

# STANDARD LANGUAGE REFERENCE GUIDE

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## I GENERAL PRINCIPLES

### A. Standard Contract Language

To create a condition or contingency: **“This contract is contingent upon...”**

To create an obligation or promise to perform: **“The Seller (Buyer) shall (or will)...”**

Example: **“This contract is contingent upon approval of Seller’s attorney. Seller shall remove contingency in writing within three calendar days of final acceptance.”**

Example: **“Buyer shall approve and initial carpet selection upon removal of all contingencies. Seller shall install carpet selected prior to close of escrow.”**

### B. Time Frame for Performance

**“...on or before \_\_\_\_\_ (date)...”**

**“...on or before close of escrow”.....**

**“...within \_\_\_\_\_ (hours/ calendar days) of \_\_\_\_\_ (specified event)...”**

Example: **“The Seller shall provide the Buyer with carpet samples on or before May 1, 2006. (OR “...within 14 calendar days of final acceptance.”)**

### C. Identifying Provisions/ Clauses to Be Changed

Generally, when a provision in the counter offer alters or amends a provision in the original offer (or previous counter offer) the paragraph and subparagraph in the document to be amended should be referenced in the counter offer.

Example: **“Regarding Para. 4 (B) (1), BUYER shall pay to have septic disposal system inspected.”**

Example: **“Regarding Para. 4 (B) (1) and Item 2 of counter offer, Buyer and Seller shall equally share cost of septic disposal system inspection.”**

## II CLAUSES TO BE USED IN COUNTER OFFERS AND ADDENDA

### A. Adding Initials to Specified Paragraphs in Purchase Agreement (Par 1A of Counter Offer Form) and Making Certain Forms Part of the Agreement

**CAR Counter Offer form, para. 1. A.** states: “Paragraphs in the Offer that require initials by all parties, but are not initialed by all parties, are excluded from the final agreement unless specifically referenced for inclusion in paragraph 1 C of this or another Counter Offer.” In order to reference for inclusion, use the following language:

- Liquidated damages

Example: “**Para 16, Liquidated Damages, shall be a part of this agreement.**”

- Dispute resolution

Example: “**Para 17, B, Arbitration of Disputes, shall be a part of this agreement.**”

- Pages not initialed.

Example: “**Page 4 of Purchase Agreement was not initialed by Buyer (Seller) and is hereby made a part of this agreement.**”

- Other terms and conditions

Example: “**Para 25, Other Terms and Conditions, shall include the following as part of this agreement:**

- 1) A Buyer’s Inspection Advisory (C.A.R. Form BIA)**
- 2) Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)**
- 3) Seller shall provide SELLER PROPERTY QUESTIONNAIRE (C.A.R. Form SPQ) as part of the disclosures specified in Para. 14 A.”**

B. Correcting, Changing, Substituting and Adding Terms and Clauses to the Purchase Agreement, Para. 1 C of Counter Offer Form

- Identity of Buyer (**Para 1 A** of Purchase Agreement)

Example: **“Buyer and Seller agree that John Q. Jones shall be an additional buyer and, upon his signing the Purchase Agreement and all counter offers and addenda, including the present, shall be made a party to this agreement.”**

Additional clause: **“John Q. Jones agrees to complete and sign an ‘Additional Signature Addendum’ (C.A.R. Form ASA) regarding the dispute and liquidated damages provisions of the purchase agreement.”**

Example: **“Buyer and Seller agree that Mary Q. Jones is hereby removed as a Buyer. Her signature below and those of the remaining parties acknowledge the termination of any and all rights and obligations she had under this agreement.”**

Note: *The above clauses and Form ASA should not be used to attempt an assignment of contract, i.e. substituting one buyer for another. An assignment agreement should be drafted by an attorney. In the alternative, a new contract can be written between the seller and new buyer contingent up the seller and original buyer executing a “Release of Contract” (C.A.R. Form RC-11) agreement.*

- Property description (**Par 1 B** of Purchase Agreement)

Example: **“The correct description (or Assessor’s Parcel No.) of the property to be acquired is \_\_\_\_\_.”**

- The purchase price (**Para 1 C** of Purchase Agreement)

Example: **“The purchase price is Three hundred eighty-three thousand dollars, (\$383,000).”**

- Close of escrow (**Para 1 D** of Purchase Agreement)

Example: **“The close of escrow shall occur on or before \_\_\_\_\_(date)” OR “\_\_\_\_ Days After Acceptance.”**

- Increase deposit (**Para 2 B** of Purchase Agreement)

Example: **“Buyer shall deposit with Escrow Holder an increased deposit in the amount of \$ \_\_\_\_\_ within \_\_\_\_\_ days after acceptance,” OR “upon \_\_\_\_\_ (some event).”**

Additional clause: **“Parties agree to execute ‘Receipt for Increased Deposit/ Liquidated Damages’ (C.A.R. Form RID) at time of increase of deposit.”**

Note: *Without C.A.R. Form RID the increased deposit would not be covered by liquidated damages.*

- Changing loan terms (**Para 2 C** of Purchase Agreement)

Example: **“Buyer shall obtain financing at the best available interest rate, fees and points for which Buyer qualifies.”**

Note: *The above clause should be used to protect the SELLER. When representing the BUYER, counter with specific rate and terms that are reasonable and acceptable to the client.*

**C. General and Miscellaneous Clauses in connection with the Purchase Agreement, Para. 1 C of Counter Offer Form, or Addendum, CAR Form ADM**

- Promises of performance

Example: **“Seller shall, on or before close of escrow, provide Buyer...**

- a two year roof certification
- architectural drawing of the structure
- the design plan and operating instructions for the irrigation system

Example: **“Buyer shall, within three days of the removal of Buyer’s contingencies, provide Seller...**

- paint color selections for exterior of dwelling
- make and model number of replacement stove top.”
- Buyer’s selection of a replacement fixture for the dining room chandelier costing no more than \$500.”

- Holding funds in escrow

Example: **“Buyer and Seller agree that \$\_\_\_\_\_ shall be held in escrow after close of escrow for the purpose of \_\_\_\_\_ (e.g. completion of repairs, installation of new pool equipment, replacing tree, etc.) as specified in the purchase agreement and addenda. Moneys withheld shall be released to contractor(s) and/or vendor(s) upon: 1) completion of work (AND/OR delivery and installation of specified item), 2) the submission of bill(s) and/or invoices(s), and 3) the authorization of Buyer and Seller.”**

Note: *An alternative to holding funds in escrow would be to have the Seller credit the Buyer a sum to cover the cost of repairs. There is a provision for such credit in "Request for Repairs" (C.A.R. Form RR, as revised 11/07)*

- Credits in escrow for closing costs

Example: **"Seller shall credit Buyer \$ \_\_\_\_\_ in escrow, to be applied toward allowable closing costs as determined by lender guidelines and/or applicable law."**

Note: *In the rare event that the intended credit exceeds the allowable closing costs, the Buyer can be given additional options for applying the credit, including a reduction of the sales price. Any adjustment in the sales price, however, may adversely affect loan ratios and/or require that loan documents be redrawn. Accordingly, proceed with caution. Option b), below, might be considered as an alternative.*

Additional clause: **"In the event the intended credit exceeds allowable closing costs, the balance shall be applied to one or both of the following, at the election of the Buyer: a) reduction of the sales price and/or b) compensation for cleaning, refurbishment and repair expense."**

- Agent(s) reduce commission to enable compromise between the parties

Example: **"Agent(s) \_\_\_\_\_ (name[s]) agree to reduce commission by an amount of \$ \_\_\_\_\_ ( each), as a credit toward \_\_\_\_\_ (e.g. Buyer's closing costs; Seller's closing costs; cost of roof repair; replacing tree by drive way; cleaning expense, etc.) which shall be credited to \_\_\_\_\_ at close of escrow."**

- Acceptance of existing or previous pest control report and/or clearance

Example: **"For purposes of para. 4. A. (1) [OR 4. A. (2) and C.A.R. Form WPA] of the purchase agreement, Buyer accepts the report issued within the past four months by \_\_\_\_\_, a registered structural pest control company, dated \_\_\_\_\_."**

Additional clause: **"Buyer shall accept the clear report issued by \_\_\_\_\_, a registered structural pest control company, dated \_\_\_\_\_, showing satisfactory completion of work required under terms of the purchase agreement and addenda."**

Note: *Even if the Buyer is satisfied with an existing report and/or clearance, the lender may require a re-inspection if the transaction does not close within four months of the original inspection and/or completion of the work. If a re-inspection is necessary, the parties should agree on who will pay for the re-inspection.*

- Allocation of cost of pest control work and rights of the parties

Example: **“Seller shall be liable for cost of work to correct ‘Section One’ conditions only. The cost of work required to correct ‘Section Two’ conditions shall be the responsibility of Buyer (OR shared equally by Buyer and Seller) .”**

Additional clause: **“If the transaction does not close due to Buyer’s failure to perform, cost of work to correct ‘Section Two’ conditions shall be deducted from Buyer’s deposit and released to contractor or to Seller, if already paid by Seller.”**

Additional clause: **“Seller shall credit Buyer \$\_\_\_\_\_ to pay for work performed after close of escrow to correct ‘Section Two’ conditions.”**

Additional clause: **“Seller (Buyer) retains the right to order his own wood destroying pest inspection and report, a copy of which shall be made available to the other party. Seller may select the company of his choice to perform the work recommended to correct the conditions identified in the report, PROVIDED a full clearance is obtained.”**

- Disclosure and liability issues

Note: *Certain conditions, whether noted in the Transfer Disclosure Statement or not, may be of such magnitude or concern that the Seller risks potential liability. To minimize the exposure, it is advisable to make special mention of the condition together with a Seller disclaimer.*

Example: **“Buyer is aware that \_\_\_\_\_ (improvements, e.g.: laundry room addition, garage conversion, tool shed electrical work, pool house plumbing,) was done without permits and that Seller makes no warranty, guaranty or representation of legality, functionality or suitability with respect thereto. Buyer assumes full liability and responsibility and holds Seller and Seller’s agent harmless with respect to all claims, expense and/or obligations that may arise subsequent to close of escrow in connection with such condition, work or improvements.”**

Example: **“Buyer is aware that \_\_\_\_\_ (special circumstance or legal/governmental action with respect to property, e.g.: abatement action, condemnation proceeding, cease and desist order, or civil proceeding affecting the subject property) is pending or in process. Buyer agrees to hold Seller and Seller’s agent harmless with respect to all claims, expense, liability or obligations that may arise subsequent to close of escrow in connection with such action or circumstance.”**

Additional clause: **“Buyer is advised to seek the guidance of legal counsel for a full understanding of his rights and obligations with respect to the above stated \_\_\_\_\_(circumstance, condition or action) and the attendant hold harmless agreement.”**

- Miscellaneous contingencies

Example: **“This contract is contingent upon...**

- **the approval of Buyer’s (Seller’s) attorney** (OR accountant, tax advisor, financial advisor, doctor, decorator, feng shui advisor, spiritual advisor, palmist, mother-in-law, etc.)
- **Buyer (Seller) obtaining necessary building permits** (OR zoning variance, regulatory agency approval, contracts, etc.)
- **Buyer obtaining satisfactory construction bids** (OR architectural and/or engineering drawings, plans, etc.)

**Buyer (Seller) shall remove this contingency in writing within \_\_\_\_\_ days after acceptance or cancel this agreement.”**

#### D. Highly Sensitive or Unorthodox Situations

Some aspects of a transaction subject the buyer, seller or **agent** to high risk or legally sensitive circumstances. Even in cases where the party indicates a willingness to assume the risk, protective language in the contract should be used to minimize legal exposure for the other party and the agents. The specific issue or problem area should be identified and the protective measure stated. Typical situations and suggested language include:

- Agent acts as principal in transaction. Disclosure required.

Example: **“Buyer (Seller) is a licensed real estate agent with specialized knowledge of the real estate market and real estate practice.”**

Additional Protective Clause: **“This transaction is contingent upon the approval of Seller’s (Buyer’s) attorney. This contingency shall be removed in writing within five days of final acceptance.”** OR **“Seller (Buyer) is advised to seek the guidance of legal counsel for a full understanding of his rights and obligations.”**

- Client makes decision contrary to advice of agent

Example: **“Notwithstanding the advice of agent, \_\_\_\_\_ (name), Buyer has elected to forego his right to request a \_\_\_\_\_ (e.g. home, roof, pest control, etc.) inspection and is willing to risk non-discovery of unknown or hidden defects or conditions.”**

Additional Protective Clause: **“Buyer agrees to read and sign C.A.R. Form HID, ‘For Your Protection: Get a Home Inspection’ and P1R/A1R Form ‘Home Inspection/ Home Warranty Advisory and Waiver Form.’”**

Example: **“Notwithstanding the advice of agent, \_\_\_\_\_ (name), Buyer has elected to forego inclusion of a contingency for \_\_\_\_\_ (e.g. financing, sale of Buyer’s home, approval of tax advisor, etc.) and is willing to risk failure to perform and possible liability for damages to Seller.”**

Example: **“Notwithstanding the advice of agent, \_\_\_\_\_ (name), Seller has elected to forego inclusion of a contingency for \_\_\_\_\_ (e.g. purchasing a replacement property, securing building permits, verifying Buyer’s credit worthiness, etc.) and understands he may suffer damages or hardship as a result.”**

- Seller does not wish to make any repairs and wants buyer to accept the property in its present condition.

Note: *Seller must make full disclosure, regardless of contract terms. Buyer has right to inspect property for defects or adverse conditions. Repairs are negotiable, but Seller may make his refusal to repair clear in advance by use of PIR/AIR Form “Acceptance of Property in Present Condition, ‘As is’ Disclosure and Release of Liability.” When used, form should be referenced in counter offer form or addendum.*

Example: **“PIR/ A1R Form “Acceptance of Property in Present Condition, ‘As Is’ Disclosure and Release of Liability” is made a part of this agreement.”**

- Seller (or Buyer) is a trustee, conservator, executor or other special circumstance where legal issues and/or court involvement is a factor.

Example: **“This transaction is contingent upon the approval of Seller’s (Buyer’s) attorney and, if required by law, the approval of the court of law with jurisdiction. This contingency to be removed in writing within \_\_\_\_\_ days of final acceptance.”**

- Home inspections

Note: *If there is to be a home inspection, this can be noted in **para 4. B** [Other Inspections and Reports], **(4)** of the purchase agreement or in an addendum. Any and all references to such an inspection should include the word “**professional**” in order for the agent to be exempt from negligent referral as provided in the Business and Professions Code. Since there is no licensing requirement for home inspectors, a “professional” is deemed to be one belonging to or recognized by one of the three trade organizations for home inspectors. Though not prohibited, the best practice is **not** to reference the home inspection request in the Transaction Disclosure Statement or AVID form because a home inspection is **not** a substitute for the agent’s statutorily mandated obligation to inspect the property.*

Example: **“The Buyer shall order and pay for a professional home inspection.”**

Note: *If the Buyer does **not** want a home inspection, have them sign C.A.R. Form HID, “For Your Protection: Get a Home Inspection” and check the box, “I/We choose not to have a home inspection performed.” This protects the agent against a claim that a home inspection was not recommended/ offered.*

### III CLAUSES TO BE USED IN CONNECTION WITH LISTING AGREEMENT

Note: *The need for additional clauses to the listing agreement is minimal. When necessary, use para 16, "ADDITIONAL TERMS" on page 2 of the Residential Listing Agreement - Exclusive. If more space is needed or a change is being made in price, expiration date or other terms of the agreement, use either a Modification of Terms, Authorization and Right to Sell, Acquire or Rent (CAR Form MT) or an addendum form. In either case, the property address, date of listing agreement and Seller and Broker/agent's names and signatures must appear on the form.*

#### A. Altering the Commission Paid by Seller

Note: *The standard commission charged by the company for the sale of residential real estate is six percent (6%) of the listing or sales price. This figure should be preprinted in para. 4. A. of the listing agreement. If not preprinted, ALWAYS enter six percent (6%) there. In order to change the commission rate, add the appropriate clause in para 16, "ADDITIONAL TERMS" on page 2.*

- Reducing commission rate

Example: **"The commission rate as provided in para 4. A. of the listing agreement shall be \_\_\_\_\_ percent."**

Additional clause: **"Agent agrees to the amended commission rate PROVIDED Seller gives Agent \_\_\_\_\_ ( e.g. the opportunity, without obligation, to find a replacement property and represent Seller in the purchase; a letter of recommendation; \_\_\_\_\_ [specified number of] referrals, etc.), with the understanding that Agent must provide quality service."**

Example: **"In consideration for Agent representing Seller in the purchase of \_\_\_\_\_ (property description), Agent agrees to list subject property at the reduced commission rate of \_\_\_\_\_ percent."**

- Alternative rates

Example: **"Should \_\_\_\_\_ (name), the listing agent, function as dual agent, representing the Buyer as well as Seller, the gross commission rate as provided in para 4. A. shall be reduced to \_\_\_\_\_ percent."**

Example: “**Should** \_\_\_\_\_ (named Buyer), **purchase the property during the term of the listing or during the protection period as specified in para 4. A. (2) of the listing agreement, Agent agrees to reduce the commission rate to \_\_\_\_\_ percent, PROVIDED the Agent also represents \_\_\_\_\_ (named Buyer) in the transaction.**

*Note: The above language may be used when the Seller is reluctant to list because he has a probable buyer in his pocket. The clause enables the Agent to handle the transaction at a reduced rate for the named buyer, yet market the property to others under standard terms. An alternative would be to exempt the named Buyer completely.*

B. Expenses Paid by Agent as Off-set to Compensation

Example: “**In consideration for Seller paying full commission rate of six percent, Agent agrees to pay cost of \_\_\_\_\_ (e.g. home warranty, transaction coordinator fee, pest control inspection fee, etc.) which shall be deducted from commission at close of escrow.**”

C. Expenses Paid by Seller as Additional Compensation

*Note: If Seller is to pay fee in addition to commission, it should be noted in para 4. A. on line after “AND” or in para 16, page two, “ADDITIONAL TERMS.”*

Example: “**Seller shall pay \$285 transaction coordination fee (escrow documentation and archival expenses) at close of escrow.**”

D. Agent Representations Concerning the Property

*Note: An agent is responsible for the truth and accuracy of any and all representations he or she makes about the property (e.g. statements concerning square footage, materials, features, the condition of the property, building permits, zoning, etc.), unless accompanied by a clear **DISCLAIMER**. The fact the information is provided to the agent by the Seller, an appraiser, contractor, home inspector or anyone else does not absolve the agent of responsibility. The agent can protect him or herself in one of two ways: 1) by being **certain** of the accuracy of the information (always risky) or; 2) by disclaiming, i.e. stating the information **HAS NOT BEEN VERIFIED**. The latter is a far better solution and therefore recommended. The courts have held that the exact words “**not verified**” are critical and should be used in connection with any representations made, especially when made in writing (e.g. on fliers, signs, in listings, letters, etc.).*

Example: “**The information contained herein has not been verified by the agent.**”

Example: **“None of the representations made have been verified by the agent. The Buyer is advised to satisfy himself as to the truth and accuracy of the information provided.”**

Example for use in counter offer: **“Seller obtained all necessary building permits and required approvals for alterations and additions. Information has not been verified by agent.”**