

**BREWER**

— OFFORD & PEDERSEN LLP

# SAVE THE DEAL!

**Handling Unexpected Legal Issues  
in Real Estate Transactions**



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# CONTRACT OVERVIEW

## CAR and PRDS

- CAR (California Association of Realtors®)
- PRDS (Peninsula Regional Data Service)
  - <https://www.brewerfirm.com/resources/prds-vs-car-purchase-contract-comparison-tool/>
    - As-Is Provision
      - CAR-default, PRDS-optional
    - Property Taxes/HOA Fees
      - CAR gives option, PRDS establishes who pays



# CONTRACTS IN REAL ESTATE

- **MIRROR IMAGE RULE**
- **CA Civil Code Section 1585**
  - Acceptance **MUST** match offer identically
  - Any changes results in counter-offer
  - Common changes:
    - Price
    - Mediation/Arbitration Provisions Initialed
    - Close of escrow date



# COUNTER-OFFERS

- **NULLIFYING NON-INITIALED CLAUSES**
- **AMENDMENTS**
  - If parties agree, get change in writing
  - Amendments help keep transaction moving
- **ADDENDA**
  - Very useful to show parties' intent/agreement to help avoid dispute



# PLAN AHEAD

- **WAYS TO HELP PREVENT FALLOUT**
  - Negotiate Early
  - Investigate Property
  - Establish Communications with Agent & Escrow
  - Have Vendors Lined Up Ahead of Time
  - Establish Relationship with Seller(s)/Buyer(s)





# DISCLOSURES

- **Sellers**

- Timing of delivery important
- CA Civil Code Section 1102.3
- Delivery after acceptance, buyer(s) has 3 days to terminate agreement
- More common to receive prior acceptance

- **Buyers**

- Make sure to review ALL disclosures!
- If something concerns you, don't be afraid to negotiate, contract terms can be changed.



# NOTICES TO PERFORM

- **CONTINGENCIES**
  - CAR Form NBP
  - Communication helps prevent surprises
  - If more time needed, use Amendment form to change Close of Escrow
- **NOTHING IS “SELF-EXECUTING”**



# “In vs. Out” of Contract

- **MISCONCEPTION**
  - People often skip triggering forms thinking they are out of contract
- **“OUT OF CONTRACT”**
  - Riddled with problems for agents and parties to transaction.



# COMMON DISPUTES & SOLUTIONS

- **ISSUES DISCOVERED DURING CONTINGENCY PERIOD**
  - Negotiate & Communicate
  - Cancellation is not always the best option
- **CHANGE OF HEART**
  - Communicate w/ agent ASAP, after COE likely too late!
  - Prior to offer, make sure agent knows wants/needs



# COMMON DISPUTES & SOLUTIONS

- **NOT ENOUGH TIME**
  - Use Amendments
  - Communicate
- **TENANT IN PROPERTY**
  - Have up to date lease
  - Know laws in the area
  - Plan ahead → be courteous



# Closing & Finance Issues

- **LOAN COMPLICATIONS**
  - Appraisal, credit, and title issues
- **TITLE ISSUES**
  - Boundary, hidden lien, and forgery issues
- **COSTS**
  - Plan ahead, if buyer(s)- budget for closing costs



# Closing & Finance Issues

- **NATURAL DISASTERS**

- Fire, flood, hurricane, etc.
- PRDS: Buyer right to cancel prior to close
- CAR: No such language, relies on Civil Code Section 1662

- **REPAIRS**

- Don't be afraid to ask Seller(s) to negotiate



# TRANSACTION ASSIST PROGRAM





# Questions?





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