

Realtor Risk and Consumer Protection Forum
February 2023

Home Warranty Update:

Supply chains have opened up. All home warranties are going up in price. HW companies spend over 1 billion dollars in CA last year.

****Legal Hotline Issues - CAR Attorney - Jana Gardener**

Disclosure mistakes - failure to disclose are the number one cause of litigation

Who is required? Not every seller is exempt — very few sellers are exempt

Five categories of exemption

Bankruptcy

Government entity

REO

Probate admin and Trustees of a trust - has not lived in the property.

NO exemption of disclosing of actual knowledge- need to disclose

Timing:

Deliver within first 7 days - and buyer has 17 days to remove contingencies or five days after delivery whichever is later.

Deliver completely — completed TDS - sections 1,2 and 3 need to be completed with listing agents AVID

*USE the Disclosure Information Advisory - give to sellers as a risk management tool

*Post Closing disputes - especially when the buyer paid way over list price - walk that fine line to providing assistance. Practical tip - stay on the clients good side - on a team - in it together. We cannot provide legal advice but here is Qualified CA RE attorney.

Go to Mediation first. We are not a part of mediation - do agents attend? Ask your broker about this.

Robert - CAR attorney

Cancelling Escrows - Buyer has a broad effective way to cancel the contract. Not so with the seller. Defective cancellations - seller has two open contracts with two different buyers.

Must Provide a notice to buyer to perform - can't just cancel. Two days

Only when closing escrow must use Demand to Close Escrow - Three days

Make sure you do not deliver the NTB too early

Two purposes - buyer is out of contract

Intending to cancel - notice to perform must come first

As a seller - seller needs to make sure they have met all of their obligations

Seller needs to be patient with the buyer before cancellation

Do not negotiate with another agent via text, orally or by email - clients must sign

****“As Is” clause - provision is already in the RPA so when Seller Counters with that verbiage it can be confusing for the buyer — as if they cannot cancel.**

SPRP - sellers make sale contingent upon sellers purchase - two very separate contingencies - entering into contract - OR closing on that purchase. Box must be checked (1.C) on that form.

If there is a Tenant - Use TOPA FORM

Q&A

Best practice - follow up and confirm receipt

Exempt seller - provide seller with SPQ to jog their memory for their own protection. Fill out relevant portions — answer NO if they don't know.

SPQ is better than TDS because TDS is a statutory form.

On the AVID - "Agent notes no items of Disclosure" when no defects are noted

Regional Reports:

Insurance prices/availability; unprofessional agents, rent control, vacancy tax if owner owns three or more units and they are vacant- SF will tax owner per vacant unit. Out of area agents transacting; lack of water = no building. Lack of broker supervision. The FHDS form. Agents not understanding Short term rental ordinances. NIMBYs

Gov Legal Update:

FHDS ~ there are no local point of sale defensible space inspections in SLO County

Just keep house clear of trees and brush touching the house.

Buyer Broker Agreement~ not required -either side can cancel at any time. If exclusive - must give 30 day notice. There is a cancellation form for this.

NEVER SAY THAT YOU WORK FOR FREE!

Procuring Cause Guidelines changed to say — if one agent in PC dispute has a Buyer Broker contract with that client that agent has a strong case to win.

(Do not check the 3G3 on the RPA -even if you have a Buyer Broker agreement)

Buyer Transaction Advise (BTA) new good form

Good practice to explain to buyers how compensation is paid

ABCD form

New Property management forms - be sure to understand the changes- eviction and rent increases, rent control etc.

If you are not a property manager - you are not required to know Landlord/tenant law

CAR offers webinars on all new forms~ Legal Live webinars

Two new laws:

Certified Tenant screening Report - to use this one report for multiple rental applications

Domestic Violence - victim of domestic violence can go to landlord and ask to evict perpetrator and allow the victim to remain. Any reasonable documentation- restraining order, police report or third part documentation

Rental property owner disclosure form ~ for property manager from Landlord- this form will be split into two parts in June.

More New Forms:

Non-Contingent Offer Advisory - when buyer wants to write a non-contingent offer - provide this advisory.

Solar Advisory Questionnaire - if seller has solar- fill this out with basic questions for buyer

RPA changes

If a TOPA is not used - paragraph 7a everyone vacates the property after COE

Law Changes?

Cannot offer REOs in bulk~ must sell one by one and first 30 days can only sell to homeowners
- not investors.

**DRE is concerned about Fair Housing and Property Management AND Broker owned
escrows. The DRE will start to audit them.