

Sellers and Buyers - Know the Purchase and Sale Agreement

Whether you are a seller or a buyer of an existing home, it is very likely that your real estate agent will use the form entitled “California Residential Purchase Agreement and Joint Escrow Instructions” to document the transaction. This eight-page form, usually called the RPA-CA for its form designation, was created by the California Association of Realtors and is designed to be neutral, i.e. it does not favor either sellers or buyers, though individual provisions may have different effects depending on market conditions.

The Most Important of Many Transaction Forms

The RPA-CA is a daunting form for most first-time users because of its tiny print, complex language and sheer number of provisions. Nonetheless it is critical to understand this document because it defines your rights and obligations when selling or purchasing existing residential property, from the buyers’ inspection rights, to which side keeps the deposit money in the event of a breach of the contract, and everything in between. The RPA-CA also constitutes escrow instructions, that is, it tells the neutral, third party escrow how to manage and facilitate your transaction. You will likely receive additional, supplemental instructions from the escrow officer handling the transaction, but the RPA-CA is the governing document. There will be many other documents you will review during the transaction as well, a surprisingly large number if you have not been through the process before, including disclosures, advisories and reports. Each is very important in its own right and it is critical that you understand each one, but the RPA-CA is the basic agreement governing the main terms of the transaction.

It Is Not Simply “Boilerplate”

The RPA-CA contains provisions that control everything from inspection rights to contingency removal to what items stay with the property. It is a complicated document and as important as what it says is how it is used. Whether you are a seller or a buyer, insist that your real estate agent sit down with you and take the time necessary to go over each provision thoroughly before you ever make or receive an offer on a home. The provisions are there because they are important – none of it is mere “boilerplate” to be skimmed and ignored. Additionally, many of the provisions are not intuitive. Also, many of those “boilerplate” provisions can be and often are modified in typical practice. Understand completely why your real estate agent is making his or her recommendations regarding the contract and the effect of the recommendation on contract performance. Your real estate agent, while familiar with the forms, is not an attorney and you should *not* expect the agent to give you legal advice – it is not their area of expertise. If you have concerns about your legal rights or obligations beyond the typical obligations of the contract, your agent will properly refer you to a real estate attorney for expert opinions and advice. The ultimate responsibility for the terms of the contract is yours, however, the buyers or sellers, so you must know what you are signing.

Use a Knowledgeable Real Estate Agent

Fortunately, good real estate agents know the importance to your satisfaction and peace of mind of understanding the RPA-CA. They will do all in their power to make the process as clear as possible for you, keep you informed of what is happening as the transaction progresses, provide you the knowledge and guidance to help you make the critical decisions that arise at each step of the transaction, or refer you to a real estate attorney to address legal issues. Just remember the bottom line – this is your transaction and the responsibilities under the contract are yours. Study the document, ask questions, and know your duties and obligations to ensure that your transaction is as stress free and satisfying as possible.