

# REAL ESTATE BROKERAGE DURING EXTRAORDINARY TIMES

## Speakers

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Presented by the Real Property Section, Bar Association of San Francisco

# REAL AGENCY

## CACI 4107

“As a fiduciary, a real estate broker must disclose to his or her client all material information that the broker knows or could reasonably obtain regarding the property or relating to the transaction.

“The facts that a broker must learn, and the advice and counsel required of the broker, depend on the facts of the transaction, the knowledge and experience of the client, the questions asked by the client, the nature of the property, and the terms of sale. The broker must place himself or herself in the position of the client and consider the type of information required for the client to make a well-informed decision.

“A real estate broker cannot accept information received from another person, such as the seller, as being true, and transmit it to his or her client without either verifying the information or disclosing to the client that the information has not been verified.”

# REAL ESTATE AGENCY

## CACI 4109

“A real estate broker for the seller of property must disclose to the buyer all facts known to the broker regarding the property or relating to the transaction that materially affect the value or desirability of the property. A broker must disclose these facts if the broker knows or should know that the buyer is not aware of them and cannot reasonably be expected to discover them through diligent attention and observation. The broker does not, however, have to disclose facts that the buyer already knows or could have learned with diligent attention and observation.”

# REAL ESTATE AGENCY

## LIMITATIONS ON SCOPE OF DUTIES

- Duties May be Defined by Contract. (*Carleton v. Tortosa* (1993) 14 Cal.App.4th 745, 755.)
- Duties may be defined by advertising and representations.
- Limitations of duties and exculpatory provisions not dispositive (*Manderville v. PCG&S Group, Inc.* (2007) 146 Cal.App.4th 1486).
- Examples of Language in Commercial Contracts Limiting Duties and Protecting Agent/Broker—'Damages against brokerage not to exceed \$50,000,' 'Real Estate Broker qualified to advise re real estate, not legal, financial, tax matters ...,' etc.

# DUAL AGENCY

- Dual Agency Defined
- Dual Agency Disclosures
- Dual Agency—Limits on Disclosure of Information (CC 2079.21)
- Remedies

# DUAL AGENCY – RECENT STATUTORY AMENDMENTS

- 2019 Amendment to CC 2079.22: “Nothing in this article precludes a seller’s agent from also being a buyer’s agent. If a seller or buyer in a transaction chooses to not be represented by an agent, that does not, of itself, make that agent a dual agent.”
- 2018 Amendment to CC 2079.21: “A dual agent may not, without the express permission of the seller/buyer, disclose to the buyer/seller any confidential information obtained from the seller/buyer ... “Confidential information” means facts relating to the client's financial position, motivations, bargaining position, or other personal information that may impact price, such as the seller is willing to accept a price less than the listing price or the buyer is willing to pay a price greater than the price offered.”
- 2018 Amendment to CC 2079.16, Disclosure Form (see above)

# DUAL AGENCY – *HORIIKE (AND ITS PROGENY)*

- *Horiike*
- Progeny
- Conflicts of Interest

# DUAL AGENCY

## POCKET LISTINGS (Natural Dual Agency Conundrum)

- Pandemic Impact—increased seller desire NOT to have property exposed to general public.
- NAR 729-70: “Within one business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public-facing websites, brokerage website displays, digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public.”
- May 11, 2020 *Top Agent Network Inc. v. NAR* antitrust lawsuit

# DUAL AGENCY – ILLUSTRATIONS

- Case Study—broker represents seller, first buyer and second/backup buyer (Zuckerberg)
- In-house brokerage imputed knowledge
- Practical dual agency—forms vs. explanation
- Commission structure—antiquated vs. flat seller 3%

# NAVIGATING BROKER DUTIES

## OFF-THE-CUFF COMMENTS

- *Wilson v. Century 21 Great Western Realty* (1993) 15 Cal.App.4th 298)
- *Ryan v. Real Estate of the Pacific, Inc.* (2019) 32 Cal.App.5th 637 (note also re expert opinion for standard of care)

# NAVIGATING BROKER DUTIES

## PHYSICAL INSPECTION

- Shelter-In-Place Orders and Broker/Agent Health and Safety Concerns
- CC 2079: “It is the duty of a real estate broker or salesperson ... to conduct a reasonably competent and diligent visual inspection of the property offered for sale and to disclose ...”
- CC 1102.6: “BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING ...”
- CC 1102: “[A]ny waiver of the requirements of this article [providing statutory disclosures including, TDS] is void as against public policy.”

# NAVIGATING BROKER DUTIES

## MULTIPLE OFFERS

NAR, Standard of Practice 1-7:

“When acting as listing brokers, REALTORS® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing. REALTORS® shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. REALTORS® shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease.”

# NAVIGATING BROKER DUTIES

## MULTIPLE OFFERS—ILLUSTRATIONS

- Zuckerberg revisited
- Escalation clauses

# AGENT ADVERTISING AND PROMOTION

## THE LAW

- “The elements of fraud that will give rise to a tort action for deceit are: ‘(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or ‘scienter’); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.’” (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 974.)
- “Puffing,” or sales talk, is generally considered opinion, unless it involves a representation of product safety. (*Hauter v. Zogarts* (1975) 14 Cal.3d 104, 112.)
- “... that the property was worth much more than that amount, ... and that within a year said lot would have a market value of approximately twice the sum contracted ... these statements made by the selling agent would not constitute actionable fraud.” (*Title Guarantee & Trust Co. v. Stahler* (1936) 15 Cal.App.2d 239, 243.)

# AGENT ADVERTISING AND PROMOTION

## THE LAW (Continued)

- “As brokers, they knew that the primary purpose of the broker's statement was to provide a basic description and information to the buyer, and that the information was incomplete and had to be supplemented, and that some aspects, such as the vacancy figures, were based on 100 percent occupancy and were simply ‘puffing.’” (*Ford v. Cournale* (1973) 36 Cal.App.3d 172, 180.)
- The “statement that appellants' house was ‘in perfect shape’ cannot be taken in the literal sense. At the very best, it was a representation that the house was in good condition, and according to early concepts would have been treated as commendatory language known as ‘sales talk’ or ‘puffing.’ Under the modern trend, such statements, particularly when made by builders and real estate agents, are considered representations of a material fact because they tend to induce reasonable men to purchase the property which is up for sale. (*Wood v. Kalbaugh* (1974) 39 Cal.App.3d 926, 930.)

# AGENT ADVERTISING AND PROMOTION

## MLS

- Pandemic Impact—more difficult to verify accuracy of information.
- Statutory Duty – An agent who places a listing or other information in a multiple listing service “shall be responsible for the truth of all representations and statements” made by the agent of which the agent “had knowledge or reasonably should have had knowledge to anyone injured by their falseness or inaccuracy.” (Civ. Code § 1088.)
- *Saffie v. Schmeling* (2014) 224 Cal.App.4th 563.

# AGENT ADVERTISING AND PROMOTION

## OTHER ILLUSTRATIONS

- Advertised expertise in law
- Advertised expertise in tax
- Advertised expertise in construction

# STANDARD OF CARE FOR AGENTS INVOLVED IN DISTRESSED SALES—SHORT SALES, FORECLOSURES, ETC.

- Civ. Code 1102.01(a) (TDS may not be waived)
- Civ. Code 1102.2 (Exceptions to TDS requirement—e.g., foreclosure sales)
- *Manderville v. PCG&S Group, Inc.* (2007) 146 Cal.App.4th 1486 revisited

# NEW COVID-19 DISCLOSURES AND ADDENDA

- Coronavirus Listing Agreement Addendum or Amendment (Form RLA-CAA)
- Coronavirus Property Entry Advisory (assumption of risk) (Form PEAD-V)
- Coronavirus Seller Entry Advisory (assumption of risk) (Form PEAD-S)
- Coronavirus Notice of Unforeseen Coronavirus Circumstances (Form NUCC)
- Coronavirus Addendum or Amendment (Form CVA)

# NEW COVID-19 DISCLOSURES AND ADDENDA

- Coronavirus Addendum or Amendment (“this form is intended to contractually address an Unforeseen Coronavirus Circumstance”) (Form CVA-LR)
- Coronavirus Lease Entry Advisory (assumption of risk) (Form PEAD-LR)
- Coronavirus Notice of Unforeseen Rental Coronavirus Circumstances (Form NUCC-LR)
- Notice of Tenant of Ability to Pay Rent (Form NTAP)
- Coronavirus Rent Payment Delay and Repayment Agreement (Form RFP)

APPENDIX 1

**APPENDIX 1**

## **A Study of the Law of Fiduciary Duty at Trial**

### **Major Premises of the Law of Fiduciary Duty at Trial**

“The facts that a broker must learn, and the advice and counsel required of the broker, depend on the facts of the transaction, the knowledge and experience of the client, the questions asked by the client, the nature of the property, and the terms of sale. The broker must place himself or herself in the position of the client and consider the type of information required for the client to make a well-informed decision.” CACI 4107

### **The Standard of Care**

“The standard of care owed by a broker under this article is the degree of care that a reasonably prudent real estate licensee would exercise and is measured by the degree of knowledge through education, experience, and examination, required to obtain a license under Division 4 (commencing with Section 10000) of the Business and Professions Code.” California Civil Code § 2079.2 – Broker’s Standard of Care

### **Civil Code § 2079.2 – Broker’s Standard of Care**

During the presentation of the evidence at trial expert witnesses testify regarding the standard of care. At the end of the presentation of the evidence at trial the judge instructs the jury on the law of fiduciary duty.

### **An Examination of Expert Testimony**

An expert’s credibility at trial is based, in part, on the rational arguments.

### **Logos**

Aristotle teaches us that the expert’s rational arguments (Logos) can convince a jury that an opinion is true. A rational argument by an expert generally is based upon a methodology and appropriate data.

### **The Use of Syllogisms**

A syllogism is a two-premise deductive argument. To test an expert’s opinion, one may

consider methodology as the major premise and data as the minor premise. (Critical Thinking, Moore and Parker, 10<sup>th</sup> edition.)

### **Effective Use of Expert Opinions Based on Syllogisms**

An effective expert opinion can be based upon a syllogism. The major premise states the expert's methodology and the minor premise states the expert's data in support of the conclusion. When the expert's major and minor premises are appropriate for the problem presented by the plaintiff's complaint, the expert's concluding opinion will be sound.

Federal Rule of Evidence 702 provides a useful summary of the use of syllogisms in qualifying expert witnesses at trial:

“A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion if (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.”

Admissibility of an expert's opinion may be expressed through the following syllogism:

- Major Premise: Reliable principles and method.
- Minor Premise: Sufficient facts or data.
- Conclusion: Reliable application of the methodology to the data.

### **Example of a Syllogism Regarding Dual Agency**

**See Attachment hereto**

### **The Presuppositions of Dual Agency**

Syllogisms are based upon stated premises. A syllogism is valid if the stated premises logically support the conclusion. But a syllogism is not sound if a stated premise is false or there is an unstated presupposition that is not true.

If the presuppositions of a syllogism are wrong then the syllogism's conclusion is wrong.

### **Some Presuppositions in the Theory of Dual Agency**

The Seller v. Broker hypothetical case demonstrates some presuppositions supporting

dual agency theory.

1) The primary actual conflict between buyer and seller is the contract price. The price conflict arises where there is asymmetric knowledge between the buyer and seller regarding the condition of the property for sale. The theory of dual agency presupposes that a dual agent can comply with the standard of care by learning about the condition of the property and providing the buyer and seller with the same type of information required by the buyer and seller to make a well-informed decision on price.

2) A potential conflict between the buyer and seller regarding the terms of the sale can be resolved by a dual agent through the use of a standard form contract.

3) Once the buyer and seller ratify the standard form contract, the buyer and seller are both motivated to consummate the sale.

4) The buyer and seller will not have an actual conflict regarding the performance of the contract.

### **Unstated Presuppositions in the Theory of Dual Agency**

The Seller v. Broker hypothetical case demonstrates that the theory of dual agency is based, in part, on at least two unstated presuppositions. One of those unstated presuppositions is that buyers do not have atypical motivations. When a buyer is willing to pay a price that exceeds the value of the property, the theory of dual agency is threatened by an atypical motivation. The other unstated presupposition is that dual agency only involves two principals.

### **The Atypically Motivated Buyer**

The Seller v. Broker hypothetical case presents Buyer II who has made a back-up offer (“Back-up Buyer”) with a price in excess of the value of the property. Back-up Buyer’s anomalous price creates conflicts of interest amongst the Seller, Buyer I and Back-up Buyer. While it could be argued that the Broker is a dual agent between the Seller and Buyer I, and a dual agent between the Seller and Back-up Buyer, in a larger sense the Broker may be a triple agent representing the Seller, Buyer I and Back-up Buyer because the three principals are involved in a transaction regarding one property.

The Code of Ethics and Standards of Practice of the National Association of Realtors (“Code of Ethics”) states, in relevant part, as follows: “When acting as listing brokers, Realtors®

shall continue to submit to the seller . . . all offers . . . until closing . . .” (Standard of Practice 1-7). Standard of Practice 1-7 does waive this requirement if the seller waives in writing the presentation of back-up offers. Given that Back-up Buyer’s anomalous offer price creates an arbitrage opportunity (“profit”), the Seller and Buyer I may have an actual conflict over the profit that cannot be resolved by the theory of dual agency.

In a profession, individual members of the profession should update the presuppositions of the theories that support the professional’s code of conduct when an anomaly presents itself.

### **Proposed Updates to the Code of Conduct**

There may be two appropriate updates to the theory of dual agency available to address the problems presented by the Seller v. Broker hypothetical case.

One is to have the Seller waive in writing the requirement that back-up offers be presented after the ratification of an offer. This waiver could be included in the listing agreement or in the acceptance provisions of the purchase agreement.

The second possible update is to bar the dual agent representing the Seller and Buyer I from representing Back-up Buyer.

### **Conclusion**

The atypically motivated back-up buyer presents the theory of dual agency with an anomaly that threatens the legal viability of dual agency at trial. If we accept the fiduciary duty jury instruction and expert testimony regarding the standard of care as the methodology for the application of the law to the facts arising from this anomaly, then we can either change the law or change the standard of care. To change the law of dual agency there would need to be either a statutory prohibition against a dual agent representing a seller, buyer and back-up buyer or a judicial decision doing so. The legal profession could produce this change. To change the standard of care of dual agency, all that is needed is a change in the Code of Ethics. The National Association of Realtors® (“N.A.R.”) could amend Standard of Practice 1-7 to provide that once an initial offer is ratified, the listing broker shall obtain the seller’s written consent to waive the presentation of all other offers. By amending Standard of Practice 1-7 of the Code of Ethics, N.A.R. could produce a change in the theory of dual agency on behalf of the real estate profession.

## **Attachment**

### **EXPERT OPINIONS**

#### **Seller v. Broker Hypothetical**

##### **Statement of the Problem**

The standard of care problem presented by the breach of fiduciary duty claim by Sam Seller (“Seller”) is as follows:

Did John Broker and First Global Realty (“Broker”) breach a fiduciary duty to Seller in the sale of 888 Ramone Street, Palo Alto (“Property”)?

##### **Major Premise**

“The facts that a broker must learn, and the advice and counsel required of the broker, depend on the facts of the transaction, the knowledge and experience of the client, the questions asked by the client, the nature of the property, and the terms of sale. The broker must place himself or herself in the position of the client and consider the type of information required for the client to make a well-informed decision.” CACI 4107

“The standard of care owed by a broker under this article is the degree of care that a reasonably prudent real estate licensee would exercise and is measured by the degree of knowledge through education, experience, and examination, required to obtain a license under Division 4 (commencing with Section 10000) of the Business and Professions Code.” California Civil Code § 2079.2 – Broker’s Standard of Care

##### **Minor Premise**

On October 17, 2017, an offer to purchase the Property for the sum of \$2,800,000 was prepared. Joe Buyer, I (“Buyer I”) signed the offer. Seller accepted the offer. Broker was the agent for both Seller and Buyer I. The purchase contract stated at paragraph 27(I) as follows:

LEGAL AND OTHER PROFESSIONAL ADVICE: The Parties understand, acknowledge and agree that the real estate licensees identified in this Contract are providing real estate advice only and cannot provide any advice that is beyond the scope of their real estate licenses. If any of the Parties want or need legal, tax, title, or other professional advice, those Parties must consult the appropriate professionals. (“Legal Advice Advisory”)

On or about October 18, 2017, Broker opened an escrow for Buyer I's contract. On October 24, 2017, Sue Agent ("Agent") at First Global Realty prepared an offer to purchase the Property for the sum of \$2,900,000. Jane Buyer, II ("Buyer II") signed the offer as buyer. This offer was not accepted by the Seller. Buyer II's offer price exceeds the value of the Property.

On October 25, 2017, a Notice to Perform was prepared requiring Buyer I to deposit \$84,000 into escrow. On October 30, 2017, Buyer I deposited said sum in escrow.

On November 7, 2017, Buyer II renewed the offer of \$2,900,000. Seller signed the renewed offer as a backup offer.

On November 16, 2017, a Notice to Perform was prepared requiring Buyer I to remove the loan contingency. On November 18, 2017, Buyer I signed a removal of the loan contingency.

On November 18, 2017, Buyer I signed an advisory and consent regarding multiple agency and dual agency, which had previously been signed by Seller ("Consent to Dual Agency"). The Consent to Dual Agency stated, in relevant part, as follows:

"Dual Agency" arises when (1) both the buyer and seller of a particular property are represented by the same, individual agent or (2) the buyer and seller are separately represented by different agents of the same brokerage company. Dual Agency is recognized and accepted under California law as a legally authorized agency relationship, and is addressed in the "Disclosure Regarding Real Estate Agency Relationships" form required by Civil Code Section 2079.13, et seq. and provided to Client. When consented to by the subject buyer and seller, a listing agent is thus permitted by law to represent said listing agent's own buyer client (if any) in the showing and eventual sale of property listed by that agent, and may present offers for that buyer on properties listed by other agents affiliated with the same brokerage. Client is nevertheless advised, and acknowledges and understands, that the conflicts of interests can and do arise in Dual Agency situations due to the inherently competing interests of buyers and sellers of a particular property and the fact that one single brokerage company, and the agent(s) involved, owe a fiduciary duty to buyer and seller both.

As to any such conflict or dispute, Client understands and agrees that Agent may seek guidance and counsel from Agent's managing broker or broker of record (as applicable) to assist in achieving a fair and impartial resolution. Client acknowledges and accepts Agent's affirmation of brokerage fiduciary duties and responsibilities and Agent's commitment to devote best efforts to fairly and ably resolve such conflicts and other disputes in a manner that favors the interests of neither party over the other. Additionally, Client accepts that, although Agent commits to the full and faithful disclosure to both Buyer and Seller of all material information (of which Agent is aware) reasonably bearing on value or desirability of the subject property, Agent will not (without written consent):

(a) reveal to Buyer the fact or extent of any willingness by Seller to sell the property at a price, and/or upon terms, less than those set forth in the subject listing;

(b) reveal to Seller the highest price and/or most Seller-favorable terms upon which Buyer is willing to buy the property; or

(c) reveal to the other party to the transaction any information relating to any family, financial, health, occupational or other circumstance, purpose or motivation (not relating to condition, value or desirability of the property) that might influence or otherwise bear on Buyer's or Seller's decision to purchase or sell the property.

Client acknowledges and accepts the foregoing limitations and exceptions regarding disclosure by Agent, and acknowledges Agent's advice and recommendation to confer with legal counsel regarding Multiple Agency and Dual Agency and any decision to proceed on the basis thereof.

Client affirms that Client has read and considered the foregoing, and that Client expressly consents to, and hereby agrees to allow Agent and Agent's Broker to proceed on the basis of, Multiple Agency and Dual Agency on Client's behalf as explained herein."

(Copyright 2006, Advanced Real Estate Solutions, Inc., Form RCMDA, Revised 8/04.)

On November 19, 2017, Buyer II offered to pay Buyer I \$200,000 for an assignment of Buyer I's contract to buy the Property. Buyer I accepted the offer and Agent opened an escrow for Buyer II's contract assignment agreement.

On November 22, 2017, the escrow between Seller and Buyer I closed.

On November 23, 2017, the escrow between Buyer I and Buyer II closed. For purposes of the assignment of Buyer I's contract Buyer I was not represented by Broker, and Agent represented Buyer II. Buyer II paid the Agent a fee for said representation.

### **Potential Conclusions By Opposing Experts**

1) The degree of knowledge through education, experience and examination required to obtain a real estate license does not provide to real estate agents an expertise regarding legal advice. The Legal Advice Advisory provided by Broker to Seller provided the information required by Seller to make a well-informed decision about her legal rights, if any, regarding the active contingency removal mechanism set forth in the purchase contract.

Moreover, the Consent to Dual Agency Advisory and Agency Disclosure provided by

Buyer to Seller provided the information required by Seller to make a well-informed decision about her legal rights, if any, when conflicts of interest arise in a dual agency situation due to the inherently competing interests of buyers and sellers of a particular property.

By providing Seller with the Legal Advice Advisory, the Consent to Dual Agency Advisory, and the Agency Disclosure, Broker exercised the degree of care that a reasonably prudent real estate licensee would exercise in the sale of the Property. The standard of care was complied with in the sale of the Property. Broker did not breach its fiduciary duty to Seller.

2) Dual agency creates a conflict of interest and increases risk for clients.

The standard of care requires that a broker vigorously protect the interests of the client and utilize the skill, training and experience to ensure that the client achieves the best possible result in the transaction. The broker must put herself in the client's shoes, and do what is best for the client. It is not enough that a broker merely disclose objective facts and follow the client's directions. The broker has a responsibility to counsel and advise the client and to disclose any and all facts that might affect the client's decisions. The broker must utilize the utmost care in representing the client's interests, and must perform with loyalty and integrity. The standard is set at a very high level when the broker represents both buyer and seller.

In a smooth transaction, with no actual conflicts, the task of the dual agent can be accomplished. But as soon as there is a problem in the transaction where the parties' interests diverge - and especially where actual adversity arises - the broker is in an impossible position. And the standard of care does not provide the broker with any relief: He or she still must represent both clients with the highest level of loyalty, often an impossible task, as the advice and counsel required to be provided to one may well be directly contrary to the interests of the other.

Standard industry practice, when a dual agency results in an actual dispute between the broker's two clients, is for management to get involved, with the managing broker stepping in to represent one or the other of the two clients. The idea is to have two different agents separately advising and counseling the two clients.

The actual dispute in this transaction was that Buyer I failed to timely deposit \$84,000 into escrow and failed to timely remove the loan contingency. In response to this actual conflict of interest, the Broker failed to present to the Seller a professional assessment of the Seller's right to cancel Buyer I's contract. Also, the Broker failed to disclose to the Seller Buyer I's

agreement to assign the contract to Buyer II for \$200,000. Broker did not exercise the degree of care that a reasonably prudent real estate licensee would exercise in the sale of the Property. The standard of care was not complied with. Broker did breach its fiduciary duty to Seller.

APPENDIX 2

**APPENDIX 2**



## CORONAVIRUS PROPERTY ENTRY ADVISORY AND DECLARATION – VISITOR

(C.A.R. Form PEAD-V, 7/13/20)

(A new declaration should be obtained from each visitor, each time they enter a property)  
(May be used for more than one property visited on the date this form is signed, provided a copy is delivered to each Listing Broker/Property Manager.)

**Property Address(es)**

1. **RISKS OF EXPOSURE:** The Coronavirus (COVID-19) pandemic is a worldwide risk to human health. COVID-19 is highly contagious. While people of all ages are at risk of catching COVID-19, persons with compromised immune systems and older persons may be at particular risk.
2. **GOVERNMENT ORDERS:** In order to reduce the spread of COVID-19, elected representatives and health officials from the State of California, as well as many California cities and counties have issued “Stay Home” Orders and other mandates and recommendations (collectively, “COVID-19 Directives”), limiting activities that can be engaged in by businesses and members of the public. Some city and county orders are more restrictive than, and may take precedence over, Federal and State guidelines.
3. **VISITOR ADVISORY: Visitors are advised that if you engage in any activities in violation of any COVID-19 Directives, you are acting against the advice of Broker. Brokers and agents (i) will comply with COVID-19 Directives, notwithstanding any Party’s instructions and (ii) will obey all Fair Housing laws while pursuing safe COVID-19 practices. Nothing contained in this form shall be construed to allow an activity that is otherwise prohibited by any law. You are required to take all reasonable steps necessary to protect yourself and others.**
4. **PURPOSE OF ENTRY:** The purpose of the entry is for either (i) viewing or inspecting a Property or performing an activity or providing services in furtherance of or to facilitate a real estate transaction or service, or (ii) allowing prospective purchasers or tenants to view or inspect the Property (Property may also be referred to as Premises in lease documents, and both carry the same meaning), making necessary or agreed repairs to the Property, or completing a pre-move-in or pre-move-out inspection of the Property, or other service in furtherance of a property management agreement.
5. **PROPERTY ENTRANT RULES:** Whether the person signing below is a prospective or actual buyer or tenant, real estate agent, or other person whose services facilitate the completion of a real estate transaction or lease/rental agreement or provide a property management or other service (“Signer”), Signer is voluntarily entering the Property. Signer agrees to take all reasonable and necessary precautions to protect Signer and others from the spread of COVID-19, including, but not limited to, the following (“Posted Rules of Entry”):
  - A. Following all Federal, State, and local laws and Stay at Home Orders, even though they may be changing rapidly;
  - B. Exercising care to protect yourself, and assessing your own risks, by considering your age, underlying health conditions, recent travel, possible exposure to COVID-19, doctor’s recommendations, and local, State and Federal recommendations. You agree and understand that it is your responsibility to evaluate the risks and protect yourself;
  - C. Washing your hands with soap and water or using hand sanitizer, immediately upon entry and before touring or inspecting the Property. Remember to not touch your eyes, nose or mouth;
  - D. Wearing a protective face covering;
  - E. Practicing social distancing by keeping at least 6 feet between yourself and others. Do not gather in groups;
  - F. Avoiding touching knobs, faucets, toilets and toilet handles, light switches, garage door opener buttons, handles and pulls, alarm system controls, fan pulls, remotes, thermostats, switchboxes, gates and gate latches, window locks and sashes, pool coverings, counters, door and cabinet handles, sinks, and other such items, with the exception for trades or repair persons performing tasks requiring the touching of such items. If you believe it necessary to touch surfaces or items in the Property, consider the risks of doing so; and
6. **SIGNER ACKNOWLEDGMENTS AND AUTHORIZATIONS:**
  - A. No written materials or brochures describing, advertising, or marketing the Property will be available at the Property. Any such information needs to be obtained from broker or agent electronically;
  - B. A set of rules for agents and entrants will be posted at the entrance of the Property and are clearly visible and include pictograms “Posted Rules For Entry” (C.A.R. Document PRE);
  - C. Signer acknowledges that although others have been advised to clean and disinfect the Property before and after each showing, there is no guarantee that the cleaning removed any or all instances of the COVID-19 virus that may have been present;
  - D. Signer has been provided an electronic copy of, and agrees to the terms of, the  Mandatory Government Showing Requirements, including Best Practices Guidelines and Prevention Plan (C.A.R. Document BPPP) or substantially equivalent document approved by Broker which has been provided to Visitor and the Posted Rules For Entry contained herein;
  - E. Signer can obtain online information about COVID-19 Directives from the California Departments of Public Health (CDPH) and Industrial Relations (Cal/OSHA) at the following locations: (i) <https://covid19.ca.gov/pdf/guidance-real-estate.pdf>; (ii) <https://covid19.ca.gov/pdf/checklist-real-estate.pdf>; and (iii) <https://www.dir.ca.gov/dosh/coronavirus/General-Industry.html>.
  - F. Signer authorizes Broker or agent to electronically deliver this form and any updates to it, to Seller and listing broker or agent.
7. **SIGNERS REPRESENTATIONS:**
  - A. You understand that accessing a property for any of the purposes above (i) may be dangerous or unsafe and (ii) could expose you or others to COVID-19. You are voluntarily accessing the property;
  - B. To the best of your knowledge, you are not currently afflicted with COVID-19;
  - C. To the best of your knowledge, you have not knowingly, within the last 14 days, been in contact with someone afflicted with, COVID-19;
  - D. You are not experiencing a fever, or signs of respiratory illness such as cough, shortness of breath or difficulty breathing, or other COVID-19 symptoms;
  - E. You understand that persons may be afflicted with COVID-19 and: (i) not exhibit symptoms, (ii) not be aware that they are afflicted or (iii) may not voluntarily agree to disclose their condition.
  - F. **You will inform Broker if, after the date this document is signed, there is a change in your health condition or knowledge that potentially puts others at risk or invalidates the representations made in this document.**

8. **ACCOMPANYING MINORS:** Adult Signers acknowledge and agree that all Property entrant rules, Signer acknowledgments and Signer representations apply equally to any accompanying minors as they do to Signer. Signer is responsible for their care, safety, and conduct in the Property. Any accompanying minors shall be identified in paragraph 9.
9. **EXCEPTIONS TO REPRESENTATIONS AND ADDITIONAL TERMS:** \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

10. **AGREEMENT, DECLARATION AND ASSUMPTION OF RISK:** By signing below, you are declaring the foregoing is true, that you agree to take all recommended and reasonable actions to protect yourself and others from exposure to COVID-19, and that you **ASSUME THE RISK**, of entering the Property. **You understand and agree that no one, including but not limited to real estate brokers and agents, can guarantee that you will not be exposed to or contract COVID-19.**

By signing below, you, the Signer, the person entering the Property, acknowledge that you have read, understand, voluntarily agree to the foregoing and will adhere to the Posted Rules For Entry, and have received a copy of this Coronavirus Property Entry Advisory and Declaration – Visitor.

\_\_\_\_\_ Date \_\_\_\_\_  
 (print name) (signature)  
 Person entering Property:  Buyer,  Tenant/Lessee,  Broker/Agent (DRE# \_\_\_\_\_),  Other Entrant

\_\_\_\_\_ Date \_\_\_\_\_  
 (print name) (signature)  
 Person entering Property:  Buyer,  Tenant/Lessee,  Broker/Agent (DRE# \_\_\_\_\_),  Other Entrant

\_\_\_\_\_ Date \_\_\_\_\_  
 (print name) (signature)  
 Person entering Property:  Buyer,  Tenant/Lessee,  Broker/Agent (DRE# \_\_\_\_\_),  Other Entrant

(For record keeping purposes only)

**I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS SIGNED PEAD-V FORM. (The initials below are not required but can be used as evidence that the initialing party has received the completed form.)**

Broker/Agent for Buyer/Tenant/Lessee (\_\_\_\_)(\_\_\_\_)

Broker/Agent for Seller/Landlord/Lessor (\_\_\_\_)(\_\_\_\_)

Seller/Landlord/Lessor (\_\_\_\_)(\_\_\_\_)

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**R** **L**  
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**B** **L**  
**S** **C**

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All showings must comply with the applicable County COVID-19 Shelter-in-Place Order and the State COVID-19 guidelines published by California Departments of Public Health and Industrial Relations (Cal/OSHA) "COVID-19 INDUSTRY GUIDANCE: Real Estate Transactions" as updated on May 12, 2020.



## Check Your City or County for More Restrictive Local Showing Rules

More restrictive rules regarding showings by a County or City must still be followed.

### Prevention Plan

Brokerages must:

- Establish a written COVID-19 "Prevention Plan" to be followed by agents who show properties.
- Regularly evaluate compliance with the plan and document and correct deficiencies identified.

**Unless otherwise specified, this entire document known as the "Mandatory Government Showing Requirements, including Best Practices Guidelines and Prevention Plan" is hereby adopted as Broker's "Prevention Plan."**

### Showing Rules for Listing and Buyer's Agents

1. Utilize virtual tours instead of in-person property showings whenever possible.
2. Do not hold "traditional" open houses or showings which are open to the general public on a walk-in basis. For all in-person visits, **(i)** agents must use an appointment or digital sign-in process to control the number of people in the house or property and **(ii)** the cleaning, social distancing and other government guidelines and best practices in the sections below shall be followed.
3. If you are going to hold a non-traditional "Open House" in compliance with government guidelines and these best practices, then any Open House signs and advertisements shall include a rider or express condition indicating that appointments or digital sign-in are required before entry.
4. Only one listing agent and one "buying party" are to be in a dwelling at the same time during a showing. A "buying party" may be more than one individual buyer and may include one agent for that party.
5. Show houses with occupants not present when possible. Sellers and tenants, in accordance with their legal rights, are to be advised that they should not be present within a dwelling at the same time as other individuals.
6. Agents conducting the showing should meet clients at the property and not drive the client to the property.
7. The listing agent must post the Posted Rules for Entry (C.A.R. Document PRE) at the entrance of the property. These Posted Rules for Entry or a link to them should be part of any online public and MLS listings.
8. Even though the client may have already been informed, real estate licensees should remind clients to maintain physical distancing during showings and to refrain from touching handles, switches, pulls, etc.
9. Real estate licensees or sellers/renters must open doorways or other areas of ingress and egress prior to in-person property showings to minimize clients touching surfaces. During a showing, introduce fresh outside air, for example by opening doors/windows, weather permitting, and operating ventilation systems.
10. All information must be delivered electronically. Discontinue providing handouts or other types of promotional or informational materials.

# Cleaning and Disinfecting the Property and Sanitation Products

1. The agent who shows the property shall follow cleaning and disinfecting protocols and provide sanitation products unless otherwise agreed. Where possible, do not clean floors by sweeping or other methods that can disperse pathogens into the air. Use a vacuum with a HEPA filter wherever possible.
2. Real estate licensees should ensure shown properties have proper sanitation products, including hand sanitizer, face coverings and disinfecting wipes, for use by visitors as needed. No showing should take place if these products are not available to those entering the property.
3. Shown properties should have commonly used surface areas cleaned and disinfected before and after each showing. Examples of commonly used surface areas are counters, door and cabinet handles, key lock boxes, keypads, toilets, sinks, light switches, etc. Disinfect mobility and safety fixtures on the property such as handrails and banisters, door knobs and locks.
4. No showing may occur unless the property is cleaned and disinfected before and after each showing. Sanitizers must be recognized by the CDC as effective in combatting COVID-19 (e.g., at least 60% ethanol or 70% isopropanol).

## Rules for Every Visitor

1. Prior to entering a property, all persons must have already signed a Coronavirus Property Entry Advisory and Declaration - Visitor form (C.A.R. Form PEAD-V) and delivered a copy of that signed form to the listing agent.
2. By signing the PEAD-V, the visitor is agreeing to both the Posted Rules of Entry (C.A.R. Document PRE) and this Prevention Plan or other plan adopted by the Broker. This is required of everyone entering the property including prospective buyers, agents, inspectors, appraisers, contractors, etc.
3. All visitors must maintain six feet of physical distance between unrelated persons.
4. All visitors must wear face coverings. For individuals with disabilities who cannot wear a face covering or face shield, the showing agent will engage in the interactive process with the individual to discuss any available reasonable accommodations.
5. All visitors must use hand sanitizer or wash their hands immediately upon entry.
6. All visitors must avoid touching knobs, faucets, toilets and toilet handles, light switches, garage door opener buttons, handles and pulls, alarm system controls, fan pulls, remotes, thermostats, switchboxes, gates and gate latches, window locks and sashes, pool coverings, and other such items.

## Rules for Sellers

If current occupants are present and/or participate during the showings, in accordance with their legal rights, they should adhere to the same standards regarding physical distancing and property cleaning and disinfecting protocols and promote a safe environment for all persons present.

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**BPPP 7/13/20 (PAGE 2 OF 2)**

**BEST PRACTICES GUIDELINES AND PREVENTION PLAN (BPPP PAGE 2 OF 2)**

Produced with Lone Wolf Transactions (zipForm Edition) 231 Shearson Cr. Cambridge, Ontario, Canada N1T 1J5 [www.lwolf.com](http://www.lwolf.com)

## LISTING AGREEMENT CORONAVIRUS ADDENDUM OR AMENDMENT (C.A.R. Form RLA-CAA, 7/13/20)

The following terms and conditions are hereby incorporated in and made a part of the Listing Agreement or  Other \_\_\_\_\_  
 \_\_\_\_\_ (“Listing Agreement”) dated \_\_\_\_\_ (“Property”) \_\_\_\_\_  
 on property known as \_\_\_\_\_ (“Property”) \_\_\_\_\_  
 in which \_\_\_\_\_ is referred to as Broker  
 and \_\_\_\_\_ is referred to as Seller  
 OR  This is an amendment to the already existing Listing Agreement between Seller and Broker.

The current worldwide Coronavirus (COVID-19) pandemic has had unprecedented impacts on the real estate industry, affecting: Solicitation and marketing; Pre-contract showings, negotiations and inspections; Contract formation and expectations; Post-acceptance inspections and repairs; Loan applications, appraisals and approvals; and Closings. Local, State and Federal states of emergency, “Stay Home” orders, and Health Official and other Government mandates and recommendations (collectively, “COVID-19 Directives”) have changed the way sellers and real estate licensees need to approach otherwise allowable or acceptable business practices. Seller and Broker acknowledge that there are mutual benefits in addressing the effects of the COVID-19 pandemic on the sale of the Property. In consideration for the mutual benefits contained herein, Seller and Broker agree as follows: This Addendum or Amendment shall remain in force until the earlier of either (i) the termination of all government orders, including local, State, and Federal, impacting the Property due to the COVID-19 pandemic or (ii) the mutual written termination of this Addendum or Amendment by Seller and Broker. **Brokers and Agents (i) will comply with COVID-19 Directives, notwithstanding any Party's instructions and (ii) will obey all Fair Housing laws while pursuing safe COVID-19 practices. Nothing contained in this Addendum or Amendment shall be construed to allow an activity that is otherwise prohibited by any law.**

### 1. PROPERTY SHOWINGS:

- A. Seller agrees  DOES NOT agree - see paragraph 4) to allow prospective purchasers to enter the Property as specified below. Seller has been advised of the potential for visitors to the Property to be carriers of the COVID-19 virus. Broker has provided Seller with a  Coronavirus Property Entry Advisory and Declaration - Seller/Occupant (C.A.R. Form PEAD-S), and  C.A.R. Best Practices Guidelines/Prevention Plan for Showings (C.A.R. Document BPPP), or substantially equivalent forms approved by Broker. Seller and Broker agree to abide by the protocols set forth in those documents and this form.
- B. Prospective purchaser visitors will not be given permission to enter the Property until and unless:
- (1) They sign the Coronavirus Property Entry Advisory and Declaration - Visitor (C.A.R. Form PEAD-V).
  - (2)  They provide verification that they are financially able to purchase the Property, such as (i) verification of an all-cash purchase or (ii) a prequalification or preapproval from a lender or loan broker.
  - (3)  They represent that they have previously viewed the Property online.

### 2. MARKETING ACTIVITIES:

In furtherance of the goal of selling the Property, and provided Broker and others sign C.A.R. Form PEAD-V, Seller agrees  DOES NOT agree - see paragraph 4) to give permission to Broker and other authorized persons, to access the inside and outside of the Property in order to engage in ALL MARKETING ACTIVITY, including but not limited to those listed below, **OR, only** (see paragraph 4) those checked below:

- |   |  |
|---|--|
| <input type="checkbox"/> Install signage<br><input type="checkbox"/> Provide landscape services<br><input type="checkbox"/> Paint | <input type="checkbox"/> Prepare and remove staging<br><input type="checkbox"/> Prepare an agent's visual inspection and disclosure<br><input type="checkbox"/> Prepare a virtual tour or take photographs |
|---|--|

### 3. POST-ACCEPTANCE AND OTHER NECESSARY SALE ACTIVITIES:

In furtherance of the goal of completing the sale of the Property, and provided Broker and others sign C.A.R. Form PEAD-V, Seller agrees  DOES NOT agree - see paragraph 4) to give permission to Broker and other authorized persons, to access the inside and outside of the Property in order to engage in all necessary real estate activities to facilitate the sale of the property, including but not limited to those below:

- ▶ Conduct a Homeowner's Association site inspection
- ▶ Prepare an appraisal or buyer insurance inspection
- ▶ Obtain county or other municipal or government inspections or permit approvals
- ▶ Prepare an agent's visual inspection and disclosure
- ▶ Put up or remove fumigation tents
- ▶ Conduct a final verification (walk-through)
- ▶ Pack and move Seller's furniture or belongings
- ▶ Prepare a home inspection, and necessary follow-up inspections, on behalf of the buyer
- ▶ Perform repairs agreed to in the purchase agreement, or improvements necessary to get the Property ready for sale, or prepare bids or estimates

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



4. **SELLER PROHIBITING OR LIMITING ACCESS TO PROPERTY:** If, pursuant to paragraph 1, 2 or 3, Seller instructs Broker that no, or limited, access to the Property will be permitted for marketing, showings, inspections or other purposes relating to the Property's sale, Seller understands that:
- A. Broker, other brokers, and prospective buyers may not be able to perform many activities typically conducted in, or in preparation for, a real estate transaction, such as, performing an agent's diligent, visual inspection, or a buyer conducting contractual inspections, including a final verification, of the Property. Any of those restrictions may limit the value or desirability of the Property.
  - B. **It may be necessary to modify any real estate agreement entered into between Seller and a buyer to take into account the restricted access to the Property. Seller and Brokers are advised to seek the advice of a qualified California real estate attorney to draft applicable language intended to contractually prohibit or limit access by a buyer, Broker or other brokers as otherwise allowed by contract or law.**
5. **PROPERTY SHOWING AND ACCESS RULES:**
- A. **COVID-19 DIRECTIVES AND SHOWING RULES:** The California Departments of Public Health (CDPH) and Industrial Relations (Cal/OSHA) have issued COVID-19 Directives for real estate transactions that need to be followed. These Directives are available at <https://covid19.ca.gov/pdf/guidance-real-estate.pdf>; <https://covid19.ca.gov/pdf/checklist-real-estate.pdf>; and <https://www.dir.ca.gov/dosh/coronavirus/General-Industry.html>. Broker's Prevention Plan and Showing Rules are located in the PEAD-S form and BPPP document specified in paragraph 1A.
  - B. (1) **SHOWING REQUIREMENTS:** (i) Properties must be equipped with proper sanitizing products, including hand sanitizer and disinfecting wipes, and face coverings, at the entrance of the Property; (ii) Purchasers, real estate licensees, inspectors and other entrants must use face covers and wash or sanitize hands upon entry into the Property; (iii) During a showing, introduce fresh outside air, for example by opening doors/windows, weather permitting, and operating ventilation systems. Real estate licensees or sellers must open doorways or other areas of ingress and egress prior to in-person property showings to minimize clients touching surfaces.  
(2) **SHOWING REQUIREMENT COSTS:**  Seller agrees to pay for necessary supplies of face coverings, and sanitizing products for hands and surfaces and \_\_\_\_\_.
  - C. (1) **CLEANING AND SANITIZING:** (i) Commonly touched surfaces and areas shall be cleaned and disinfected before and after each showing; (ii) Property showings shall be scheduled so as to allow adequate time for cleaning and disinfecting; and (iii) More information on cleaning and disinfecting can be found in the Mandatory Government Showing Requirements, including Best Practices Guidelines and Prevention Plan (C.A.R. Document BPPP).  
(2) **CLEANING AND SANITIZING COSTS:**  Broker and agent are authorized to hire, in Seller's name, a service to clean and disinfect the Property, as required above. Seller agrees to pay the service directly or reimburse Broker or agent for any such activities directly billed to Broker or agent by the service provider.
6. **BROKER MARKETING PLAN:** If Broker's Listing Agreement included a marketing plan, that plan is modified to comport with safety guidelines and best practices established by Broker or the local Association of REALTORS® or  in the attached addendum.
7.  **TEMPORARY WITHDRAWAL OF PROPERTY FROM MARKET:** Broker agrees to pause marketing of the Property, including changing to an appropriate status on the MLS, and not to conduct any showings of the Property while this Addendum or Amendment is in effect. The Listing Agreement shall remain in effect during the temporary withdrawal and Broker shall immediately begin all appropriate marketing efforts upon termination of this Addendum or Amendment. The termination date of the Listing Agreement shall ( shall NOT) be extended by the same amount of time that the temporary withdrawal is in effect but in no event shall the termination date be extended beyond \_\_\_\_\_ (date).
8. **SCOPE OF BROKER DUTY:** Seller understands and agrees that Broker will abide by the terms of this Addendum or Amendment and use Broker's best efforts to obtain compliance by others. Broker will provide Seller with a copy of all PEAD forms signed by and received from any broker or other person entering the Property. Broker cannot and will not verify the representations of others nor guarantee their compliance with Seller's and Broker's instructions. Broker cannot and will not physically prevent entrance to the Property by others who do not agree to the instructions. If Broker becomes aware of such person's failure to comply with the instructions, Broker will promptly inform Seller and take efforts to prevent such person's future access to the property. Seller wants the potential benefits, and ASSUMES THE RISK, of allowing others to enter the Property. Seller releases Broker and its agents, from any loss, liability, expense, claim or cause of action that may arise from allowing entry upon the Property or are related in any manner to this Addendum or Amendment.
9. **ADDITIONAL TERMS:** \_\_\_\_\_

By signing below Seller and Broker acknowledge that each has read, understands, has received a copy of, and agrees to the terms of this Listing Agreement Coronavirus Addendum or Amendment.

Seller \_\_\_\_\_ Date \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_

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

Real Estate Broker (Firm) \_\_\_\_\_

By \_\_\_\_\_ DRE Lic# \_\_\_\_\_ Date \_\_\_\_\_

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 525 South Virgil Avenue, Los Angeles, California 90020





# CORONAVIRUS PROPERTY ENTRY ADVISORY AND DECLARATION – SELLER/OCCUPANT

(C.A.R. Form PEAD-S, 7/13/20)

(Seller's Broker shall Deliver to Buyer's Broker a Signed Copy of this form upon request.)

### Property Address(es)

- RISKS OF EXPOSURE:** The Coronavirus (COVID-19) pandemic is a worldwide risk to human health. COVID-19 is highly contagious. While people of all ages are at risk of catching COVID-19, persons with compromised immune systems and older persons may be at particular risk.
- GOVERNMENT ORDERS:** In order to reduce the spread of COVID-19, elected representatives and health officials from the State of California, as well as many California cities and counties have issued "Stay Home" Orders and other mandates and recommendations (collectively, "COVID-19 Directives"), limiting activities that can be engaged in by businesses and members of the public. Some city and county orders are more restrictive than, and may take precedence over, Federal and State guidelines.
- SELLER AND OCCUPANT ADVISORY:** Seller and occupant are advised that if you engage in any activities in violation of any COVID-19 Directives, you are acting against the advice of Broker. Brokers and Agents (i) will comply with COVID-19 Directives, notwithstanding any Party's instructions and (ii) will obey all Fair Housing laws while pursuing safe COVID-19 practices. Nothing contained in this form shall be construed to allow an activity that is otherwise prohibited by any law. You are required to take all reasonable steps necessary to protect yourself and others.
- SELLER OR OCCUPANT ACKNOWLEDGMENTS AND AUTHORIZATIONS:** (i) Seller or the occupant ("Signer") is voluntarily allowing someone to enter the Property; (ii) Signer has been advised that the Property shall be cleaned and disinfected before any persons are allowed to enter and after any such persons leave the Property. More information on cleaning and disinfecting can be found in the C.A.R. Best Practices Guidelines/Prevention Plan for Showings (C.A.R. Document BPPP); (iii) A set of rules for agents and entrants will be posted at the entrance of the Property and be clearly visible; and (iv) No written materials or brochures describing, advertising, or marketing the Property can be available on the Property; and (v) Signer authorizes Broker or agent to electronically deliver this form and any updates to it, and the above information, including the BPPP, to all entrants.
- SIGNER REPRESENTATIONS:**
  - You understand that allowing access to the Property (i) may be dangerous or unsafe and (ii) could expose you or others to COVID-19. You are voluntarily allowing access to the Property;
  - To the best of your knowledge, you are not currently afflicted with COVID-19;
  - To the best of your knowledge, you have not knowingly, within the last 14 days, been in contact with someone afflicted with, COVID-19;
  - You are not experiencing a fever, or signs of respiratory illness such as cough, shortness of breath or difficulty breathing, or other COVID-19 symptoms;
  - You understand that persons may be afflicted with COVID-19 and: (i) not exhibit symptoms, (ii) not be aware that they are afflicted or (iii) may not voluntarily agree to disclose their condition, and;
  - You will inform Broker if, after the date this document is signed, there is a change in your health condition or knowledge that potentially puts others at risk or invalidates the representations made in this document.**
- MINOR OCCUPANTS:** Adult Signers acknowledge and agree that all Signer acknowledgments and Signer representations apply equally to any minors occupying the property as they do to Signer. All minors occupying the property shall be identified in paragraph 7.
- EXCEPTIONS TO REPRESENTATIONS AND ADDITIONAL TERMS:**

8. **AGREEMENT, DECLARATION AND ASSUMPTION OF RISK:** By signing below, you are declaring the foregoing is true, that you agree to take all recommended and reasonable actions to protect yourself and others from exposure to COVID-19, and that you ASSUME THE RISK, of allowing someone to enter the Property. **You understand and agree that no one, including but not limited to real estate brokers and agents, can guarantee that you will not be exposed to or contract COVID-19.**

By signing below, you, the Signer, the person allowing entry to the Property, acknowledge that you have read, understand, voluntarily agree to the foregoing, and have received a copy of this Coronavirus Property Entry Advisory and Declaration.

\_\_\_\_\_  
 (print name) (signature) Date \_\_\_\_\_  
 Person allowing entry:  Seller,  Occupant

\_\_\_\_\_  
 (print name) (signature) Date \_\_\_\_\_  
 Person allowing entry:  Seller,  Occupant

\_\_\_\_\_  
 (print name) (signature) Date \_\_\_\_\_  
 Person allowing entry:  Seller,  Occupant

(For record keeping purposes only)

**I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS SIGNED PEAD-S FORM. (The initials below are not required but can be used as evidence that the initialing party has received the completed form.)**

Broker/Agent for Buyer (\_\_\_\_\_) Broker/Agent for Seller (\_\_\_\_\_) Seller (\_\_\_\_\_) (\_\_\_\_\_)

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PEAD-S 7/13/20 (PAGE 1 OF 1)

## CORONAVIRUS PROPERTY ENTRY ADVISORY AND DECLARATION – SELLER/OCCUPANT (PEAD-S PAGE 1 OF 1)



All showings must comply with the applicable County COVID-19 Shelter-in-Place Order and the State COVID-19 guidelines published by California Departments of Public Health and Industrial Relations (Cal/OSHA) "COVID-19 INDUSTRY GUIDANCE: Real Estate Transactions" as updated on May 12, 2020.



## **Check Your City or County for More Restrictive Local Showing Rules**

**More restrictive rules regarding showings by a County or City must still be followed.**

### **Prevention Plan**

Brokerages must:

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- Regularly evaluate compliance with the plan and document and correct deficiencies identified.

**Unless otherwise specified, this entire document known as the "Mandatory Government Showing Requirements, including Best Practices Guidelines and Prevention Plan" is hereby adopted as Broker's "Prevention Plan."**

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1. Utilize virtual tours instead of in-person property showings whenever possible.
2. Do not hold "traditional" open houses or showings which are open to the general public on a walk-in basis. For all in-person visits, (i) agents must use an appointment or digital sign-in process to control the number of people in the house or property and (ii) the cleaning, social distancing and other government guidelines and best practices in the sections below shall be followed.
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10. All information must be delivered electronically. Discontinue providing handouts or other types of promotional or informational materials.



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4. No showing may occur unless the property is cleaned and disinfected before and after each showing. Sanitizers must be recognized by the CDC as effective in combatting COVID-19 (e.g., at least 60% ethanol or 70% isopropanol).

## Rules for Every Visitor

1. Prior to entering a property, all persons must have already signed a Coronavirus Property Entry Advisory and Declaration - Visitor form (C.A.R. Form PEAD-V) and delivered a copy of that signed form to the listing agent.
2. By signing the PEAD-V, the visitor is agreeing to both the Posted Rules of Entry (C.A.R. Document PRE) and this Prevention Plan or other plan adopted by the Broker. This is required of everyone entering the property including prospective buyers, agents, inspectors, appraisers, contractors, etc.
3. All visitors must maintain six feet of physical distance between unrelated persons.
4. All visitors must wear face coverings. For individuals with disabilities who cannot wear a face covering or face shield, the showing agent will engage in the interactive process with the individual to discuss any available reasonable accommodations.
5. All visitors must use hand sanitizer or wash their hands immediately upon entry.
6. All visitors must avoid touching knobs, faucets, toilets and toilet handles, light switches, garage door opener buttons, handles and pulls, alarm system controls, fan pulls, remotes, thermostats, switchboxes, gates and gate latches, window locks and sashes, pool coverings, and other such items.

## Rules for Sellers

If current occupants are present and/or participate during the showings, in accordance with their legal rights, they should adhere to the same standards regarding physical distancing and property cleaning and disinfecting protocols and promote a safe environment for all persons present.

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**BPPP 7/13/20 (PAGE 2 OF 2)**

**BEST PRACTICES GUIDELINES AND PREVENTION PLAN (BPPP PAGE 2 OF 2)**

Produced with Lone Wolf Transactions (zipForm Edition) 231 Shearson Cr. Cambridge, Ontario, Canada N1T 1J5 [www.lwolf.com](http://www.lwolf.com)

The following terms and conditions are hereby incorporated in and made a part of the Purchase Agreement or  Other \_\_\_\_\_ dated \_\_\_\_\_ (the "Agreement") on property known as \_\_\_\_\_ ("Property") in which \_\_\_\_\_ is referred to as Buyer and \_\_\_\_\_ is referred to as Seller OR  This is an amendment to the already accepted Agreement. This amendment shall be deemed revoked unless within 3 or \_\_\_\_\_ Days after being Signed by the initiating Party it is Signed by the other Party and a Copy Delivered to the initiating Party or that person's Authorized Agent.

1. The current worldwide Coronavirus (COVID-19) pandemic has had unprecedented impacts on real estate transactions, because of, but not limited to, closures of both governmental and private offices and declarations of States of Emergency and so-called shelter-in-place or stay-at-home ("Stay Home") orders, among others ("Unforeseen Coronavirus Circumstance"). While the Agreement allocates risk as between the Parties by way of contingencies, covenants, and disclosures, it does not address the right of a Party to suspend or terminate performance when circumstances, which the parties could not have anticipated and are beyond their control, make performance of the contract impossible or impracticable.
2. This form is intended to contractually address an Unforeseen Coronavirus Circumstance. The Parties' agreement to this form is optional. It is not binding on either Party unless Signed by both. Its purpose is to reflect the Parties' (i) mutual obligation to deal fairly with each other and act in good faith to accomplish the purpose of the Agreement, and (ii) attempt to avoid any uncertainty that may otherwise exist as a result of the COVID-19 pandemic by resolving potential disputes by mutual agreement. **The Parties are advised to seek the advice and counsel of a qualified California real estate attorney.**
3. **Notice of Unforeseen Coronavirus Circumstance:**
  - A. If either Buyer or Seller is affected by an Unforeseen Coronavirus Circumstance, the affected Party shall Deliver to the other a Notice of Unforeseen Coronavirus Circumstance (C.A.R. Form NUCC). The NUCC shall identify and provide verification of the Unforeseen Coronavirus Circumstance which impacts the affected Party's ability to perform.
  - B.  The NUCC is attached to this CVA form.

4. **Extension of Time (check 4A or 4B or both); Upon Delivery of the NUCC:**
  - A.  **Extension of Time for Buyer to Remove Contingencies:** The time to remove the following contingencies, provided they have not already been waived or removed, shall be extended for 30 or \_\_\_\_\_ Days after Delivery of the NUCC: ALL CONTINGENCIES, OR, if checked, only:  Loan,  Investigation,  Appraisal,  Other \_\_\_\_\_ If, after this time, Buyer does not remove the applicable contingency because of the Unforeseen Coronavirus Circumstance, (i) either Party may cancel the Agreement by Delivering written notice of cancellation (C.A.R. Form CC) to the other and (ii) Buyer's deposit shall be returned to Buyer, minus fees and costs incurred by Buyer. A Notice to Buyer to Perform (C.A.R. Form NBP), as otherwise applicable, shall NOT (OR  shall) be required before Seller may issue a CC.
  - B.  **Extension of Time for Buyer or Seller to Close Escrow:** The Close Of Escrow date shall be extended for an additional 30 or \_\_\_\_\_ Days beyond the scheduled COE in the Agreement. If, after this time, the Buyer or Seller Delivering the NUCC is still unable to close escrow as a result of the Unforeseen Coronavirus Circumstance, (i) either Party may cancel the Agreement by Delivering written notice of cancellation (C.A.R. Form CC) to the other and (ii) Buyer's deposit shall be returned to Buyer, minus fees and costs incurred by Buyer OR  Buyer's deposit shall be released to Seller if otherwise allowed in the Agreement. A Demand to Close Escrow (C.A.R. Form DCE), as otherwise applicable, shall NOT, (OR if checked  shall) be required before either Party may issue a CC.
  - C.  The following additional terms shall apply:

- OR 5.  **IMMEDIATE Mutual Cancellation:** The Parties agree to cancel the Agreement at the time this amendment is Signed by all Parties and a Copy Delivered to each Party or Authorized Agent. Buyer's deposit shall be returned to Buyer, minus fees and costs incurred by Buyer. **This form CVA shall constitute irrevocable joint instructions to Escrow Holder to (i) cancel escrow file# \_\_\_\_\_ and, (ii) release the deposit as provided in this form without further instructions to the Parties, unless necessary to satisfy Escrow Holder regulatory requirements.**  
 The following additional terms shall apply:

By signing below Buyer and Seller acknowledge that each has read, understands, has received a Copy of, and agrees to the terms of this Coronavirus Addendum Or Amendment.

Date \_\_\_\_\_ Date \_\_\_\_\_  
Buyer \_\_\_\_\_ Seller \_\_\_\_\_  
Buyer \_\_\_\_\_ Seller \_\_\_\_\_

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CVA 04/30/20 (PAGE 1 OF 1)



**CORONAVIRUS ADDENDUM OR AMENDMENT (CVA PAGE 1 OF 1)**

# CORONAVIRUS PROPERTY ENTRY ADVISORY AND DECLARATION – SELLER/OCCUPANT

(C.A.R. Form PEAD-S, 7/13/20)

(Seller's Broker shall Deliver to Buyer's Broker a Signed Copy of this form upon request.)

**Property Address(es)**

1. **RISKS OF EXPOSURE:** The Coronavirus (COVID-19) pandemic is a worldwide risk to human health. COVID-19 is highly contagious. While people of all ages are at risk of catching COVID-19, persons with compromised immune systems and older persons may be at particular risk.
2. **GOVERNMENT ORDERS:** In order to reduce the spread of COVID-19, elected representatives and health officials from the State of California, as well as many California cities and counties have issued "Stay Home" Orders and other mandates and recommendations (collectively, "COVID-19 Directives"), limiting activities that can be engaged in by businesses and members of the public. Some city and county orders are more restrictive than, and may take precedence over, Federal and State guidelines.
3. **SELLER AND OCCUPANT ADVISORY:** Seller and occupant are advised that if you engage in any activities in violation of any COVID-19 Directives, you are acting against the advice of Broker. Brokers and Agents (i) will comply with COVID-19 Directives, notwithstanding any Party's instructions and (ii) will obey all Fair Housing laws while pursuing safe COVID-19 practices. Nothing contained in this form shall be construed to allow an activity that is otherwise prohibited by any law. You are required to take all reasonable steps necessary to protect yourself and others.
4. **SELLER OR OCCUPANT ACKNOWLEDGMENTS AND AUTHORIZATIONS:** (i) Seller or the occupant ("Signer") is voluntarily allowing someone to enter the Property; (ii) Signer has been advised that the Property shall be cleaned and disinfected before any persons are allowed to enter and after any such persons leave the Property. More information on cleaning and disinfecting can be found in the C.A.R. Best Practices Guidelines/Prevention Plan for Showings (C.A.R. Document BPPP); (iii) A set of rules for agents and entrants will be posted at the entrance of the Property and be clearly visible; and (iv) No written materials or brochures describing, advertising, or marketing the Property can be available on the Property; and (v) Signer authorizes Broker or agent to electronically deliver this form and any updates to it, and the above information, including the BPPP, to all entrants.
5. **SIGNER REPRESENTATIONS:**
  - A. You understand that allowing access to the Property (i) may be dangerous or unsafe and (ii) could expose you or others to COVID-19. You are voluntarily allowing access to the Property;
  - B. To the best of your knowledge, you are not currently afflicted with COVID-19;
  - C. To the best of your knowledge, you have not knowingly, within the last 14 days, been in contact with someone afflicted with, COVID-19;
  - D. You are not experiencing a fever, or signs of respiratory illness such as cough, shortness of breath or difficulty breathing, or other COVID-19 symptoms;
  - E. You understand that persons may be afflicted with COVID-19 and: (i) not exhibit symptoms, (ii) not be aware that they are afflicted or (iii) may not voluntarily agree to disclose their condition, and;
  - F. **You will inform Broker if, after the date this document is signed, there is a change in your health condition or knowledge that potentially puts others at risk or invalidates the representations made in this document.**
6. **MINOR OCCUPANTS:** Adult Signers acknowledge and agree that all Signer acknowledgments and Signer representations apply equally to any minors occupying the property as they do to Signer. All minors occupying the property shall be identified in paragraph 7.
7. **EXCEPTIONS TO REPRESENTATIONS AND ADDITIONAL TERMS:** \_\_\_\_\_

8. **AGREEMENT, DECLARATION AND ASSUMPTION OF RISK:** By signing below, you are declaring the foregoing is true, that you agree to take all recommended and reasonable actions to protect yourself and others from exposure to COVID-19, and that you ASSUME THE RISK, of allowing someone to enter the Property. **You understand and agree that no one, including but not limited to real estate brokers and agents, can guarantee that you will not be exposed to or contract COVID-19.**

**By signing below, you, the Signer, the person allowing entry to the Property, acknowledge that you have read, understand, voluntarily agree to the foregoing, and have received a copy of this Coronavirus Property Entry Advisory and Declaration.**

		Date
(print name)	(signature)	
Person allowing entry: <input type="checkbox"/> Seller, <input type="checkbox"/> Occupant		
		Date
(print name)	(signature)	
Person allowing entry: <input type="checkbox"/> Seller, <input type="checkbox"/> Occupant		
		Date
(print name)	(signature)	
Person allowing entry: <input type="checkbox"/> Seller, <input type="checkbox"/> Occupant		

(For record keeping purposes only)

**I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS SIGNED PEAD-S FORM. (The initials below are not required but can be used as evidence that the initialing party has received the completed form.)**

Broker/Agent for Buyer (\_\_\_\_\_) Broker/Agent for Seller (\_\_\_\_\_) Seller (\_\_\_\_\_) (\_\_\_\_\_)

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## CORONAVIRUS PROPERTY ENTRY ADVISORY AND DECLARATION – SELLER/OCCUPANT (PEAD-S PAGE 1 OF 1)