph 18A, or paragraph D of the section titled Real Estate Brokers on page 10 is deposited with Escrow Holder by Broker, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder and will execute such provisions within the time specified in paragraph 7C(1)(c). To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller will execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within **3 (or \_\_\_\_\_) Days**, shall pay to Escrow Holder or HOA or HOA management company or others any fee required by paragraphs 7, 10 or elsewhere in this Agreement.**

**B. A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within **3 Days** After Acceptance (or \_\_\_\_\_). Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title company when received from Seller. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under paragraph 10C, Escrow Holder shall deliver to Buyer a Qualified Substitute statement that complies with federal Law.**

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )



Property Address: \_\_\_\_\_

Date: \_\_\_\_\_

- C. Brokers are a party to the escrow for the sole purpose of compensation pursuant to paragraph 18A and paragraph D of the section titled Real Estate Brokers on page 10. Buyer and Seller irrevocably assign to Brokers compensation specified in paragraph 18A, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.
- D. Upon receipt, Escrow Holder shall provide Seller and Seller's Broker verification of Buyer's deposit of funds pursuant to paragraph 3A and 3B. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify all Brokers: (i) if Buyer's initial or any additional deposit or down payment is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.
- E. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within 3 Days after mutual execution of the amendment.

**21. REMEDIES FOR BUYER'S BREACH 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).**

Buyer's Initials \_\_\_\_\_ / \_\_\_\_\_

Seller's Initials \_\_\_\_\_ / \_\_\_\_\_

**22. DISPUTE RESOLUTION:**

- A. **MEDIATION:** The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action through the C.A.R. Real Estate Mediation Center for Consumers ([www.consumermediation.org](http://www.consumermediation.org)) or through any other mediation provider or service mutually agreed to by the Parties. The Parties also agree to mediate any disputes or claims with Broker(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. Mediation fees, if any, shall be divided equally among the Parties involved. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. **THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED. Exclusions from this mediation agreement are specified in paragraph 22C.**

**B. ARBITRATION OF DISPUTES:**

The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The Parties also agree to arbitrate any disputes or claims with Broker(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of residential real estate Law experience, unless the parties mutually agree to a different arbitrator. The Parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 22C.

**"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."**

**"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."**

Buyer's Initials \_\_\_\_\_ / \_\_\_\_\_

Seller's Initials \_\_\_\_\_ / \_\_\_\_\_

**C. ADDITIONAL MEDIATION AND ARBITRATION TERMS:**

- (1) **EXCLUSIONS:** The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; and (iii) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court.

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Property Address: \_\_\_\_\_

Date: \_\_\_\_\_

(2) **PRESERVATION OF ACTIONS:** The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.

(3) **BROKERS:** Brokers shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Broker(s) participating in mediation or arbitration shall not be deemed a party to this Agreement.

23. **SELECTION OF SERVICE PROVIDERS:** Brokers do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Broker or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.

24. **MULTIPLE LISTING SERVICE ("MLS"):** Brokers are authorized to report to the MLS a pending sale and, upon Close Of Escrow, the sales price and other terms of this transaction shall be provided to the MLS to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS.

25. **ATTORNEY FEES:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 22A.

26. **ASSIGNMENT:** Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the separate written consent of Seller to a specified assignee. Such consent shall not be unreasonably withheld. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless otherwise agreed in writing by Seller. (C.A.R. Form AOAA).

27. **EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.

28. **TERMS AND CONDITIONS OF OFFER:**

This is an offer to purchase the Property on the above terms and conditions. The liquidated damages paragraph or the arbitration of disputes paragraph is incorporated in this Agreement if initialed by all Parties or if incorporated by mutual agreement in a counter offer or addendum. If at least one but not all Parties initial, a counter offer is required until agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance. The Parties have read and acknowledge receipt of a Copy of the offer and agree to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing.

29. **TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as otherwise specified, this Agreement shall be interpreted and disputes shall be resolved in accordance with the Laws of the State of California. **Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.**

30. **DEFINITIONS:** As used in this Agreement:

- A. "Acceptance" means the time the offer or final counter offer is accepted in writing by a Party and is delivered to and personally received by the other Party or that Party's authorized agent in accordance with the terms of this offer or a final counter offer.
- B. "Agreement" means this document and any counter offers and any incorporated addenda, collectively forming the binding agreement between the Parties. Addenda are incorporated only when Signed by all Parties.
- C. "C.A.R. Form" means the most current version of the specific form referenced or another comparable form agreed to by the parties.
- D. "Close Of Escrow", including "COE", means the date the grant deed, or other evidence of transfer of title, is recorded.
- E. "Copy" means copy by any means including photocopy, NCR, facsimile and electronic.
- F. "Days" means calendar days. However, after Acceptance, the last Day for performance of any act required by this Agreement (including Close Of Escrow) shall not include any Saturday, Sunday, or legal holiday and shall instead be the next Day.
- G. "Days After" means the specified number of calendar days after the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59 PM on the final day.
- H. "Days Prior" means the specified number of calendar days before the occurrence of the event specified, not counting the calendar date on which the specified event is scheduled to occur.
- I. "Deliver", "Delivered" or "Delivery", unless otherwise specified in writing, means and shall be effective upon: personal receipt by Buyer or Seller or the individual Real Estate Licensee for that principal as specified in the section titled Real Estate Brokers on page 10, regardless of the method used (i.e., messenger, mail, email, fax, other).
- J. "Electronic Copy" or "Electronic Signature" means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.
- K. "Law" means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
- L. "Repairs" means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
- M. "Signed" means either a handwritten or electronic signature on an original document, Copy or any counterpart.

31. **EXPIRATION OF OFFER:** This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless the offer is Signed by Seller and a Copy of the Signed offer is personally received by Buyer, or by \_\_\_\_\_, who is authorized to receive it, by 5:00 PM on the third Day after this offer is signed by Buyer (or by  AM/  PM, on \_\_\_\_\_ (date)).

One or more Buyers is signing this Agreement in a representative capacity and not for him/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-B) for additional terms.

Date  BUYER

(Print name)

Date \_\_\_\_\_ BUYER

(Print name) \_\_\_\_\_

Additional Signature Addendum attached (C.A.R. Form ASA).

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )



Property Address: \_\_\_\_\_ Date: \_\_\_\_\_

**32. ACCEPTANCE OF OFFER:** Seller warrants that Seller is the owner of the Property, or has the authority to execute this Agreement. Seller accepts the above offer, and agrees to sell the Property on the above terms and conditions. Seller has read and acknowledges receipt of a Copy of this Agreement, and authorizes Broker to Deliver a Signed Copy to Buyer.

(If checked) SELLER'S ACCEPTANCE IS **SUBJECT TO ATTACHED COUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:** \_\_\_\_\_

One or more Sellers is signing this Agreement in a representative capacity and not for him/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-S) for additional terms.

Date \_\_\_\_\_ SELLER  
(Print name) \_\_\_\_\_

Date \_\_\_\_\_ SELLER  
(Print name) \_\_\_\_\_

Additional Signature Addendum attached (C.A.R. Form ASA).

(\_\_\_\_\_/\_\_\_\_\_) (Do not initial if making a counter offer.) **CONFIRMATION OF ACCEPTANCE:** A Copy of Signed Acceptance was personally received by Buyer or Buyer's authorized agent on (date) \_\_\_\_\_ at \_\_\_\_\_  
(Initials)  AM/  PM. **A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence the date that Confirmation of Acceptance has occurred.**

**REAL ESTATE BROKERS:**

- A. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.**
- B. Agency relationships are confirmed as stated in paragraph 2.**
- C.** If specified in paragraph 3A(2), Agent who submitted the offer for Buyer acknowledges receipt of deposit.
- D. COOPERATING BROKER COMPENSATION:** Listing Broker agrees to pay Cooperating Broker (**Selling Firm**) and Cooperating Broker agrees to accept, out of Listing Broker's proceeds in escrow, the amount specified in the MLS, provided Cooperating Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Listing Broker and Cooperating Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sale, then compensation must be specified in a separate written agreement (C.A.R. Form CBC). Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.

Real Estate Broker (Selling Firm)		CalBRE Lic. # _____
By _____	CalBRE Lic. # _____	Date _____
By _____	CalBRE Lic. # _____	Date _____
Address _____	City _____	State _____ Zip _____
Telephone _____ Fax _____	E-mail _____	
Real Estate Broker (Listing Firm)		CalBRE Lic. # _____
By _____	CalBRE Lic. # _____	Date _____
By _____	CalBRE Lic. # _____	Date _____
Address _____	City _____	State _____ Zip _____
Telephone _____ Fax _____	E-mail _____	

**ESCROW HOLDER ACKNOWLEDGMENT:**

Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked,  a deposit in the amount of \$ \_\_\_\_\_), counter offer numbers \_\_\_\_\_  Seller's Statement of Information and \_\_\_\_\_, and agrees to act as Escrow Holder subject to paragraph 20 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised that the date of Confirmation of Acceptance of the Agreement as between Buyer and Seller is \_\_\_\_\_

Escrow Holder \_\_\_\_\_ Escrow # \_\_\_\_\_

By \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_

Phone/Fax/E-mail \_\_\_\_\_

Escrow Holder has the following license number # \_\_\_\_\_

Department of Business Oversight,  Department of Insurance,  Bureau of Real Estate.

**PRESENTATION OF OFFER:** (\_\_\_\_\_) Listing Broker presented this offer to Seller on \_\_\_\_\_ (date).  
\_\_\_\_\_  
Broker or Designee Initials

**REJECTION OF OFFER:** (\_\_\_\_\_) (\_\_\_\_\_) No counter offer is being made. This offer was rejected by Seller on \_\_\_\_\_ (date).  
\_\_\_\_\_  
Seller's Initials

©1991- 2015, California Association of REALTORS®, Inc. United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.



Published and Distributed by: REAL ESTATE BUSINESS SERVICES, INC.  
a subsidiary of the CALIFORNIA ASSOCIATION OF REALTORS®  
\*525 South Virgil Avenue, Los Angeles, California 90020

Buyer Acknowledges that page 10 is part of this Agreement (\_\_\_\_\_) (\_\_\_\_\_) Buyer's Initials

Reviewed by \_\_\_\_\_  
Broker or Designee



**RPA-CA REVISED 12/15 (PAGE 10 of 10)**

**CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 10 OF 10)**

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 [www.zipLogix.com](http://www.zipLogix.com)



From Dukeminier et al., Property (8th ed. 2014)

possession. This result was said to follow from equitable conversion, treating the purchaser as owner. Most courts are thought to follow this view. Some courts, however, have declined to apply equitable conversion and have held that the loss is on the seller until legal title is conveyed. In Massachusetts, the risk of loss is on the seller if the loss is substantial and the terms of the contract show that the building constituted an important part of the subject matter of the contract; if the loss is not substantial, either party can enforce the contract, though an abatement in purchase price may be given. In some other states, the risk of loss is placed on the party in possession, the view also taken by the Uniform Vendor and Purchaser Act (1935). See, e.g., *Brush Grocery Kart, Inc. v. Sure Fine Market, Inc.*, 47 P.3d 680 (Colo. 2002). If the purchaser has the risk of loss, and the seller has insurance, in most states the seller holds the insurance proceeds as trustee for the buyer. See *Bryant v. Willison Real Estate Co.*, 350 S.E.2d 748 (W. Va. 1986) (discussing the law of many states); William B. Stoebuck & Dale A. Whitman, *The Law of Property* 792-797 (3d ed. 2000). Which rule is likely to promote economic efficiency—equitable conversion or an approach such as the one adopted in Massachusetts? Obviously, to avoid litigation, the parties should include a provision regarding risk of loss in the contract of sale and buy insurance accordingly.

**Inheritance.** Equitable conversion has been applied in situations when one of the parties to a contract for the sale of land dies and the issue arises whether the decedent's interest is real property or personal property. If equitable conversion has occurred, the seller's interest is personal property (right to the purchase price), and the buyer is treated as owner of the land. Thus suppose that O, owner of Blackacre, contracts to sell Blackacre to A for \$10,000. Before closing, O dies intestate. By the applicable intestacy statute, B succeeds to O's real property, and C succeeds to O's personal property. Under equitable conversion, C is entitled to the \$10,000 when it is paid. See also *In re Estate of Pickett*, 879 So. 2d 467 (Miss. App. 2004); *Shay v. Penrose*, 185 N.E.2d 218 (Ill. 1962); *Coe v. Hays*, 661 A.2d 220 (Md. App. 1995).

### 3. The Duty to Disclose Defects

#### **Stambovsky v. Ackley**

New York Supreme Court, Appellate Division  
 First Department, 1991  
 572 N.Y.S.2d 672

RUBIN, J. Plaintiff, to his horror, discovered that the house he had recently contracted to purchase was widely reputed to be possessed by poltergeists, reportedly seen by defendant seller and members of her family on numerous occasions over the last nine years. Plaintiff promptly commenced this action seeking rescission of the contract of sale. Supreme Court reluctantly dismissed the complaint, holding that plaintiff has no remedy at law in this jurisdiction.



The unusual facts of this case, as disclosed by the record, clearly warrant a grant of equitable relief to the buyer who, as a resident of New York City, cannot be expected to have any familiarity with the folklore of the Village of Nyack. Not being a "local," plaintiff could not readily learn that the home he had contracted to purchase is haunted. Whether the source of the spectral apparitions seen by defendant seller are parapsychic or psychogenic, having reported their presence in both a national publication (*Reader's Digest*) and the local press (in 1977 and 1982, respectively), defendant is estopped to deny their existence and, as a matter of law, the house is haunted. More to the point, however, no divination is required to conclude that it is defendant's promotional efforts in publicizing her close encounters with these spirits which fostered the home's reputation in the community. In 1989, the house was included in a five-home walking tour of Nyack and described in a November 27th newspaper article as "a riverfront Victorian (with ghost)." The impact of the reputation thus created goes to the very essence of the bargain between the parties, greatly impairing both the value of the property and its potential for resale. The extent of this impairment may be presumed for the purpose of reviewing the disposition of this motion to dismiss the cause of action for rescission (*Harris v. City of New York*, 147 A.D.2d 186, 188-189) and represents merely an issue of fact for resolution at trial.

While I agree with Supreme Court that the real estate broker, as agent for the seller, is under no duty to disclose to a potential buyer the phantasmal reputation of the premises and that, in his pursuit of a legal remedy for fraudulent misrepresentation against the seller, plaintiff hasn't a ghost of a chance, I am nevertheless moved by the spirit of equity to allow the buyer to seek rescission of the contract of sale and recovery of his down payment. New York law fails to recognize any remedy for damages incurred as a result of the seller's mere silence, applying instead the strict rule of *caveat emptor*. Therefore, the theoretical basis for granting relief, even under the extraordinary facts of this case, is elusive if not ephemeral.

"Pity me not but lend thy serious hearing to what I shall unfold" (William Shakespeare, *Hamlet*, Act I, Scene V [Ghost]).

From the perspective of a person in the position of plaintiff herein, a very practical problem arises with respect to the discovery of a paranormal phenomenon: "Who you gonna' call?" as a title song to the movie "Ghostbusters" asks. Applying the strict rule of *caveat emptor* to a contract involving a house possessed by poltergeists conjures up visions of a psychic or medium routinely accompanying the structural engineer and Terminix man on an inspection of every home subject to a contract of sale. It portends that the prudent attorney will establish an escrow account lest the subject of the transaction come back to haunt him and his client—or pray that his malpractice insurance coverage extends to supernatural disasters. In the interest of avoiding such untenable consequences, the notion that a haunting is a condition which can and should be ascertained upon reasonable inspection of the premises is a hobgoblin which should be exorcised from the body of legal precedent and laid quietly to rest.

It has been suggested by a leading authority that the ancient rule which holds that mere nondisclosure does not constitute actionable misrepresentation "finds



proper application in cases where the fact undisclosed is patent, or the plaintiff has equal opportunities for obtaining information which he may be expected to utilize, or the defendant has no reason to think that he is acting under any misapprehension" (Prosser, Torts §106, at 696 (4th ed. 1971)). However, with respect to transactions in real estate, New York adheres to the doctrine of caveat emptor and imposes no duty upon the vendor to disclose any information concerning the premises (*London v. Courduff*, 141 A.D.2d 803) unless there is a confidential or fiduciary relationship between the parties (*Moser v. Spizzirro*, 31 A.D.2d 537, aff'd 25 N.Y.2d 941; *IBM Credit Fin. Corp. v. Mazda Motor Mfg. [USA] Corp.*, 152 A.D.2d 451) or some conduct on the part of the seller which constitutes "active concealment" (see, *17 E. 80th Realty Corp. v. 68th Assocs.*, 173 A.D.2d 245 (dummy ventilation system constructed by seller); *Haberman v. Greenspan*, 82 Misc. 2d 263 (foundation cracks covered by seller)). Normally, some affirmative misrepresentation (e.g., *Tahini Invs. v. Bobrowsky*, 99 A.D.2d 489 (industrial waste on land allegedly used only as farm); *Jansen v. Kelly*, 11 A.D.2d 587 (land containing valuable minerals allegedly acquired for use as campsite)) or partial disclosure (*Junius Constr. Corp. v. Cohen*, 257 N.Y. 393 (existence of third unopened street concealed); *Noved Realty Corp. v. A.A.P. Co.*, 250 A.D. 1 (escrow agreements securing lien concealed)) is required to impose upon the seller a duty to communicate undisclosed conditions affecting the premises (contra, *Young v. Keith*, 112 A.D.2d 625 (defective water and sewer systems concealed)).

Caveat emptor is not so all-encompassing a doctrine of common law as to render every act of nondisclosure immune from redress, whether legal or equitable. . . . Where fairness and common sense dictate that an exception should be created, the evolution of the law should not be stifled by rigid application of a legal maxim.

The doctrine of caveat emptor requires that a buyer act prudently to assess the fitness and value of his purchase and operates to bar the purchaser who fails to exercise due care from seeking the equitable remedy of rescission (see, e.g., *Rodas v. Manitaras*, 159 A.D.2d 341). . . . It should be apparent, however, that the most meticulous inspection and search would not reveal the presence of poltergeists at the premises or unearth the property's ghoulish reputation in the community. Therefore, there is no sound policy reason to deny plaintiff relief for failing to discover a state of affairs which the most prudent purchaser would not be expected to even contemplate (see, *Da Silva v. Musso*, 53 N.Y.2d 543, 551).

The case law in this jurisdiction dealing with the duty of a vendor of real property to disclose information to the buyer is distinguishable from the matter under review. The most salient distinction is that existing cases invariably deal with the physical condition of the premises (e.g., *London v. Courduff*, supra) (use as a landfill); *Perin v. Mardine Realty Co.*, 5 A.D.2d 685, aff'd 6 N.Y.2d 920 (sewer line crossing adjoining property without owner's consent), defects in title (e.g., *Sands v. Kissane*, 282 A.D. 140 (remainderman)), liens against the property (e.g., *Noved Realty Corp. v. A.A.P. Co.*, supra), expenses or income (e.g., *Rodas v. Manitaras*, supra (gross receipts)) and other factors affecting its operation. No case has been brought to this court's attention in which the property value was impaired as the



result of the reputation created by information disseminated to the public by the seller (or, for that matter, as a result of possession by poltergeists).

Where a condition which has been created by the seller materially impairs the value of the contract and is peculiarly within the knowledge of the seller or unlikely to be discovered by a prudent purchaser exercising due care with respect to the subject transaction, nondisclosure constitutes a basis for rescission as a matter of equity. Any other outcome places upon the buyer not merely the obligation to exercise care in his purchase but rather to be omniscient with respect to any fact which may affect the bargain. No practical purpose is served by imposing such a burden upon a purchaser. To the contrary, it encourages predatory business practice and offends the principle that equity will suffer no wrong to be without a remedy.

Defendant's contention that the contract of sale, particularly the merger or "as is" clause, bars recovery of the buyer's deposit is unavailing. Even an express



*“ . . . as a matter of law, the house is haunted.”*



disclaimer will not be given effect where the facts are peculiarly within the knowledge of the party invoking it (*Danaan Realty Corp. v. Harris*, 5 N.Y.2d 317, 322; *Tahini Invs. v. Bobrowsky*, supra). Moreover, a fair reading of the merger clause reveals that it expressly disclaims only representations made with respect to the physical condition of the premises and merely makes general reference to representations concerning “any other matter or things affecting or relating to the aforesaid premises.” As broad as this language may be, a reasonable interpretation is that its effect is limited to tangible or physical matters and does not extend to paranormal phenomena. Finally, if the language of the contract is to be construed as broadly as defendant urges to encompass the presence of poltergeists in the house, it cannot be said that she has delivered the premises “vacant” in accordance with her obligation under the provisions of the contract rider. . . .

In the case at bar, defendant seller deliberately fostered the public belief that her home was possessed. Having undertaken to inform the public-at-large, to whom she has no legal relationship, about the supernatural occurrences on her property, she may be said to owe no less a duty to her contract vendee. It has been remarked that the occasional modern cases which permit a seller to take unfair advantage of a buyer’s ignorance so long as he is not actively misled are “singularly unappetizing” (Prosser, *Torts* §106, at 696 (4th ed. 1971)). Where, as here, the seller not only takes unfair advantage of the buyer’s ignorance but has created and perpetuated a condition about which he is unlikely to even inquire, enforcement of the contract (in whole or in part) is offensive to the court’s sense of equity. Application of the remedy of rescission, within the bounds of the narrow exception to the doctrine of *caveat emptor* set forth herein, is entirely appropriate to relieve the unwitting purchaser from the consequences of a most unnatural bargain.

Accordingly, the judgment of the Supreme Court, New York County, entered April 9, 1990, which dismissed the complaint pursuant to CPLR 3211(a)(7), should be modified, on the law and the facts, and in the exercise of discretion, and the first cause of action seeking rescission of the contract reinstated, without costs.

SMITH, J., dissenting. . . . [I]f the doctrine of *caveat emptor* is to be discarded, it should be for a reason more substantive than a poltergeist. The existence of a poltergeist is no more binding upon the defendants than it is upon this court.

**Johnson v. Davis**  
 Supreme Court of Florida, 1985  
 480 So. 2d 625

ADKINS, J. [The Davises entered into a contract to buy the Johnsons’ home for \$310,000. The Johnsons knew that the roof leaked, but they affirmatively represented to the Davises that there were no problems with the roof. After the Davises made a \$21,000 deposit, the Johnsons vacated the home. Several days later,

**New York Real Property Law**

*§ 258 – Short forms of deeds and mortgages.*

The use of the following forms of instruments for the conveyance and mortgage of real property is lawful, but this section does not prevent or invalidate the use of other forms:

*Statutory Form A (Individual)*

**DEED WITH FULL COVENANTS.**

This indenture, made the ..... day of ..... nineteen hundred and ....., between .....(insert residence) party of the first part, and ..... (insert residence) party of the second part,

Witnesseth, that the party of the first part, in consideration of ..... dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, ..... and assigns forever, all ..... (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

To have and to hold the premises herein granted unto the party of the second part, ..... and assigns forever. And said ..... covenants as follows:

First. That said ..... is seized of said premises in fee simple, and has good right to convey the same;

Second. That the party of the second part shall quietly enjoy the said premises;

Third. That the said premises are free from incumbrances;

Fourth. That the party of the first part will execute or procure any further necessary assurance of the title to said premises;

Fifth. That said ..... will forever warrant the title to said premises.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of:

*Statutory Form D. (Individual)*

**QUITCLAIM DEED.**

This indenture, made the ..... day of ....., nineteen hundred and ....., between ....., (insert residence), party of the first part, and ....., (insert residence), party of the second part:

Witnesseth, that the party of the first part, in consideration of ..... dollars, lawful money of the United States, paid by the party of the second part, does hereby remise, release, and quitclaim unto the party of the second part, ..... and assigns forever, all (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the premises herein granted unto the party of the second part, ..... and assigns forever.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of:

**Questions**

1. What is the difference between these two deed forms? Why would a grantee ever accept a quitclaim deed?

## **Engelhart v. Kramer**

570 N.W.2d 550 (S.D. 1997)

GILBERTSON, Justice.

A \$34,800 judgment was rendered against Crystal Kay Kramer based on violation of SDCL ch 43-4 and for failure to properly disclose a defect in the home she sold to Karen Engelhart. The case was tried without a jury before the Second Judicial Circuit Court. Kramer appeals the award claiming that Engelhart did not show that Kramer failed to meet the required standard in completing the seller's property disclosure statement.<sup>1</sup> We affirm.

### FACTS AND PROCEDURE

In May of 1991, Crystal Kay Kramer purchased a home in Sioux Falls, South Dakota for \$35,000. Over the next few years Kramer made several improvements. Four days prior to putting the home on the market, in September, 1993, Kramer enlisted the support of friends and family and began an extensive cleaning of the basement. There were several large cracks in the basement's cement walls and pieces of various sizes had fallen off. They removed old sheet rock and put up wood paneling over the basement walls. The basement project was memorialized by Kramer with several photographs depicting the before, during and after condition of the walls.

During this period Karen Engelhart was searching for a home commensurate with her income level. Engelhart was a first-time home buyer and was assisted by Dorothy Ecker, a real estate agent. Engelhart viewed Kramer's home, became interested, and then decided to purchase it.

Kramer was represented by Shirley Ullom, a Century 21 Advantage, Inc. real estate agent. Kramer completed the detailed "property condition disclosure statement" form required by SDCL 43-4-44. Part two of the form required the seller to disclose certain structural information. Specifically, question 2 asked "Have you experienced water penetration in the basement ... within the past two years?" Kramer replied, "Small amt of H2O penetration in NW + NE corners [when it] rains." (emphasis added). In

---

<sup>1</sup> Kramer also argues that the trial court erred in finding Kramer's actions constituted fraud and deceit. In light of our disposition of the case on the disclosure requirement issue, the fraud and deceit issue need not be addressed.



answering question 3 “[a]re there any cracked walls or floors?” Kramer responded “basement floor, some spots in basement walls, East bedroom walls.” Under § 5, Miscellaneous Information, Kramer was required to disclose any additional problems that were not previously mentioned. Kramer offered, “*basement cement walls have some crumbling*, behind paneling, basement floor cracked [and] uneven in spots.” (emphasis added).

The trial court found that Engelhart relied upon, among other things, Kramer’s disclosure statement with regard to the condition of the basement walls and that Engelhart believed “some spots” and “some crumbling” to mean the problems were minimal. Kramer allegedly offered to remove the paneling to expose the basement walls but the trial court concluded that the offer was “a gambit, or a bluff ... without any real intention of performing” and that the typical buyer in Engelhart’s position would be “reluctant to remove paneling from someone else’s house.” Kramer admitted taking photographs before installing the paneling and that showing the photos to a potential purchaser would have been easier than removing it. Kramer could not explain why she did not offer the photos.

Engelhart purchased the property in October 1994. In March of 1995, she discovered water seepage through the south wall of the basement. The paneling was removed and water was discovered running through cracks in the south wall. Also noted were several other large cracks, including a large horizontal crack running around the basement. Engelhart hired a structural engineer, Chester Quick (Quick) to diagnose the problem. Quick issued a report in which he found the basement walls “very badly cracked” and testified that the cement had “leached out” which allowed dirt and water to pass into the basement.<sup>2</sup>

Further, Quick noted that the concrete was showing “considerable disintegration especially at the south wall” which was not repairable. He concluded that the foundation had to be replaced and that “As bad as [the walls] are cracked they could collapse at any time.” When asked whether the disclosure statement adequately

---

<sup>2</sup> Quick testified that the wall was “a mixture of sand, cement [which holds the mixture together], and usually some rock, and over time with excess water and cracks the cement ‘leeches out’ of the mixture and you wind up with nothing but sand and rock.”

described the condition of the basement Quick testified that, although accurate in part, “some crumbling” did not adequately describe the damage that existed behind the paneling.

Engelhart brought suit against Kramer based upon misrepresentations made in the disclosure statement. The trial court ruled in favor of Engelhart on failure to comply with South Dakota’s Disclosure Statutes and fraud. Kramer appeals the \$34,800 award entered against her. ...

### LEGAL ANALYSIS AND DECISION

Whether Kramer failed to complete the disclosure statement in good faith as required by SDCL Ch 43-A?

In 1993 the South Dakota legislature enacted specific requirements for disclosures in certain real estate transfers. SDCL §§ 43-4-38 to -44. SDCL 43-4-38 provides:

The seller of residential real property shall furnish to a buyer a completed copy of the disclosure statement before the buyer makes a written offer. If after delivering the disclosure statement to the buyer or the buyer’s agent and prior to the date of closing for the property or the date of possession of the property, whichever comes first, the seller becomes aware of any change of material fact which would affect the disclosure statement, the seller shall furnish a written amendment disclosing the change of material fact.

SDCL 43-4-41 requires that “The seller shall perform each act and make each disclosure in good faith.” SDCL 43-4-40 absolves sellers of liability for defects in certain circumstances by providing:

Except as provided in § 43-4-42, a seller is not liable for a defect or other condition in the residential real property being transferred if the seller *truthfully completes* the disclosure statement.

(Emphasis added). The disclosure form mandated by SDCL 43-4-44 establishes that beyond the above obligations, there is no warranty passing from the seller to the buyer:

THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY.... IT IS NOT A WARRANTY OF ANY

KIND BY THE SELLER OR ANY AGENT REPRESENTING ANY PARTY IN THIS TRANSACTION AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PARTIES MAY WISH TO OBTAIN.

(Capitals in original).

Kramer relies on SDCL 43-4-40 and contends that even if her description of the basement was inadequate or under Kramer's phraseology, an innocent misrepresentation, that it was truthful nonetheless and therefore no liability should attach. It is important to note that in SDCL 43-4-40, the terms "truthfully" and "complete" do not operate independently to the exclusion of the other. A plain reading of the terms together evince a more exacting standard than truth alone.

Until today, this Court has not addressed the scope of the disclosure statutes at issue. Of central concern to our resolution is what is required by the term "good faith," in the absence of a definition in SDCL 43-4-41, and whether the disclosure of "some crumbling" violates that standard? We recognize that the concept of "good faith" may, at times, seem as elusive as the "reasonableness" that is spoken of in the law of torts. However, there exists several sources from which meaning can be found.

Statutory guidance can be found at SDCL 2-14-2(13) which states that "good faith" is:

an honest intention to abstain from taking any unconscientious advantage of another, even through the forms or technicalities of law, together with an absence of all information or belief of facts which would render the transaction unconscientious;

Black's Law Dictionary 693 (6th ed 1990) offers the following:

Good faith is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage.... In common usage this term is ordinarily used to describe that state of mind denoting honesty of purpose, freedom of intention to defraud, and, generally speaking, means being faithful to one's duty or obligation.

Case law decided under different contexts has provided additional meaning to the term “good faith” to include “honesty in fact,” *Garrett v. BankWest, Inc.*, 459 N.W.2d 833, 841 (S.D.1990) (contractual context; meaning of good faith “varies with the context and emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party”), and an “honest belief in the suitability of the actions taken.” *B.W. v. Meade Co.*, 534 N.W.2d 595, 598 (S.D.1995), (in the context of reporting and investigating child abuse). In the case now before us the trial court properly relied upon the definition found in SDCL 2-14-2(13).

Kramer contends that since she described the condition of the basement walls as having “some spots” and “some crumbling,” she fulfilled her duty of good faith by truthfully completing the Disclosure Statement. Kramer argues that to hold otherwise would, in effect, result in a strict liability standard on sellers of real estate. We disagree.

SDCL 43-4-42 provides:

A transfer that is subject to §§ 43-4-37 to 43-4-44, inclusive, is not invalidated solely because a person fails to comply with §§ 43-4-37 to 43-4-44, inclusive. However, a person *who intentionally or who negligently* violates §§ 43-4-37 to 43-4-44, inclusive, is liable to the buyer for the amount of the actual damages and repairs suffered by the buyer as a result of the violation or failure. A court may also award the buyer costs and attorney fees. Nothing in this section shall preclude or restrict any other rights or remedies of the buyer.

(Emphasis added).

Kramer relies on *Amyot v. Luchini*, 932 P.2d 244 (Alaska 1997), for the proposition that a disclosure statement can be truthful yet not “perfect” and that “innocent misrepresentations” do not violate good faith. However, it must be noted that Kramer’s representation of the issue to this Court incorrectly assumes that the misrepresentation of the basement walls was found merely innocent by the trial court. To the contrary, the trial court specifically found that the Kramer’s paneling of the walls four days before putting the house on the market was not “solely for aesthetic purposes” and was completed deliberately<sup>3</sup> in an attempt to hide their true condition.

---

<sup>3</sup> The trial court relied on Kramer’s deposition and trial testimony in that when she purchased the house “[t]he walls were crumbling with cracks in places,” that the residue she had discovered on the basement floor was “Part



Kramer's colorful attempt to characterize her description of the basement as an innocent misrepresentation is inaccurate.

In 1993, Alaska enacted residential real property disclosure statement statutes (substantially similar to that of South Dakota enacted the same year). Alaska Stat. §§ 34.70.010 to 34.70.090 (Michie 1996).<sup>4</sup> The *Amyot* court stated:

Prior to the enactment of [the mandatory disclosure statutes], sellers of real property were not required to make any representations about the property. However, sellers were strictly liable for those representations they made. (Citation omitted.) Under the disclosure statute a seller is now required to make representations about a wide range of the property's features and characteristics. We conclude that the legislature intended to offset the seller's increased disclosure responsibilities by the lower liability standard for misrepresentations.

*Amyot*, 932 P.2d at 246.

We agree with the *Amyot* court and hold that strict liability is not the requisite standard under South Dakota's disclosure statutes. A plain reading of SDCL 43-4-42 tells us that liability will not attach unless an intentional or negligent violation occurs. The legal maxim "*expressio unius est exclusio alterius*" means "the expression of one thing is the exclusion of another." Black's Law Dictionary 581 (6th ed.1990). The maxim is a general rule of statutory construction. Applying the general rule to SDCL 43-4-42, we find the language "intentionally or ... negligently" is exclusive and negates strict liability.

It is fair to presume that sellers know the character of the property they convey. At present, when Kramer became aware of Engelhart's concern over the basement she could have simply shown the pictures of its true condition. Her failure to do so was unreasonable and amounts to negligence. SDCL 43-4-42. It must be noted that Kramer admitted taking the photographs before installing the paneling and that showing the

---

of the basement wall ... whatever makes up the wall was there in a pile" and further that Kramer admitted in her disclosure statement that no water ever came in on the south wall.

<sup>4</sup> The Alaska disclosure statutes did not define "good faith" but held that "good faith" envisioned an "honest and reasonable belief." *Id.* at 247. *Amyot* is distinguishable from the present facts in that the court held an "innocent misrepresentation" did not violate the good faith standard. South Dakota does not attach liability in this context unless the seller's conduct amounts to an "intentional or negligent" violation the disclosure statutes. SDCL 43-4-42.

photos would have been easier than removing it. Kramer could not explain why she did not offer the photos.

We hold that with the adoption of South Dakota's detailed disclosure statutes the doctrine of *caveat emptor* has been abandoned in favor of full and complete disclosure of defects of which the seller is aware. We are not inferring, as Kramer suggests, that a seller must possess the expertise of a structural engineer to pass good faith muster. Nor are we suggesting that a seller will be liable for defects of which she is unaware. Those claims are clearly disposed of in the closing section of the mandated disclosure form of SDCL 43-4-44:

The Seller hereby certifies that the information contained herein is true and correct to the best of the Seller's information, knowledge and belief as of the date of the Seller's signature below.... THE SELLER AND THE BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO OBTAIN A TRUE REPORT AS TO THE CONDITION OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN ANY CONTRACT OF SALE AS NEGOTIATED BETWEEN THE SELLER AND THE BUYER WITH RESPECT TO SUCH PROFESSIONAL ADVICE AND INSPECTIONS.

(Capitals in original). It is clear that, as per SDCL § 43-4-41 and 43-4-44, a seller's "good faith" is determined under a reasonable person standard.

Affirmed.

### Questions

1. In *Lucero v. Van Wie*, 598 NW 2d 893 (S.D. 1999), the seller failed to provide the statutorily required disclosure statement, but the contract of sale contained the following clause:

The buyer acknowledges that she has examined the premises and the same are in satisfactory condition and they accept the property in the "as-is" condition . . . .

This time, the South Dakota Supreme Court held that the buyer could not recover for undisclosed defects in the property; she "entered into an enforceable

contract and purchased the property ‘as is,’ the result of which was to waive disclosure requirements.” After *Lucero*, what do you expect happened to real estate sales contracts in South Dakota? What do you expect the South Dakota courts will do in cases where the sales contract contains an “as-is” clause but the buyer alleges that the seller affirmatively lied about the condition of the property – e.g., “No, the roof has never leaked.”

2. In addition to the distinction between unknown defects and defects known to the seller, some courts draw a distinction between latent and apparent defects. Only hidden defects – e.g., rotting support beams in the walls – need to be disclosed, while readily visible defects, or ones that a reasonable inspection could discover – e.g., nonworking plumbing on the second floor – need not. The theory, at least, is that the buyer depends on the seller to tell her about conditions she could not reasonably discover herself. But isn’t there a connection between defects the buyer doesn’t know about and defects the seller doesn’t know about, either? Cases like *Engelhart* are one thing, where the Seller literally plasters (or at least panels) over the problem. But who should bear the loss if a previously unknown sinkhole surprises everyone by swallowing up the back porch the day after closing? Consider, in this regard, a seller who doesn’t know whether her home’s attic walls contain asbestos insulation, and a buyer whose offer to buy the house is contingent on drilling into the walls to confirm that they do not contain asbestos. If you represented the seller, would you advise your client to accept this contingency?
3. What kinds of conditions must be disclosed? A leaky roof? A leaky faucet? The presence of lead paint on the walls? The fact that a previous inhabitant of the home was gruesomely murdered by a family member? That the homeowner regularly gave “ghost tours” on which she pretended to tourists that the house was haunted? The fact that a registered sex offender lives on the block? The fact that there is a municipal garbage dump half a mile away?
4. In many states, new-home builders are required to give a non-waivable warranty of habitability that substantially parallels the warranty of habitability required of landlords. What might account for the decision to hold sellers of new houses to a higher standard than sellers of existing houses? When should the statute of

limitations on breach of warranty claims start running? Should subsequent purchasers be able to sue the original builder for breach of the warranty if the defects become apparent only after a resale?