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Welcome Letter

4/13/2023

Dear Aspiring Real Estate Gamer / Student / Buyer / Homeowner and Professional,

This document details the California Association of Realtors (CAR) Residential Purchase Agreement (RPA) clauses that are the most relevant for a dispute related to Fraudulent Representation of Laws and Statutes in the state mandated RPA.

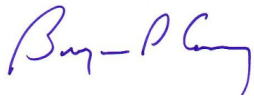
Most would expect this document would only have those clauses in them with commentary.

However, when the Case Precedents are put first as a required reminder of what is on the books for law, and those are reviewed prior to the RPA clauses in question, there is far less reason for thought about differing views.

Likewise when CA 1102 requirements are also included prior, it adds more facts for comparison as well as a direct statement for "good faith" requirements in fact and conduct.

For that reason the case percents and CA 1102 references are first as well as being included in the same form in separate documents

My our pain be your gain in education, wisdom and social correction,



Bryan Canary

=== PART 1 - CASE PRECEDENTS ===

Case Precedents - Fraud found during escrow

Ref: <https://ca-brokerage-fraud-2023.bryancanary.com/legal/case-precedents>

RELIANCE IS BASED ON FACTS PRESENTED PRIOR TO SIGNING PURCHASE AGREEMENT

Jue v Smiser (1994) 23 Cal. App. 4th 312-318

"The plaintiffs discovery of the true facts after signing a real property purchase agreement but before the close of escrow does not preclude a finding of justifiable reliance with respect to false representations made by the defendant before the purchase agreement was signed. The plaintiff's reliance at the inception of the agreement is sufficient to support recovery for fraud".

DEFRAUDED BUYER CAN STAND ON CONTRACT AND SUE FOR DAMAGES

Bagdasarian v. Gragnon (1948) 31 Cal. 2d 744, 750 [192 P.2d 935]

"When a party learns that he has been defrauded, he may, instead of rescinding, elect to stand on the contract and sue for damages, and, in such case his continued performance of the agreement does not constitute a waiver of his action for damages. [Citations.]" (.)

Case Precedents - As Is Sales with Inspections

Ref: <https://ca-as-is-case-precedents.bryancanary.com/as-is-disclosure-precedents/summary-of-cases>

DUTY TO DISCLOSE TO AVOID FRAUD OR DECEIT IN THE TRANSFER TRANSACTION

Shapiro v. Sutherland (1999) 64 Cal. App. 4th 1534, 1545

The specification in the law and the TDS of particular matters to be disclosed was not intended to limit or abridge any obligation for disclosure by law which may exist to avoid fraud or deceit in the transfer transaction. Civ. Code, § 1102.8, 1572(3), 1710(3);

DUTY TO DISCLOSE - COMMON LAW and STATUTORY

1 Miller & Starr, California Real Estate (3d ed. 2005) § 1:140

In California, the seller of a residence has both a common law and statutory duty of disclosure to the buyer, and even full compliance with the statutory duty does not excuse the common law duty.

DUTY TO DISCLOSE - COMMON LAW

Lingsch v. Savage, supra, 213 Cal. App. 2d at 735

"where the seller knows of facts materially affecting the value or desirability of the property which are known or accessible only to him and also knows that such facts are not known to, or within the reach of the diligent attention and observation of the buyer, the seller is under a duty to disclose them to the buyer."

FAILURE TO DISCLOSE GIVES RISE TO CAUSE OF ACTION FOR RESCISSION AND DAMAGES

Shapiro v. Sutherland, supra, 64 Cal.App.4th at p.1544; Karoutas v. HomeFed Bank (1991) 232 Cal. App. 3d 767, 771. -

"A breach of this duty of disclosure will give rise to a cause of action for both rescission and damages. [Citation.]".

HALF TRUTHS ARE UNACCEPTABLE

San Diego Hospice v. County of San Diego (1995) 31 Cal.App.4th 1048, 1055, fn. 4.

"A duty to disclose may also arise in the so-called 'half-truth' context--that is, when a speaker makes a representation which, though not false, he knows will be misleading absent full disclosure of additional facts known to him which qualify the initial representation."

SUPPRESSION AND OMISSION OF FACTS UNACCEPTABLE

Marketing West, Inc. v. Sanyo Fisher (USA) Corp. (1992) 6 Cal.App.4th 603, 613

Where one undertakes to speak to a matter, he must not only state the truth, he also must not suppress or conceal facts within his knowledge that materially affect those stated.

FULL STATEMENTS REQUIRED

Jacobs v. Freeman (1980) 104 Cal.App.3d 177, 192

In other words, when one speaks at all, he must make a full disclosure on the subject.

FULL STATEMENTS REQUIRED

Marketing West, Inc. v. Sanyo Fisher (USA) Corp., supra, 6 CalApp.4th at 613;

Lacher v. Superior Court (1991) 230 Cal. App. 3d 1038, 1046-1047

Thus, a duty to fully disclose may arise from a partial disclosure that is likely to mislead, if other material facts are not also disclosed.

AS IS SALE clause and BUYER INSPECTION clause do NOT release liability for Fraudulent misrepresentations concerning known defects not otherwise visible or observable to buyer .

Loughrin v. Superior Court (1993) 15 Cal.App.4th 1188, 1195;

[view](#)

Shapiro v. Hu (1986) 188 Cal. App. 3d 324, 333-334, 233 Cal. Rptr. 470;

[view](#)

Lingsch v. Savage (1963) 213 Cal. App. 2d 729, 740-742, 29 Cal. Rptr. 201;

Greenwald & Asimow, Cal. Practice Guide: Real Property Transactions (The Rutter Group 2005) § 4:3 52, p. 4-86.10;

1 Miller & Starr, California Real Estate supra, §1:154

Neither an "as is" sale nor the buyer's independent inspection exonerates a seller or the seller's agent from fraudulent misrepresentations concerning known defects not otherwise visible or observable to the buyer.

AS IS SALE clause does NOT relieve seller of liability for Misrepresenting Condition, Failing to Disclose Facts, or Concealment

Lingsch v. Savage, supra, 213 Cal. App. 2d at 742;

Galen v. Mobil Oil Corp., 922 F. Supp. 318, 324 (C.D. Cal. 1996)

"[W]here the seller actively misrepresents the then condition of the property or fails to disclose the true facts of its condition not within the buyer's reach and affecting the value or desirability of the property, an 'as is' provision is ineffective to relieve the seller of liability arising from the concealed condition."

Case Precedents - Loughrin v Superior Court - Good Quotes

Ref: <https://ca-as-is-case-precedents.bryancanary.com/as-is-disclosure-precedents/loughgrin-vs-superior-court>

From Loughrin v. Superior Court (1993) 15 Cal.App.4th 1188, 1195;

This Case precedent has some exceptional quotes

1. "The purchase contract was not intended to insulate Seller from Liability for misrepresentation in the preparation of the statutory disclosure form. "
2. "Contrary to the apparent assumption of many people dealing in real estate (including some brokers), a sale "as is"" is not the equivalent of a waiver of potential claims for misrepresentation".
3. "Sale of real property "as is" is not equivalent of waiver of potential claims of common-law misrepresentations. ' as is' sale simply means that purchaser accepts property in condition visible or observable by him."
4. "[Stock or] augmented 'as is' clause will will not protect against claims of intentional misrepresentation, fraudulent concealment, or negligent concealment not related to failure to inspect".
5. "While the waiver clause . can be construed as avoiding claims for negligent misrepresentation based upon defects seller should have known existed but did not because he did not because of a lack of inspection, there remains other possibilities of claims on negligence."
6. "These commitments do NOT preclude the possibility of a claim of misrepresentation for failing to reveal concealed defects not apparent from an inspection of the property, including not only intentional but negligent".
7. "Even such augmented "as is" clause, however, does not address the issues of 1) intentional misrepresentation 2) fraudulent concealment or even 3) negligent concealment not related to failure to inspect"
8. From Hu v Lee - "the use of phrase "As Is" relieves a seller of real property from liability for defects. The only exception is when a seller through fraud or misrepresentation intentionally conceals material defects no otherwise visible or observable to the buyer." -- but its not just intentional acts either!!
9. From Katz v Department of RE - "An 'as is' provision, generally speaking means that the buyer takes the property in the condition visible to or observable by him. It does not in itself protect.. or absolve [seller] from liability for passive concealment".
10. The Docs required by 1102.6 (the TDS) has yes/no answers that MUST BE ANSWERED. Failure to comply results in award of damages. All other questions and instructions for disclosure must be followed or those damages. The failure of the Agent to answer the question about additional disclosure information is a violation and subject to damages.

=== PART 2 - CA 1102 ===

CA 1102.7, 1102.6, 1102.3

Ref: <https://ca-1102.bryancanary.com/ca-1102-rpa-tds-screen-shots>

CA-1102	Home	The CAR Conspiracy	CA 1102 , RPA , & TDS Screen Sh...	Backstory
CA 1102.7			view	
1102.7. Each disclosure required by this article and each act which may be performed in making the disclosure, shall be made in good faith. For purposes of this article, "good faith" means honesty in fact in the conduct of the transaction. <i>(Added by Stats. 1985, Ch. 1574, Sec. 2. Operative January 1, 1987, by Sec. 3 of Ch. 1574.)</i>				
CA 1102.6			view	
1102.6. (a) The disclosures required by this article pertaining to the property proposed to be transferred are set forth in, and shall be made on a copy of, the following disclosure form: ***** NOTICE OF INCOMPLETE TEXT: The Real Estate Transfer Disclosure Statement appears in the published bill. See Sec. 25, Chapter 370 (pp. 34–38), Statutes of 2020. ***** (b) The amendments to this section by the act adding this subdivision shall become operative on July 1, 2014. <i>(Amended by Stats. 2020, Ch. 370, Sec. 25. (SB 1371) Effective January 1, 2021. Note: See published chaptered bill for complete section text. The Real Estate Transfer Disclosure Statement appears on pages 34 to 38 of Ch. 370.)</i>				
CA 1102.3			view	
1102.3. The seller of any single-family real property subject to this article shall deliver to the prospective buyer the completed written statement required by this article, as follows: (a) In the case of a sale, as soon as practicable before transfer of title.				

RPA clause 13B - for relational reference

CA-1102	Home	The CAR Conspiracy	CA 1102 , RPA , & TDS Screen Sh...	Backstory
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RPA-CA Clause 13 B - "Title is 'taken' at time of Contract Acceptance"

B. Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record (which Seller is obligated to pay off) unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing.

30. DEFINITIONS: As used in this Agreement:

A. "Acceptance" means the time the offer or final counter offer is accepted in writing by a Party and is delivered to and personally received by the other Party or that Party's authorized agent in accordance with the terms of this offer or a final counter offer.

RPA-CA Clause 13 D - Title "conveys" at close of escrow

D. At Close Of Escrow, Buyer shall receive a grant deed conveying title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's leasehold interest), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's supplemental escrow instructions. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.

RPA clause 14A - for comparison to (1102.3 and RPA 13B)

CA-1102	Home	The CAR Conspiracy	CA 1102 , RPA , & TDS Screen Sh...	Backstory
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RPA-CA Clause 14A - The inverted Clause

DocuSign Envelope ID: 6481BE54-0504-4E7E-969A-7AE34F82C7C6
Property Address: 12 Bayview Rd, Castroville, CA 95012-9725 Date: March 27, 2021

14. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS: The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).

A. SELLER HAS: 7 (or ____) Days After Acceptance to Deliver to Buyer all Reports, disclosures and information for which Seller is responsible under paragraphs 5, 6, 7, 8B(5), 10A, B, C, and F, 11A and 13A. If, by the time specified, Seller has not Delivered any such item, Buyer after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP) may cancel this Agreement.

RPA-CA 14F - The clause suggesting a get out of jail free card must be issued to get to title conveyance. A contract clause can not be used coercively to dismiss fraud attempts nor fraud.

or the applicable time for the other Party to remove a contingency or cancel this Agreement or meet an obligation specified in paragraph 14.

F. EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES: If Buyer removes, in writing, any contingency or cancellation rights, unless otherwise specified in writing, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.

=== PART 3 - TDS ===

Page 1 Notice - TDS Contains Representations as a Disclosure which is NOT part of Contract. (??)

Clause Text Image

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller ☐ is ☒ is not occupying the property.

A. The subject property has the items checked below: *

☒ Range	☐ Wall/Window Air Conditioning	☒ Pool:
☒ Oven	☐ Sprinklers	☒ Child Resistant Barrier

Clause Text

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S). IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Is this Fraudulent? YES...

This is on the first page of the TDS (the Transfer Disclosure Statement).

This is the document mandated for use in 1985 via the creation of CA 1102.

This is legal gibberish. This makes anyone using these documents feel they may be irrelevant.

“ The home has a range and oven. I’m representing that, but it’s a disclosure and not part of our contract. They may or may not stay there when I leave...”

Interestingly enough, the page that is supposed to show this text on the state website, will not show the text that was approved. It also appears as if there were changes in 2020.

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1102.6.&lawCode=CIV

(see next page for that image)

CA 1102.6 - LegInfo Screen shot



California
LEGISLATIVE INFORMATION

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CIVIL CODE - CIV
DIVISION 2. PROPERTY [654 - 1422] (*Heading of Division 2 amended by Stats. 1988, Ch. 160, Sec. 13.*)
PART 4. ACQUISITION OF PROPERTY [1000 - 1422] (*Part 4 enacted 1872.*)
TITLE 4. TRANSFER [1039 - 1231] (*Title 4 enacted 1872.*)
CHAPTER 2. Transfer of Real Property [1091 - 1134] (*Chapter 2 enacted 1872.*)

ARTICLE 1.5. Disclosures Upon Transfer of Residential Property [1102 - 1102.19] (*Article 1.5 added by Stats. 1985, Ch. 1574, Sec. 2.*)

1102.6. (a) The disclosures required by this article pertaining to the property proposed to be transferred are set forth in, and shall be made on a copy of, the following disclosure form:

NOTICE OF INCOMPLETE TEXT: The Real Estate Transfer Disclosure Statement appears in the published bill.
See Sec. 25, Chapter 370 (pp. 34-38), Statutes of 2020.

(b) The amendments to this section by the act adding this subdivision shall become operative on July 1, 2014.
(Amended by Stats. 2020, Ch. 370, Sec. 25. (SB 1371) Effective January 1, 2021. Note: See published chaptered bill for complete section text. The Real Estate Transfer Disclosure Statement appears on pages 34 to 38 of Ch. 370.)

=== PART 4 - RPA CLAUSES ===

Clause 10A1 - Statutory Disclosure Documents

Clause Text Image

10. STATUTORY AND OTHER DISCLOSURES (INCLUDING LEAD-BASED PAINT HAZARD DISCLOSURES) AND CANCELLATION RIGHTS:
- A. (1) Seller shall, within the time specified in paragraph 14A, Deliver to Buyer: (i) if required by Law, a fully completed: Federal Lead-Based Paint Disclosures (C.A.R. Form FLD) and pamphlet ("Lead Disclosures"); and (ii) unless exempt, fully completed disclosures or notices required by sections 1102 et. seq. and 1103 et. seq. of the Civil Code ("Statutory Disclosures"). Statutory Disclosures include, but are not limited to, a Real Estate Transfer Disclosure Statement ("TDS"), Natural Hazard Disclosure Statement ("NHD"), notice or actual knowledge of release of illegal controlled substance, notice of special tax and/or assessments (or, if allowed, substantially equivalent notice regarding the Mello-Roos Community Facilities Act of 1982 and Improvement Bond Act of 1915) and, if Seller has actual knowledge, of industrial use and military ordnance location (C.A.R. Form SPQ or ESD).
- (2) Any Statutory Disclosure required by this paragraph is considered fully completed if Seller has answered all questions and completed and signed the Seller section(s) and the Seller's Agent, if any, has completed and signed the Seller's Brokerage Firm section(s), or, if applicable, an Agent Visual Inspection Disclosure (C.A.R. Form AVID). Nothing stated herein relieves a Buyer's Brokerage Firm, if any, from the obligation to (i) conduct a reasonably competent and diligent visual inspection of the accessible areas of the Property and disclose, on Section IV of the TDS, or an AVID, material facts affecting the value or desirability of the Property that were or should have been revealed by such an inspection or (ii) complete any sections on all disclosures required to be completed by Buyer's Brokerage Firm.
- (3) **Note to Buyer and Seller:** Waiver of Statutory and Lead Disclosures is prohibited by Law.
- (4) Within the time specified in paragraph 14A, (i) Seller, unless exempt from the obligation to provide a TDS, shall, complete and provide Buyer with a Seller Property Questionnaire (C.A.R. Form SPQ); (ii) if Seller is not required to provide a TDS, Seller shall complete and provide Buyer with an Exempt Seller Disclosure (C.A.R. Form ESD).
- (5) Buyer shall, within the time specified in paragraph 14B(1), return Signed Copies of the Statutory, Lead and other disclosures to Seller.
- (6) In the event Seller or Seller's Brokerage Firm, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer, Seller shall promptly provide a subsequent or amended disclosure or notice, in writing, covering those items. **However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies of which Buyer is otherwise aware, or which are disclosed in reports provided to or obtained by Buyer or ordered and paid for by Buyer.**
- (7) If any disclosure or notice specified in paragraph 10A(1), or subsequent or amended disclosure or notice is Delivered to Buyer after the offer is Signed, Buyer shall have the right to cancel this Agreement within **3 Days After Delivery** in person, or **5 Days After Delivery** by deposit in the mail, or by an electronic record satisfying the Uniform Electronic Transactions Act (UETA), by giving written notice of cancellation to Seller or Seller's agent.

Clause Text

Clause 10A1 states, "Seller shall, within the time specified in paragraph 14A, Deliver to Buyer(ii) unless exempt, fully completed disclosures or notices required by sections 1102 et. seq and 1103 et. seq of the Civil Code ("Statutory Disclosures"). Statutory Disclosures include, but are not limited to, a Real Estate Transfer Disclosure Statement ("TDS")"

Refers to Clause 14A for delivery states it applies to 10A and they are due within 7 days of "Acceptance"...

Clause 14A for delivery states, "Seller has 7 Days after Acceptance to Deliver to Buyer all Reports, disclosures, and information for which Seller is responsible under paragraphs 10A....."

14. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS: The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).
- A. **SELLER HAS: 7 (or ____) Days After Acceptance to Deliver to Buyer all Reports, disclosures and information for which Seller is responsible under paragraphs 5, 6, 7, 8B(5), 10A, B, C, and F, 11A and 13A.** If, by the time specified, Seller has not Delivered any such item, Buyer after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP) may cancel this Agreement.

Refers to Clause 30A - Defines “Acceptance” and “Agreement”

Acceptance is “Agreement Acceptance”

30. DEFINITIONS: As used in this Agreement:

- A. “Acceptance” means the time the offer or final counter offer is accepted in writing by a Party and is delivered to and personally received by the other Party or that Party’s authorized agent in accordance with the terms of this offer or a final counter offer.
- B. “Agreement” means this document and any counter offers and any incorporated addenda, collectively forming the binding agreement between the Parties. Addenda are incorporated only when Signed by all Parties.

Is clause 10A1 Fraudulent? YES

Clause 10A1, when followed through the document to the dependent clauses specifies a delivery of the TDS AFTER Agreement Acceptance when it contains representation statements that need to be presented BEFORE Agreement Acceptance to ensure Good Faith dealings for the Buyer and to protect the sellers from Misrepresentation claims.

Clause 11 - Full Clause Analysis - Condition of Property

Clause Text Image

or direct to the management company to pay for any of the above.

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

A. Seller shall, within the time specified in paragraph 14A, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, and make any and all other disclosures required by law.

B. Buyer has the right to conduct Buyer Investigations of the Property and, as specified in paragraph 14B, based upon information discovered in those investigations: (i) cancel this Agreement; or (ii) request that Seller make Repairs or take other action.

C. Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had permits issued.

Clause Text

Clause 11 states,

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

A) Seller shall, within the time frame specified in Paragraph 14A, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS, affecting the property, including known insurance claims within the past five years and make any and all other disclosure required by law

B) Buyer has the right to conduct Buyer Investigations of the Property and , as specified in paragraph 14B, based upon information discovered in those investigations (i) cancel this Agreement or (ii) request the Seller make repairs or take other action

C) Buyer is strongly advised to conduct investigations of the entire property in order to determine it's present condition. Seller may not be aware of all defects affecting the property.or other factors that Buyer considers important. Property Improvements may not be built according to code, in compliance with current law or have had permits issued.

General Interpretation of Process - Via Text, with Concerns Noted

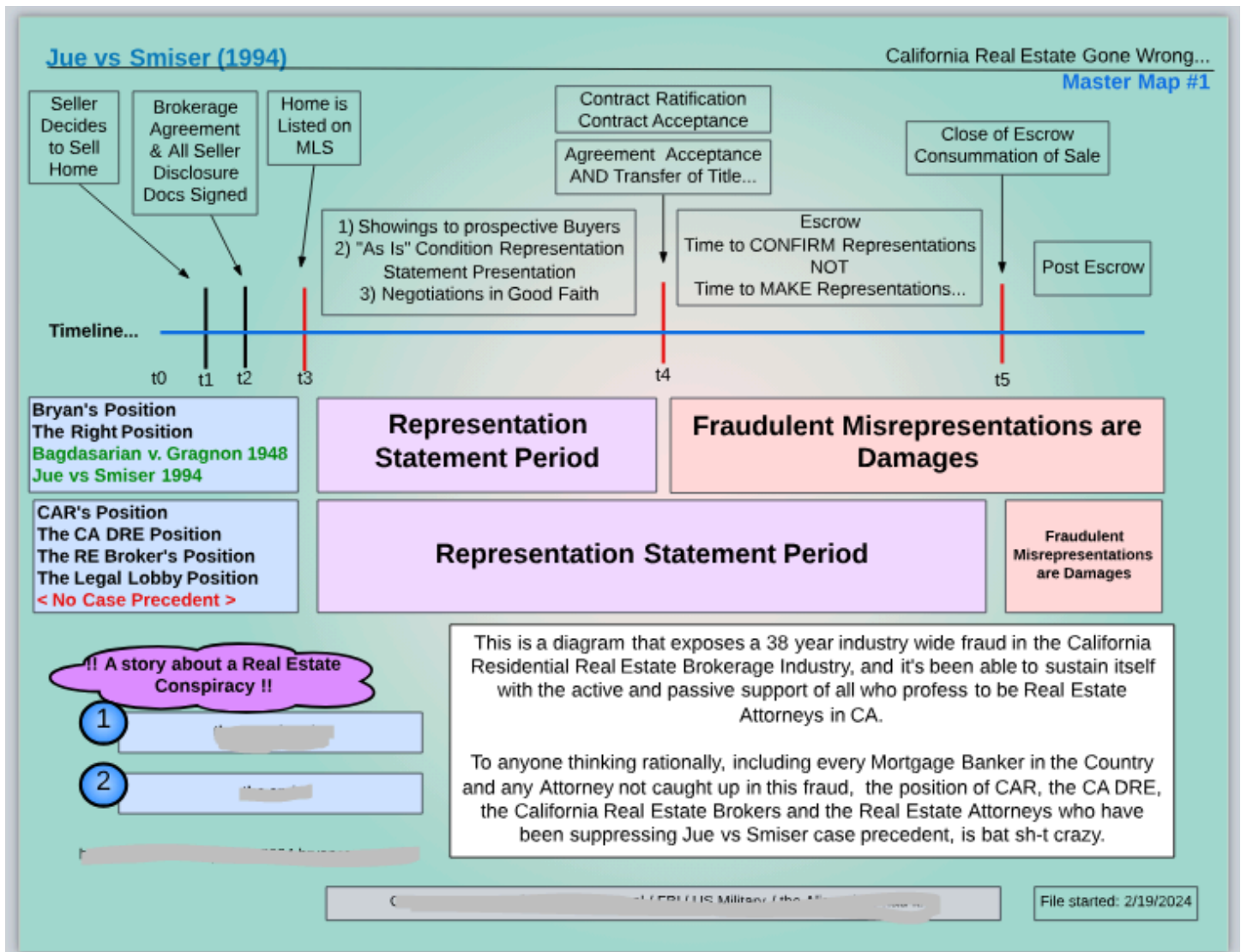
This paragraph states Buyers are to pursue "Acceptance" of property in PRESENT condition (whatever that is) subject to "investigations", and seller has until time specified in 14A to disclose material facts and defects.

Common Law Fraudulent Misrepresentation requires the disclosure of material facts and defects BEFORE entering into / executing a contract (synonymous words) with or without an executory period. An executory period is a period after contract execution to complete actions required to "consummate" or "fully execute" the contract as is found with the "escrow period" in real estate.

The only way this statement complies with “Common Law Fraudulent Misrepresentation” ethos is if this Agreement is NOT a Contract. It would have to be something less, like a “Letter of Intent” with some magic conversion into a “Contract” at some point during or at the close of escrow.

General Interpretation of Process - Via Diagram

The image below represents two different views on process. The lower row of blocks that starts out with “CAR’s Position” and the longer representation period. is representative of the process described in Clause 11. It suggests Agreement Acceptance does NOT end the Representation Period. It suggests representation statement delivery can continue after Agreement Acceptance.



Only not fraudulent if this “Agreement” is not a “Contract”...

This Clause is only not fraudulent IF this “Agreement” is not a “Contract”. If this Agreement represents a “Letter of Intent” or something less than a Contract, then delivering representation statements AFTER agreement acceptance is “okay”. If this “Agreement” is a “Contract” and if signing this “Agreement” is tantamount to

“execution of a contract”, with an executory period to complete that which can not be completed at time of execution, then representation statements are due BEFORE Agreement Acceptance, not after.

“Problems” that make this Clause and these instructions for process Fraudulent...

1. Agreement Clause 29 - “TIME IS OF THE ESSENCE; ENTIRE CONTRACT” - clause 29 calls this Agreement a Contract
2. Case Precedents Jue v Smiser- “The plaintiffs discovery of the true facts after signing a real property purchase agreement but before the close of escrow does not preclude a finding of justifiable reliance with respect to false representations made by the defendant before the purchase agreement was signed. The plaintiffs reliance at the inception of the agreement is sufficient to support recovery for fraud “ -- this case precedent intrinsically defines the agreement as a contract and states timing requirements simultaneously
3. CA 1102 - CA 1102.3 specifies the TDS is due to buyer at a time “practicable” and prior to “transfer of title”. Clause 13B of this “Agreement” states the buyer “takes title” at time of Agreement Acceptance. Thus the TDS is due to a buyer BEFORE “Agreement Acceptance, and clause 14A of this states documents are due within 7 days AFTER Agreement Acceptance and in those docs specified is a reference to the paragraph that includes the TDS.
4. It’s unreasonable to believe a “not contract” conveys title at time of “not contract” signing.
5. It’s unreasonable to believe a “not contract” can trigger “specific performance lawsuits”.

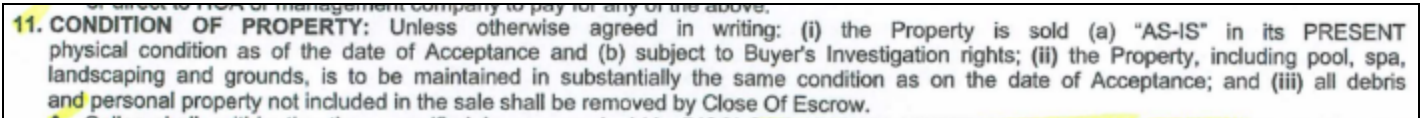
Is Clause 11 Fraudulent? YES. Very...

This entire paragraph, when viewed in totality, and against any and all means of analysis, presents inverted instructions for representation statement and disclosure document delivery timing, when the details in paragraph 14A reveal delivery timing of representation statements is up to 7 days AFTER Agreement Acceptance.

Clause 11 (root paragraph) - Condition of Property / “As Is”/ “PRESENT physical condition

This section just covers Clause 11. Not A, B, or C. the first paragraph only.

Clause Text Image



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

Clause Text

Clause 11 states, “CONDITION OF PROPERTY: Unless otherwise agreed in writing

- (i) the Property is sold (a) “AS-IS” in its PRESENT physical condition as of the date of Acceptance and (b) subject to Buyer’s Investigation Rights
- (ii) the Property, including pool, spa and landscaping and grounds is to be maintained in substantially the same condition as one the date of Acceptance, and
- (iii) all debris and personal property not included in the sale shall be removed by Close of Escrow

Intention

The Legal Intention and Actual Function of this paragraph is to state:

- 1) the home is being sold WITHOUT WARRANTY (it’s being sold as is, not with a warranty)
- 2) the present condition it’s in as of Agreement Acceptance, which is defined by a) what was visible to the buyer during a walk through and b) what was disclosed by the seller , is the condition it will be in at the close of escrow some weeks later, less any personal property that is not part of the sale, and it will be left without trash and debris.

Key Concepts --

- 1. The buyer Bids on the property based on what s/he 1) saw and 2) was told with representation statements.
- 2. Then, weeks later, when escrow closes, the buyer expects the property to be delivered in that condition or better , absent that which was not included. Thus “As Is Present Condition” sets the expectations for the future delivery condition.
- 3. During escrow s/he “inspects” the property to “confirm” disclosure statements (s/he does not “investigate” the property to discover facts and defects).

If there are non disclosed defects found during escrow and the seller conveyed with those they “broke teh contract” because they did not transfer property in the described condition they stated it was in. It was with a leaky roof they had not described in the sales process, for example.

A warranty is a description of current condition with a promise of performance into the future. In fact whatever is working must be working at time of close of escrow, and in fact, that is actually a warranty of service during escrow, given buyer took title at time of Agreement, but it can fail with no penalty after close of escrow if the home is sold without warranty.

Deviance by Legalese Writers to create “confusion”

To be honest, what the Attorneys do with this stuff is simply deviant. If there was any reasons for doing this other than encouraging cheating to encourage disputes, i’d be surprised...

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

What is “AS-IS”?

Why didn’t they just say “Without Warranty”...

Why didn’t they just say “Unless otherwise agreed in writing (i) the Property is sold (a) “WITHOUT WARRANTY” in its PRESENT physical condition as of the date of Acceptance” ?

There would be less litigation business because less cheaters would try to cheat....

There may be less need for Brokers and AGents if it reads Cleaner....

If there is less need for Brokers and Agents, that’s Less E and O insurance Sales.

Less E and O insurance Sales means Less Litigation work for Attorneys

What is “PRESENT” condition ?

Why didn’t they just say in PRESENT condition as visible to buyers and as disclosed by seller?

Why didn’t they just say “Unless otherwise agreed in writing (i) the Property is sold (a) “WITHOUT WARRANTY” in its PRESENT physical condition as visible to buyers and as disclosed by seller as of the date of Acceptance ” ?

There would be less litigation business because less cheaters would try to cheat....

There may be less need for Brokers and AGents if it reads Cleaner....

If there is less need for Brokers and Agents, that’s Less E and O insurance Sales.

Less E and O insurance Sales means Less Litigation work for Attorneys

What is “Acceptance” ?

What is “Acceptance” and when does it transpire?

This is “gross manipulation” . There is a definition of terms in the Contract/Agreement. Acceptance is short for Agreement Acceptance. But is the Agreement a Contract? That's a big deal...

Why didn't they just say “Unless otherwise agreed in writing (i) the Property is sold (a) “WITHOUT WARRANTY” in its PRESENT physical condition as visible to buyers and as disclosed by seller as of the date of Contract Ratification / Contract Acceptance ” ?

There would be less litigation business because far less cheaters would try to cheat....

There may be less need for Brokers and AGents if it reads Cleaner....

If there is less need for Brokers and Agents, that's Less E and O insurance Sales.

Less E and O insurance Sales means Less Litigation work for Attorneys

Why did they use the word “[investigations](#)” instead of “inspections”?

Why didn't they just say, subject to Buyer's [Inspection](#) Rights?

Why didn't they just say “Unless otherwise agreed in writing (i) the Property is sold (a) “WITHOUT WARRANTY” in its PRESENT physical condition as visible to buyers and as disclosed by seller as of the date of Contract Ratification / Contract Acceptance and (b) subject to buyers inspections rights ”

There would be less litigation business because NOBODY would try to cheat....

There may be less need for Brokers and AGents if it reads Cleaner....

If there is less need for Brokers and Agents, that's Less E and O insurance Sales.

Less E and O insurance Sales means Less Litigation work for Attorneys

Commentary

The goal of this entire paragraph was to feed into a cheaters belief system that they may be able to cheat and that would create a LOT of business for the legal lobby and insurance companies.

We talk about “termite inspections” and “home inspections”, so why did they put the word “investigations” in there?The words “investigations” conjures the idea of discovery and the ability to try to hide stuff. . The word “inspections” conjures the idea of confirmation or review of information. We will “inspect” this for accuracy or propriety.

Why didn't they just use the word “Contract” instead of Agreement? Because the scheme that can be used for defense of cheaters in private settings is to suggest the document was less than a contract. It was a “letter of intent”.

Why didn't they clarify PRESENT and AS IS? Because when this is all put together in vague, it's taken me 3 pages to clarify it all -- and the Attorneys would not make any money on disputes.

Is the Clause 11 Root Fraudulent? YES...

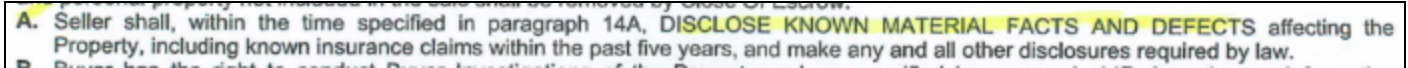
The Clause 11 root is fraudulent.

1. The reference to “As Is” is vague reference and known to be vague and incomplete in a way that would lead to suggestive confusion. .The Case precedents clarify what it means and it’s impossible to ascertain that from the Agreement.
2. The reference to “present” conditions is a vague reference and known to be vague and incomplete in a way that would lead to suggestive confusion. The Case precedents clarify what it means and it’s impossible to ascertain that from the Agreement
3. The reference to “Acceptance” is a vague reference and known to be vague and incomplete in a way that would lead to suggestive confusion. The document is a Contract and failure to reference it as such seems a suggestion that is inappropriate.
4. The reference to “Investigations” is suggestive reference and known to be confusing and misleading.

Clause 11 A - Disclosure Time Period

”

Clause Text Image



A. Seller shall, within the time specified in paragraph 14A, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, and make any and all other disclosures required by law.

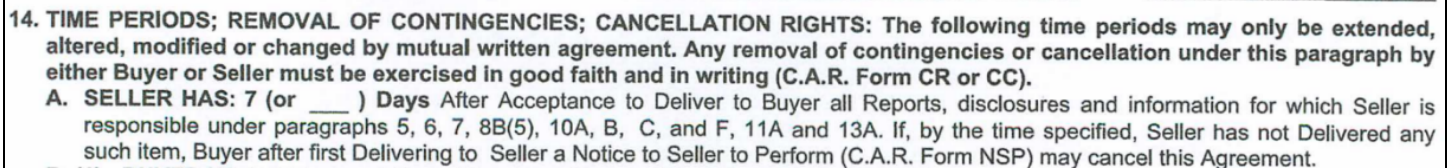
Clause Text

A) Seller shall, within the time frame specified in Paragraph 14A, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS, affecting the property, including known insurance claims within the past five years and make any and all other disclosure required by law

To Avoid Fraud, 14A needs to say representation statements are due PRIOR TO Acceptance....

To avoid Fraudulent Misrepresentation, Clause 14A needs to say representations statements are due PRIOR TO Agreement Acceptance.

Clause 14A states representation statements are due AFTER Acceptance...



14. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS: The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).
A. SELLER HAS: 7 (or ____) Days After Acceptance to Deliver to Buyer all Reports, disclosures and information for which Seller is responsible under paragraphs 5, 6, 7, 8B(5), 10A, B, C, and F, 11A and 13A. If, by the time specified, Seller has not Delivered any such item, Buyer after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP) may cancel this Agreement.

What are in Paragraphs 5, 6, 7, 8B(5), 10A, B, C and F, 11A and 13 A??

These are things the might affect buyers' perception of value and things about procedure.

If delivered AFTER Acceptance, buyers can not give consideration to them.

Item 10A reference the docs from CA 1102, including the TDS. yet CA 1102.3 says the TDS has to be delivered PRIOR TO Transfer of title and that transpires at time of Agreement. This is just one giant mess of fraudulent instructions. .

Paragraph 5 - Septic, Well and property monument / Buyer inspection addendum / Seller Advisory

5. ADDENDA AND ADVISORIES:	
A. ADDENDA:	☐ Addendum # _____ (C.A.R. Form ADM)
☐ Back Up Offer Addendum (C.A.R. Form BUO)	☐ Court Confirmation Addendum (C.A.R. Form CCA)
☒ Septic, Well and Property Monument Addendum (C.A.R. Form SWPI)	
☐ Short Sale Addendum (C.A.R. Form SSA)	☐ Other _____
B. BUYER AND SELLER ADVISORIES:	
☐ Probate Advisory (C.A.R. Form PA)	☒ Buyer's Inspection Advisory (C.A.R. Form BIA)
☐ Trust Advisory (C.A.R. Form TA)	☒ Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)
☐ Short Sale Information and Advisory (C.A.R. Form SSIA)	☐ REO Advisory (C.A.R. Form REO)
	☐ Other _____

Paragraph 6

6. OTHER TERMS: <u>Bryan Canary has an active real estate license in the State of Maryland and is acting as a principle in this transaction</u>

Paragraph 7 - Allocation of Costs

7. ALLOCATION OF COSTS
A. INSPECTIONS, REPORTS AND CERTIFICATES: Unless otherwise agreed in writing, this paragraph only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; it does not determine who is to pay for any work recommended or identified in the Report.
(1) ☐ Buyer ☒ Seller shall pay for a natural hazard zone disclosure report, including tax ☒ environmental ☐ Other: _____ prepared by <u>Seller's Choice</u>
(2) ☐ Buyer ☐ Seller shall pay for the following Report _____ prepared by _____
(3) ☐ Buyer ☐ Seller shall pay for the following Report _____ prepared by _____
B. GOVERNMENT REQUIREMENTS AND RETROFIT:
(1) ☐ Buyer ☒ Seller shall pay for smoke alarm and carbon monoxide device installation and water heater bracing, if required by Law. Prior to Close Of Escrow ("COE"), Seller shall provide Buyer written statement(s) of compliance in accordance with state and local Law, unless Seller is exempt.
(2) (i) ☐ Buyer ☒ Seller shall pay the cost of compliance with any other minimum mandatory government inspections and reports if required as a condition of closing escrow under any Law. (ii) ☐ Buyer ☒ Seller shall pay the cost of compliance with any other minimum mandatory government retrofit standards required as a condition of closing escrow under any Law, whether the work is required to be completed before or after COE. (iii) Buyer shall be provided, within the time specified in paragraph 14A, a copy of any required government conducted or point-of-sale inspection report prepared pursuant to this Agreement or in anticipation of this sale of the Property.
C. ESCROW AND TITLE:
(1) (a) ☒ Buyer ☒ Seller shall pay escrow fee <u>50/50 split between the parties</u> (b) Escrow Holder shall be <u>Seller's Choice</u> (c) The Parties shall, within 5 (or _____) Days After receipt, sign and return Escrow Holder's general provisions.
(2) (a) ☐ Buyer ☒ Seller shall pay for owner's title insurance policy specified in paragraph 13E _____ (b) Owner's title policy to be issued by <u>Seller's Choice</u> (Buyer shall pay for any title insurance policy insuring Buyer's lender, unless otherwise agreed in writing.)
D. OTHER COSTS:
(1) ☐ Buyer ☒ Seller shall pay County transfer tax or fee _____
(2) ☐ Buyer ☒ Seller shall pay City transfer tax or fee _____
(3) ☐ Buyer ☐ Seller shall pay Homeowners' Association ("HOA") transfer fee _____
(4) Seller shall pay HOA fees for preparing documents required to be delivered by Civil Code §4525.
(5) ☐ Buyer ☐ Seller shall pay HOA fees for preparing all documents other than those required by Civil Code §4525.
(6) Buyer to pay for any HOA certification fee.
(7) ☐ Buyer ☐ Seller shall pay for any private transfer fee _____
(8) ☐ Buyer ☐ Seller shall pay for _____
(9) ☐ Buyer ☐ Seller shall pay for _____
(10) ☐ Buyer ☐ Seller shall pay for the cost, not to exceed \$ <u>800.00</u> _____, of a standard (or ☐ upgraded) one-year home warranty plan, issued by <u>Seller's Choice</u> _____, with the following optional coverages: ☒ Air Conditioner ☒ Pool/Spa ☐ Other: <u>stove and refrigerator</u> Buyer is informed that home warranty plans have many optional coverages in addition to those listed above. Buyer is advised to investigate these coverages to determine those that may be suitable for Buyer.
OR ☐ Buyer waives the purchase of a home warranty plan. Nothing in this paragraph precludes Buyer's purchasing a home warranty plan during the term of this Agreement.

Paragraph 8 B 5 - Leased or Liened Systems

a home warranty plan during the term of this Agreement.

8. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:

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

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

- (1) All EXISTING fixtures and fittings that are attached to the Property;
- (2) EXISTING electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar power systems, built-in appliances, window and door screens, awnings, shutters, window coverings, attached floor coverings, television antennas, satellite dishes, air coolers/conditioners, pool/spa equipment, garage door openers/remote controls, mailbox, in-ground landscaping, trees/shrubs, water features and fountains, water softeners, water purifiers, security systems/alarms and the following if checked: ☒ all stove(s), except _____; ☒ all refrigerator(s) except _____; ☒ all washer(s) and dryer(s), except _____;

(3) The following additional items: _____

(4) Existing integrated phone and home automation systems, including necessary components such as intranet and Internet-connected hardware or devices, control units (other than non-dedicated mobile devices, electronics and computers) and applicable software, permissions, passwords, codes and access information, are (☐ are NOT) included in the sale.

(5) **LEASED OR LIENED ITEMS AND SYSTEMS:** Seller shall, within the time specified in paragraph 14A, (i) disclose to Buyer if any item or system specified in paragraph 8B or otherwise included in the sale is leased, or not owned by Seller, or specifically subject to a lien or other encumbrance, and (ii) Deliver to Buyer all written materials (such as lease, warranty, etc.) concerning any such item. Buyer's ability to assume any such lease, or willingness to accept the Property subject to any such lien or encumbrance, is a contingency in favor of Buyer and Seller as specified in paragraph 14B and C.

Paragraph 10 A B C and F -Statutory disclosures, Natural/Enviro Hazards, Taxes, Condo docs

to pay a deposit to the Homeowners Association (HOA) to obtain keys to accessible HOA facilities.

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

- A. (1)** Seller shall, within the time specified in paragraph 14A, Deliver to Buyer: (i) if required by Law, a fully completed: Federal Lead-Based Paint Disclosures (C.A.R. Form FLD) and pamphlet ("Lead Disclosures"); and (ii) unless exempt, fully completed disclosures or notices required by sections 1102 et. seq. and 1103 et. seq. of the Civil Code ("Statutory Disclosures"). Statutory Disclosures include, but are not limited to, a Real Estate Transfer Disclosure Statement ("TDS"), Natural Hazard Disclosure Statement ("NHD"), notice or actual knowledge of release of illegal controlled substance, notice of special tax and/or assessments (or, if allowed, substantially equivalent notice regarding the Mello-Roos Community Facilities Act of 1982 and Improvement Bond Act of 1915) and, if Seller has actual knowledge, of industrial use and military ordnance location (C.A.R. Form SPQ or ESD).
- (2)** Any Statutory Disclosure required by this paragraph is considered fully completed if Seller has answered all questions and completed and signed the Seller section(s) and the Seller's Agent, if any, has completed and signed the Seller's Brokerage Firm section(s), or, if applicable, an Agent Visual Inspection Disclosure (C.A.R. Form AVID). Nothing stated herein relieves a Buyer's Brokerage Firm, if any, from the obligation to (i) conduct a reasonably competent and diligent visual inspection of the accessible areas of the Property and disclose, on Section IV of the TDS, or an AVID, material facts affecting the value or desirability of the Property that were or should have been revealed by such an inspection or (ii) complete any sections on all disclosures required to be completed by Buyer's Brokerage Firm.
- (3) Note to Buyer and Seller:** Waiver of Statutory and Lead Disclosures is prohibited by Law.
- (4)** Within the time specified in paragraph 14A, (i) Seller, unless exempt from the obligation to provide a TDS, shall, complete and provide Buyer with a Seller Property Questionnaire (C.A.R. Form SPQ); (ii) if Seller is not required to provide a TDS, Seller shall complete and provide Buyer with an Exempt Seller Disclosure (C.A.R. Form ESD).
- (5)** Buyer shall, within the time specified in paragraph 14B(1), return Signed Copies of the Statutory, Lead and other disclosures to Seller.
- (6)** In the event Seller or Seller's Brokerage Firm, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer, Seller shall promptly provide a subsequent or amended disclosure or notice, in writing, covering those items. **However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies of which Buyer is otherwise aware, or which are disclosed in reports provided to or obtained by Buyer or ordered and paid for by Buyer.**
- (7)** If any disclosure or notice specified in paragraph 10A(1), or subsequent or amended disclosure or notice is Delivered to Buyer after the offer is Signed, Buyer shall have the right to cancel this Agreement within **3 Days** After Delivery in person, or **5 Days** After Delivery by deposit in the mail, or by an electronic record satisfying the Uniform Electronic Transactions Act (UETA), by giving written notice of cancellation to Seller or Seller's agent.

written notice of cancellation to Seller or Seller's agent.

B. NATURAL AND ENVIRONMENTAL HAZARD DISCLOSURES AND OTHER BOOKLETS: Within the time specified in paragraph 14A, Seller shall, if required by Law: (i) Deliver to Buyer earthquake guide(s) (and questionnaire), environmental hazards booklet, and home energy rating pamphlet; (ii) disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; and Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.

C. WITHHOLDING TAXES: Within the time specified in paragraph 14A, to avoid required withholding, Seller shall Deliver to Buyer or qualified substitute, an affidavit sufficient to comply with federal (FIRPTA) and California withholding Law (C.A.R. Form AS or QS).

F. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:
(1) **SELLER HAS: 7 (or ____) Days** After Acceptance to disclose to Buyer if the Property is a condominium, or is located in a planned development or other common interest subdivision (C.A.R. Form SPQ or ESD).

Buyer's Initials EL AB Seller's Initials MS

PA-CA REVISED 12/18 (PAGE 4 OF 10)
CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 4 OF 10)
Produced with Lone Wolf Transactions (zipForm Edition) 231 Shearson Cr. Cambridge, Ontario, Canada N1T 1J5 www.lwolf.com 12 Bayview Rd

Equal Housing Opportunity

Envelope ID: 6481BE54-0504-4E7E-969A-7AE34F82C7C6
Property Address: 12 Bayview Rd, Castroville, CA 95012-9725 Date: March 27, 2021

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

Paragraph 11A - Condition of Property

or direct to HOA or management company to pay for any of the above.

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

A. Seller shall, within the time specified in paragraph 14A, **DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS** affecting the Property, including known insurance claims within the past five years, and make any and all other disclosures required by law.

Paragraph 13A - Preliminary title

13. TITLE AND VESTING:

A. Within the time specified in paragraph 14, Buyer shall be provided a current preliminary title report ("Preliminary Report"). The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. Buyer's review of the Preliminary Report and any other matters which may affect title are a contingency of this Agreement as specified in paragraph 14B. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities. Seller shall within 7 Days After Acceptance, give Escrow Holder a completed Statement of Information.

Is the Clause 11A Fraudulent? YES...

Clause 11 B - Buyer “investigations” and Options...

Clause Text Image

B. Buyer has the right to conduct Buyer Investigations of the Property and, as specified in paragraph 14B, based upon information discovered in those investigations: (i) cancel this Agreement; or (ii) request that Seller make Repairs or take other action.

Clause Text

B) Buyer has the right to conduct Buyer Investigations of the Property and, as specified in paragraph 14B, based upon information discovered in those investigations (i) cancel this Agreement or (ii) request the Seller make repairs or take other action

Inability to reconcile Buyer Options with *Jue v Smiser* and/or *Bagdasarian v Gagnon*

There is no ability to reconcile buyer options of cancel or request repairs without inclusion of what is available in the event of fraudulent misrepresentation because the contract acts as if there is no contract at this time in the process...

Jue v Smiser (1994) 23 Cal. App. 4th 312-318 states:

"The plaintiffs discovery of the true facts after signing a real property purchase agreement but before the close of escrow does not preclude a finding of justifiable reliance with respect to false representations made by the defendant before the purchase agreement was signed. The plaintiffs reliance at the inception of the agreement is sufficient to support recovery for fraud".

Bagdasarian v. Gagnon (1948) 31 Cal. 2d 744, 750 [192 P.2d 935]

"When a party learns that he has been defrauded, he may, instead of rescinding, elect to stand on the contract and sue for damages, and, in such case his continued performance of the agreement does not constitute a waiver of his action for damages. [Citations.]" (.)

Is the Clause 11B Fraudulent? YES...

It misrepresents disclosure timing requirements and its own status as a contract during days 1-17.

The only way it's not fraud is if this is not a contract during days 1-17.

For kicks, What's in 14B ? - “investigations” , request for repairs, contingency removal/cancel,

- B. (1) BUYER HAS: 17 (or ____) Days After Acceptance**, unless otherwise agreed in writing, to:
- (i) complete all Buyer Investigations; review all disclosures, reports, lease documents to be assumed by Buyer pursuant to paragraph 8B(5), and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property; and (ii) Deliver to Seller Signed Copies of Statutory and Lead Disclosures and other disclosures Delivered by Seller in accordance with paragraph 10A.
 - (2) Within the time specified in paragraph 14B(1), Buyer may request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to (C.A.R. Form RRRR) Buyer's requests.
 - (3) By the end of the time specified in paragraph 14B(1) (or as otherwise specified in this Agreement), Buyer shall Deliver to Seller a removal of the applicable contingency or cancellation (C.A.R. Form CR or CC) of this Agreement. However, if any report, disclosure or information for which Seller is responsible is not Delivered within the time specified in paragraph 14A, then Buyer has 5 (or ____) Days After Delivery of any such items, or the time specified in paragraph 14B(1), whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.
 - (4) **Continuation of Contingency:** Even after the end of the time specified in paragraph 14B(1) and before Seller cancels, if at all, pursuant to paragraph 14D, Buyer retains the right, in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to paragraph 14D(1).
 - (5) **Access to Property:** Buyer shall have access to the Property to conduct inspections and investigations for 17 (or ____) Days After Acceptance, whether or not any part of the Buyer's Investigation Contingency has been waived or removed.
- ☐ **REMOVAL OF CONTINGENCIES WITH CEEB:** If the Buyer's Investigation Contingency has been waived or removed, the Buyer shall deliver to the Seller a copy of the CEEB report within the time specified in paragraph 14B(1).

Clause 11 C - Buyer “investigations” and Options...

Clause Text Image

C. Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had permits issued.

Clause Text

C) Buyer is strongly advised to conduct investigations of the entire property in order to determine it's present condition. Seller may not be aware of all defects affecting the property, or other factors that Buyer considers important. Property Improvements may not be built according to code, in compliance with current law or have had permits issued.

Is the Clause 11C Fraudulent? YES...

This clause was written as if it's transpiring prior to the existence of a Contract. AS if part of a Letter of Intent.

The Case precedents presented prior for As is Sales subject to Inspections are the most relevant to show this is inappropriate as part of a Contract.

The only way it's not fraud is if this is not a contract during days 1-17.

Clause 14 A - 7 days to provide Disclosure Documents // Conflicts with CA 1102

Clause Text Image

14. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS: The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).

A. SELLER HAS: 7 (or ____) Days After Acceptance to Deliver to Buyer all Reports, disclosures and information for which Seller is responsible under paragraphs 5, 6, 7, 8B(5), 10A, B, C, and F, 11A and 13A. If, by the time specified, Seller has not Delivered any such item, Buyer after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP) may cancel this Agreement.

Clause Text

SELLER HAS 7 Days After Acceptance to Deliver to Buyer all Reports, disclosures and information for which Seller is responsible under paragraphs 5, 6, 7, 8B(5) 10A, B, C and F, 11A and 13A. If, by the time specified Seller has not Delivered any such item, Buyer after First Delivering to Seller a Notice of Seller to Perform (CAR Form NSP) may cancel this Agreement.

Is Clause 14A Fraudulent? YES, we've discussed above, but but here it is w/ CA 1102 Conflict...

This clause attempts to put the Seller in control of documents. If they get into the transaction and don't want to complete it, it's as if they can just hold back documents. But there is a larger problem...

1102.3. The seller of any single-family real property subject to this article shall deliver to the prospective buyer the completed written statement required by this article, as follows:

(a) In the case of a sale, as soon as practicable before transfer of title.

This says the TDS is due to a Buyer "as soon as practicable, before transfer of title".

When does transfer of title take place? As of date of Acceptance...

Per 13B in the Contract, Transfer of Title takes place at time of Agreement Acceptance...

13. TITLE AND VESTING:

A. Within the time specified in paragraph 14, Buyer shall be provided a current preliminary title report ("Preliminary Report"). The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. Buyer's review of the Preliminary Report and any other matters which may affect title are a contingency of this Agreement as specified in paragraph 14B. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities. Seller shall within 7 Days After Acceptance, give Escrow Holder a completed Statement of Information.

B. Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record (which Seller is obligated to pay off) unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing.

Conflicting Instructions...

CA 1102.3 and 13B combint to state TDS is due BEFORE Acceptance
14A states it is due AFTER Acceptance

14A does not align with fraudulent misrepresentation presentation timing requirements.

The only way this contract is not fraudulent is if it is NOT a contract as of Acceptance.

Clause 14 D 2 - "Contract" Obligations

Clause Text Image

D. SELLER RIGHT TO CANCEL:

(1) **Seller right to Cancel; Buyer Contingencies:** If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.

(2) **Seller right to Cancel; Buyer Contract Obligations:** Seller, after first delivering to Buyer a NBP, may cancel this Agreement if, by the time specified in this Agreement, Buyer does not take the following action(s): (i) Deposit funds as required by paragraph 3A, or 3B or if the funds deposited pursuant to paragraph 3A or 3B are not good when deposited; (ii) Deliver a notice of FHA or VA costs or terms as required by paragraph 3D(3) (C.A.R. Form FVA); (iii) Deliver a letter as required by paragraph 3J(1); (iv) Deliver verification, or a satisfactory verification if Seller reasonably disapproves of the verification already provided, as required by paragraph 3C or 3H; (v) In writing assume or accept leases or liens specified in 8B5; (vi) Return Statutory and Lead Disclosures as required by paragraph 10A(5); or (vii) Sign or initial a separate liquidated damages form for an increased deposit as required by paragraphs 3B and 21B; or (viii) Provide evidence of authority to sign in a representative capacity as specified in paragraph 19. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.

Clause Text

Clause 14 D 2 states - "Buyer Contract Obligations: Seller may cancel this Agreement if, by the time specified in this Agreement, Buyer does not take the following action(s): (i) Deposit funds as required by paragraph 3A or 3B or if the funds deposited pursuant to paragraph 3A or 3B are not good when deposited"

Refers out to 3A or 3B

Deposit shall be in the amount of _____ within 3 Business days.

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

A. INITIAL DEPOSIT: Deposit shall be in the amount of \$ 26,950.00

(1) Buyer Direct Deposit: Buyer shall deliver deposit directly to Escrow Holder by electronic funds transfer, ☐ cashier's check, ☐ personal check, ☐ other _____ within 3 business days after Acceptance (or _____);

OR (2) ☐ Buyer Deposit with Agent: Buyer has given the deposit by personal check (or _____) to the agent submitting the offer (or to _____), made payable to _____.

The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder within 3 business days after Acceptance (or _____).

Deposit checks given to agent shall be an original signed check and not a copy.

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

The RPA refers to itself as having "contract obligations" within 3 days of agreement acceptance

This is here to point out the RPA refers to itself as a contract, with "contract obligations" that start within 3 days of Agreement Acceptance. This is relevant if any attempts are made to claim the RPA is "less than a Contract" at time of Agreement Acceptance (like a "letter of intent")

Clause 14 F - Release of Liability for Seller Fraud

Clause Text Image

F. EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES: If Buyer removes, in writing, any contingency or cancellation rights, unless otherwise specified in writing, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.

Clause Text

EFFECT OF BUYER'S REMOVAL OF CONTINGENCY: If Buyer removes, in writing any contingency or cancellation rights, unless otherwise specified in writing, Buyer shall conclusively be deemed to have:
(i) completed all Buyer Investigations and review of reports and other applicable information and disclosure pertaining to that contingency or cancellation right (ii) elected to proceed with the transaction and (iii) assumed all liability, responsibility and expense for the Repairs of corrections pertaining to that contingency or cancellation right or for the inability to obtain financing.

Commentary about Fraud

This states a seller can tell you nothing, you can be forced to find what you can find, and whatever you find you have to accept.

Again, this would or could only be a valid scavenger hunt if this was not a contract prior to these liability acceptance acts.

Is Clause 14F Fraudulent? YES, very...

No Contract Clause can excuse fraud to induce a contract.

Clause 22 - Mediation Clause < RACKETEERING >

Clause Text Image

22. DISPUTE RESOLUTION:

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

Clause Text

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

Is Clause 22 Fraudulent? YES. It's called RACKETEERING

This clause omits the fact that “mediation” in California requires 100% confidentiality. That’s how this remained suppressed.

The fact that CAR, the publisher of this document and the group that mandated this use of this document also advertises their own “Mediation Company” to resolve disputes has antitrust and racketeering written all over it.

Clause 29 - "Entire Contract"

Clause Text Image

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

Clause Text

"ENTIRE CONTRACT"

The RPA refers to itself as a "CONTRACT"

This is here to point out the RPA refers to itself as a contract This is relevant if any attempts are made to claim the RPA is "less than a Contract" at time of Agreement Acceptance (like a "letter of intent") Clause 14 D 2 then pins down the label to within 3 days of Agreement Acceptance

Page 10 - The RPA Footer - Approved by CAR. No representations for the Legal Validity in any specific transaction. < RACKETEERING >

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RPA-CA REVISED 12/18 (PAGE 10 of 10)

Buyer Acknowledges that page 10 is part of this Agreement

Buyer's Initials



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

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