

CAR Fall 2020 Report

Standard Forms Advisory Committed and Forum on Forms

New COVID-19 Forms and Related Forms revisions – a result of the TPA (Tenant Protection Act)

These are new/revised forms relating to tenant issues during the COVID-19 crisis. There are various forms for various situations. The consensus is that a local real estate attorney should be consulted regarding any attempted proceedings against any tenants with unpaid balances before, during, or after the crisis.

1. CDC-TD – Centers for Disease Control COVID-19 Tenant Declaration
2. CRFP – Coronavirus Rent Forgiveness, Termination of Tenancy and Possession of Premises Agreement
3. CRRA – Coronavirus Unpaid Rent Repayment Agreement
4. CURC – Coronavirus Unpaid Rent Calculation
5. DCFD – Tenant Declaration of COVID-19 Related Financial Distress
6. NTRA – Notice of Tenant of COVID-19 Tenant Relief Act of 2020
7. PMC-CPP – Notice to Cure Covid Protected Period Monetary Covenant or Quit
8. PMC-TP – Notice to Cure Covid Transition Period Monetary Covenant or Quit
9. PRQ-CPP – Notice to Pay Covid Protected Period Rent or Quit
10. PRQ-TP – Notice to Pay Covid Transition Period Rent or Quit revised
11. PCQ – Notice to Cure or Perform Covenant or Quit revised
12. PRQ – Notice to Pay Rent or Quit revised

Link to COVID-19 related forms:

<https://www.car.org/zipform/standard-forms/summary-forms-releases-chart/September-2020-Forms-Release>

New Fair Housing form FHDA – Fair Housing & Discrimination Advisory

(in ZipForm now and bundled with purchase, listing, lease forms, and buyer representation forms)

New and Revised forms for December release

1. HHDS – Home Hardening & Defensible Space Disclosure & Addendum **NEW**

This is likely to be split into 2 forms given the laws take effect at different times (1/1/21 and 7/1/21)
2. COP – Contingency For Sale of Buyer's Property
3. CR – Contingency Removal – reflects new language in COP
4. NBP – Notice to Buyer to Perform – reflects new language in COP
5. RCJC – Rent Cap and Just Cause Addendum
6. SFLS – Square Footage and Lot Size Disclosure and Advisory

Link to new/revised forms:

<https://www.car.org/zipform/standard-forms/summary-forms-releases-chart/December-2020-Forms-Release>

Status Update on the December 2021 RPA Revision

Nearly done. To be released December **2021**. February 2021 CAR meetings will show the new form and roll out/training to begin sometime after that. The delay has allowed CAR to hopefully update all of the ancillary forms (60 of them) by the December **2021** release.

NOTE – TALKING POINTS ABOUT EACH OF THE FORMS WITH A BRIEF DESCRIPTION IS ARE AT THE END OF THIS REPORT.

MLS Policy Committee

NAR Update

Current lawsuits were not dismissed by the courts.

The NAR MLS Technology and Emerging Issues and Advisory Board will be meeting 10/13/20 to have discussions on “nuances” of the Clear Cooperation Rule.

Motion passed:

Adopting NAR’s MLS Policy Mandating Broker Entitlement to Data Portability into C.A.R. Model MLS Rules

Actual motion language:

That, upon final approval by NAR, C.A.R. Model MLS Rule Section 11.13 [Participant Access and Entitlement to Their Own Listing Information; Data Portability] be added to incorporate new mandatory NAR policy requiring the MLS to provide MLS Participants access and entitlement to a data feed containing their own listing information as set forth in the Issues Briefing Paper and that Staff make any necessary related additional corrective and/or correlating changes to the Model MLS Rules and Model Citation Policy.

3 additional IBPs – reports only:

1. Changing Default IDX Advertising Option and Clarifying IDX Display Purpose in C.A.R. Model Rules
2. Joint Pro-Standards/MLS Policy Committees’ MLS Citation Hearing Process Work Group
3. Coming Soon Workgroup (a lot of discussion on this)

Link to all 4 IBPs:

<https://www.car.org/meetings/carmeetings/current/MLS-Policy-Committee---Fall-2020>

Discussion on the inclusion of Virtual Floorplans in the MLS

(a lot of discussion on this)

Talking Points - September/October COVID-19 Forms

CDC-TD – Centers for Disease Control COVID-19 Tenant Declaration

This form was created by an order from the CDC. If a residential tenant who cannot pay rent signs the form and delivers it to the landlord, the landlord may not evict the tenant for non-payment of rent until January 1, 2021. This only applies if the tenant earns no more than \$99,000 per year, and the landlord is not obligated to provide this form to the tenant.

CRFP – Coronavirus Rent Forgiveness, Termination of Tenancy and Possession of Premises Agreement

The CRFP creates a voluntary agreement between a residential landlord and tenant. The landlord agrees to forgive all or part of the unpaid rent in exchange for possession of the property on a date certain.

CRRA – Coronavirus Unpaid Rent Repayment Agreement

This voluntary agreement between a landlord and tenant is used to come to an arrangement to, over time, pay back rent that was unpaid since the beginning of the COVID-19 state of emergency. If a local government has issued an order or ordinance establishing a payback period, that local enactment needs to be complied with. Under a superseding state law, the payback period can begin no later than March 1, 2021 and end no later than March 1, 2022.

CURC – Coronavirus Unpaid Rent Calculation

This form can be used to clearly document and organize any rents not paid from March 1, 2020 to January 31, 2021, which will need to be documented as part of any future eviction or which can be useful in coming to a repayment agreement.

DCFD – Tenant Declaration of COVID-19 Related Financial Distress

Under the new California law, a landlord may not evict a tenant if the tenant signs and delivers to the landlord a declaration under penalty of perjury that the tenant is unable to pay rent due to a COVID-19 related reason. An unsigned version of this form must be attached to an eviction notice for unpaid rent from March 1, 2020 to January 31, 2021. No proof of inability to pay is required unless the tenant is a “high income” tenant.

NTRA – Notice of Tenant of COVID-19 Tenant Relief Act of 2020

This form, which provides a tenant with information regarding their rights under the new California law, was required to be given to any residential tenant who had not paid rent from March 1, 2020 to August 31, 2020 by September 30. Going forward until January 31, 2021, this form must be provided to a tenant before serving a tenant with an eviction notice.

NTT-CTRA – Notice of Termination COVID-19 Tenant Relief Act of 2020

During the COVID covered period, March 1, 2020 – January 31, 2021, a tenancy can only be terminated for “cause. This form gives the allowable reasons and minimum notice periods.

PCQ-CTRA – Perform Covenant COVID-19 Tenant Relief Act of 2020

During the COVID covered period, March 1, 2020 – January 31, 2021, attempts to evict a tenant for failure to meet a non-monetary, contractual obligation have a different procedure. This notice to perform form can be used and should be followed by a separate notice to quit.

PMC-CPP – Notice to Cure Covid Protected Period Monetary Covenant or Quit

This form, along with the next form to be discussed, was created to differentiate a breach of a monetary covenant from ordinary covenants, due to the requirements under the new law. This PMC-CPP is a 15-day notice to pay money, other than rent, that was due between March 1, 2020 and August 31, 2020. PMC-TP – Notice to Cure Covid Transition Period Monetary Covenant or Quit This form is similar to the previous form, but would be used for money obligations, other than rent, that is due between September 1, 2020 and January 31, 2021.

PRQ-CPP – Notice to Pay Covid Protected Period Rent or Quit

Due to the way the law was written, we have also created two temporary pay rent or quit notices. The PRQ-CPP is a 15-day notice to pay rent or quit, for any unpaid rent that was due between March 1, 2020 and August 31, 2020.

PRQ-TP – Notice to Pay Covid Transition Period Rent or Quit

PRQ-TP is a 15-day notice to pay rent or quit, for any unpaid rent that is due between September 1, 2020 and January 31, 2021.

September/October 2020 Revised Forms related to

NTT – Notice of Termination of Tenancy

Because of the different procedures related to the new California law, this form was modified to instruct the user to not use this form for termination of a residential tenancy from March 1, 2020 to January 31, 2021, if the tenant is a natural person.

PCQ – Notice to Cure or Perform Covenant or Quit revised

Because we added the two other forms, this form was modified to inform the user that other forms are necessary if a non-rent monetary covenant is due between March 1, 2020 and January 31, 2021.

PRQ – Notice to Pay Rent or Quit revised

Similarly, the standard pay rent or quit form was modified to inform the user that other forms may be necessary for unpaid rent due between March 1, 2020 and January 31, 2021.

October 2020 New Form

FHDA – Fair Housing and Discrimination Advisory

This form was released on October 1 and bundled with the purchase agreements, listing agreements, buyer representation agreements, and residential lease. It provides guidance and information related to fair housing laws and how they relate to real estate, It provides some best practices dos and don'ts.

Proposed December 2020 New Form

HHDS – Home Hardening and Defensible Space Disclosure and Addendum

This form satisfies the disclosure requirements starting January and July 2021 concerning home hardening and defensible space, respectively. This form should be used if the property is located in a high or very high fire hazard severity zone.

Proposed December 2020 Revised Forms

Substantive Revisions

COP – Contingency For Sale of Buyer's Property

This form went through an overhaul to make the form easier to use. The form starts by clearly identifying exactly what the contingency is for. A section was added regarding the current status of the other transaction, including what is or will be happening with the MLS. The buyer agrees to keep the seller informed of the status of the other transaction. The procedures for obtaining a backup has been moved up to the first page and the time frames for which it will apply, if it does at all, has been made easier to understand. Finally, the Buyer and Seller's cancellation rights have been more clearly defined.

CR – Contingency Removal

This form was updated to reflect the changes made to the COP form, including the paragraph references and potential contingency removal situations contemplated in the revised COP.

NBP – Notice to Buyer to Perform

Just like the CR, this form needed to be updated to reflect the changes in the COP.

RCJC-Rent Cap and Just Cause Addendum

This form was reorganized to place the exemption for single family residences or condos not owned by a corporation at a more prominent place at the beginning of the form so that it is more easily found for those that are exempt.

SFLS – Square Footage and Lot Size Disclosure and Advisory

This form was reorganized to clarify each party's representations and acknowledgements before the signature lines.