

SELLER'S GUIDE

to the

Residential Listing Agreement (C.A.R. Form RLA)

and

Disclosures (C.A.R. Forms TDS and SSD)

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Published and distributed by:
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a subsidiary of the
CALIFORNIA ASSOCIATION OF REALTORS®
525 South Virgil Ave.
Los Angeles, CA 90020
213-739-8200

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INTRODUCTION

Homeownership often marks a significant accomplishment in people's lives since a home is often the largest asset of most families. Therefore, selling a home can be a major event as well.

Before you sell your home, there are many, sometimes complicated steps in the sale of real estate that you need to be aware of. Completing the Residential Listing Agreement and disclosure forms are among the important steps in this process.

The Residential Listing Agreement is the legal contract between a seller and broker that authorizes the broker to use reasonable efforts to help the seller find a ready, willing, and able buyer for that home. The seller's terms and conditions, which affect the sale of the home, are also specified in this very important agreement.

In addition to the Residential Listing Agreement, certain disclosure forms are often required by law in most residential sales transactions in California. Disclosure forms allow the seller to disclose various facts about the property, including basic items such as types of heating & cooling systems, age of the roof, and other material conditions that may affect the sale of the property.

This booklet will help you become more familiar with the Residential Listing Agreement and two of the main disclosure forms you are likely to use when you offer your home for sale: the California Association of REALTORS® Residential Listing Agreement - Exclusive (C.A.R. Form RLA), the Real Estate Transfer Disclosure Statement (C.A.R. Form TDS), and the Supplemental Statutory and Contractual Disclosures (C.A.R. Form SSD).

This booklet is not intended to give you legal advice nor interpret the terms of the contract for you in a specific situation. If you want specific legal advice regarding the forms or a transaction in which they are used, you must contact an attorney of your own choosing.

C. A. R. FORM RLA

The Residential Listing Agreement (C.A.R. Form RLA) is the standard residential listing agreement that outlines the broker's and seller's duties and the terms of the listing. The Seller's Advisory (C.A.R. Forms SA) also attached, advises the seller of various issues and legal duties that may arise during the selling process.

Paragraph 1: Exclusive Right to Sell

This paragraph asks for Seller's name, the name of the Broker who is granted exclusive rights to list the property, and the beginning and ending dates of the listing period. Here, the property is described by the street address, Assessor's parcel number, the city and county location.

Paragraph 2: Items Excluded and Included

This paragraph states that fixtures and fittings attached to the property are included in the sale and personal items are excluded from the sale. If there are additional items to be excluded from the sale, or any additional items to be included in the sale, they are listed here. Any items which may be ambiguous should be specified (e.g. a free standing stove) and should match Seller's wishes in the purchase agreement (C.A.R. Form RPA-CA, paragraph 8).

Paragraph 3: Listing Price and Terms

The listing price is specified here in written and numeric terms. Additional terms may also be stated.

Paragraph 4: Compensation to Broker

The total amount of Broker's compensation (to both listing agent and buyer's agent) will be indicated here in percent or dollar terms. This section can be used to indicate the exact commission to the buyer's agent, any other fees, and legally defines when commissions are earned. Recent previous listings can also be indicated here.

Paragraph 5: Ownership, Title and Authority

This paragraph states that Seller signing the listing agreement is indeed the owner of the property, no other persons have title to the property, and Seller has the authority to execute this agreement. Any exceptions to ownership, title or authority may be indicated here.

Paragraph 6: Multiple Listing Service

Information about the listing and terms of the transaction will be submitted to the Multiple Listing Service (MLS) of the Broker's selection, unless a form to withhold the listing from the MLS (e.g. C.A.R. Form SEL) is attached to this listing agreement.

Paragraph 7: Seller Representations

Unless specified in writing, Seller states that he/she is unaware of any Notice of Defaults, delinquent loan amounts, bankruptcy, or similar issues; litigation, arbitration, or other actions; or proposed special assessments that affect the property. If Seller becomes aware of any of these items, Seller should promptly notify Broker.

Paragraph 8: Broker's and Seller's Duties

Broker agrees to make reasonable efforts to sell the property and is given the authority to order the necessary reports and disclosures. Broker may also advertise and market the property and disseminate information regarding the property. Seller will look at all offers presented by Broker and will decide the list and sell price of the property. Seller should inform Broker of all material facts.

Paragraph 9: Deposit

Broker may hold any deposits on Seller's behalf.

Paragraph 10: Agency Relationships

This section explains some of Broker's duties as an agent for Seller. Broker agrees to represent Seller in the sales transaction. This section also explains possible dual agency where Broker may represent a buyer for Seller's property, and that Broker may also be representing other sellers with similar properties.

Paragraph 11: Security and Insurance

This paragraph informs Seller to take precautions to secure valuables during the listing period because Broker will not be responsible for the loss of any personal belongings. Third parties, such as appraisers, may have access to and photograph the interior of the house.

Paragraph 12: Keysafe/Lockbox

Seller may authorize Broker to place a keysafe/lockbox on the property. Broker is not responsible for loss due to the use of the keysafe/lockbox.

Paragraph 13: Sign

Seller may choose to place a "For Sale/Sold" sign on the property.

Paragraph 14: Equal Housing Opportunity

Broker, Seller, and Buyer will not discriminate in the sale of the home.

Paragraph 15: Attorney Fees

This paragraph states that if a lawsuit or arbitration is necessary, the non-prevailing party will pay for the prevailing party's attorney fees, except as provided in paragraph 19A.

Paragraph 16: Additional Terms

Here, Seller may include additional terms to the Residential Listing Agreement that are not pre-printed in the contract.

Paragraph 17: Management Approval

Broker or Manager may cancel this agreement if they do not approve of the terms within five days.

Paragraph 18: Successors and Assigns

This agreement is still valid upon Seller's successors and assigns.

Paragraph 19: Dispute Resolution

If a problem develops that cannot be resolved amicably by the parties to the agreement, this paragraph states that Broker and Seller will try to talk through differences with the help of a “mediator”, someone not involved with this agreement.

If both Broker and Seller initial at the bottom of paragraph 19, each agree that if the dispute has not been settled through mediation, they will seek an “arbitrator” to decide the dispute, instead of going to court. An arbitrator is not a judge, but has the authority to decide who is right or wrong and, among other things, whether the Residential Listing Agreement is still valid and enforceable.

Paragraph 20: Entire Agreement

This paragraph states that no prior agreements take precedence over this Residential Listing Agreement. If any part of this agreement is found to be invalid, the remaining parts of the agreement are in effect. Broker and Seller provide their signatures.

C. A. R. Form SA

The Seller's Advisory (C.A.R. Form SA) is often attached behind the Residential Listing Agreement. These pages address many things a seller should think about, and do, as the property is marketed. One of the things a seller must do is make disclosure of all known pertinent facts that concern the property. One way to become informed of some potential defects (and necessary disclosure items) is to have professional home inspections conducted prior to the sale of the home. In addition, since the seller's home will be visited by other brokers and potential buyers, it is recommended that the seller maintain the necessary insurance and make precautions to ensure the safety of valuables. Other considerations are listed and should be read carefully.

C. A. R. FORM TDS

The Real Estate Transfer Disclosure Statement (C.A.R. Form TDS), required by state law, is completed by the seller (unless exempt) and delivered to the buyer. C.A.R. Form TDS requires the seller to list the various features of the property and disclose whether any of those features are in operating condition. It also allows the seller to state whether he/she is aware of a variety of common issues, such as environmental hazards, permits, authority of a homeowners' association, and other matters that might affect the property. Some areas have additional local disclosures required by the county or city.

The seller should do his/her best to answer the questions and complete the information as thoroughly and accurately as possible.

TIP 1: Based on California law, C.A.R. Form TDS normally has a three-day right to cancel. However, if this disclosure is provided to the buyer prior to the purchase contract being signed, there is no right to cancel under the law. (This is important if Seller wants Buyer to remove contingencies early.) Furthermore, any change to the C.A.R. Form TDS creates a new three-day right to cancel, so it is important to make sure that it is accurate the first time.

TIP 2: If Seller purchased the home fairly recently (i.e. within the last three years), Seller may want to review the C.A.R. Form TDS he/she received when he/she bought the property.

Section I.: Coordination With Other Disclosure Forms

This paragraph states that the C.A.R. Form TDS may be accompanied by additional disclosure forms which may be required or requested in the real estate transaction.

Section II.: Seller's Information

The information filled out by Seller is not a representation made by Broker. Seller must indicate whether or not Seller is occupying the property.

Part A.: Subject Property Items

This is a list of items pertaining to the property. This list identifies which items are included with the property, and lists details such as the age of the roof or an item's operating condition.

Part B.: Awareness of Significant Defects/Malfunctions

This section indicates if Seller is aware of any significant defects/malfunctions with the listed major components of the property. If there is a known problem, Seller may provide an explanation.

Part C.: Awareness of Other Listed Property Conditions/Attributes

Additional questions regarding the property are addressed in this section, including property lines, permits for additions, zoning, and restrictions on the use of the property.

Section III.: Agent's Inspection Disclosure

The listing agent identifies any items for disclosure based on his/her reasonable visible inspection in this section.

Section IV.: Agent's Inspection Disclosure

The buyer's agent notes any items for disclosure based on his/her reasonable visible inspection here.

Section V.: Option to Obtain Professional Advice and/or Inspections

Buyer or Seller may want to obtain professional advice and/or inspections of the property.

Acknowledgement of Receipt of Copies

Seller, Buyer, listing agent, and buyer's agent, sign to acknowledge receipt of this disclosure.

C. A. R. FORM SSD

The Supplemental Statutory & Contractual Disclosure (C.A.R. Form SSD) verifies delivery and confirmation of receipt of statutory and contractual disclosures that are not covered in the C.A.R. Form TDS.

Paragraph 1: Property Identification

The property location is identified by street address, Assessor's parcel number, city and county location.

Paragraph 2: Disclaimer

This statement specifies that the information on this form is provided by Seller and not Broker. This disclosure is not a warranty. If legal advice is desired, an attorney should be consulted.

Paragraph 3: Awareness of Listed Items

Various questions pertaining to the property are listed here, including deaths on the property, methamphetamine contamination, zoning, insurance claims, and common interest developments.

Paragraph 4: Seller's Statement

Seller states that the information entered on this form is true to the best of Seller's knowledge. The agents may provide a copy to any necessary party in this transaction.

Paragraph 5: Signatures

This paragraph is where Buyer, listing agent, and the buyer's agent sign to acknowledge receipt and understanding of this disclosure.