

The single-agency purchase agreement

Analyzing the “single-agency” purchase agreement

Purchase agreement Form 151 is primarily used by brokers and agents who represent buyers and seek to eliminate the obvious conflict of interest created by asking the seller to pay their fee. While negotiating the lowest possible price the broker’s client must pay and asking fair compensation for diligently representing the buyer’s best interests, these brokers and agents prefer to be paid by their client, the buyer.

The purchase agreement Form 151 is used to submit the buyer’s **written offer** to purchase one-to four unit residential property on terms including conventional financing, an assumption of existing loans or a carryback note. The single variation from the “conventional” purchase agreement, Form 150, is the structure of the payment of the buyer’s broker’s fee by the buyer — as part of the purchase price paid for the property at §4.1.

The purchase agreement offer, if accepted, becomes the binding written contract between the buyer and seller. Its terms must be complete and clear to prevent misunderstandings over enforcement of the agreement. Form 151 is a comprehensive “boiler-plate” purchase agreement which serves as a **checklist**, presenting the various conventional financing available to a buyer when making an offer to purchase.

Purchase agreement forms, for analysis, are divided into six sections, each with a specific purpose:

- Identification;
- Facts;
- Terms;
- Closing Conditions;
- Property Conditions; and
- Signatures.

Preparing the purchase agreement

The following instructions are for the preparation and use of Form 151, the **purchase agreement** for offers to buy conventionally financed one-to-four unit residential properties located in California with each party paying any broker fees due their agent in the transaction. The numbers on the instructions correspond to the numbers of the provisions in the form.

*Note — **Check and enter** items throughout the purchase agreement in provisions with boxes and blanks, unless the provisions left unchecked or blank are not intended to be included as part of the final agreement.*

Identification:

Enter the date and the place where the offer is prepared. This is the date used to reference this document.

Facts:

1. **Enter** the name of each buyer who will sign the offer.

Note — Never enter the words “or assignee” or “or nominee” as the buyer. [See §11.4]

Enter the dollar amount of any good-faith, earnest money deposit. **Check** the box to identify the form of the good-faith deposit. If the good-faith deposit is a check or a promissory note, **enter** to whom it is payable (escrow, title company or broker).

Enter the city and county in which the property is located.

Enter the legal or common description of the property, or the assessor’s parcel number.

Enter the description of any personal property included, or **reference** and **attach** an itemized inventory. The seller’s trade fixtures to be purchased by the buyer must be listed as inventory. [See [first tuesday Form 250](#)]

2. **Enter** the number of pages attached to the purchase agreement.

Terms for payment of the purchase price:

3. *Cash down payment:* **Enter** the dollar amount of the buyer’s cash down payment toward the price.
 - 3.1 **Enter** the description of any other consideration to be paid on the price such as trust deed notes, personal property or real estate equities (an exchange) and **enter** the dollar amount of its value.
4. *First trust deed note:* **Check** the appropriate box for a “subject-to” transfer, or an “assumption” if the buyer is to take over the seller’s existing loan.

Enter the lender’s name. **Enter** the remaining balance, monthly principal and interest payment and interest rate on the loan. **Check** whether the interest is adjustable (ARM) and if so, **enter** the index name. **Enter** any monthly impound payments made in addition to the principal and interest paid.

- 4.1 *Loan balance adjustments:* **Check** the box indicating the desired financial adjustment for loan balance differences at the close of escrow.

- 4.2 *Impound balances:* **Check** whether the impound account transferred to the buyer will be with or without a charge to the buyer.

5. *Second trust deed note:* **Check** the appropriate box for a “subject-to” transfer or an “assumption” of the note by the buyer. **Enter** the lender’s name. **Enter** the remaining balance, the monthly principal and interest payment and the interest rate on the loan. **Check** whether the interest is adjustable (ARM) and if so, **enter** the index name. **Enter** the due date on the note.

6. *New trust deed loan:* **Check** whether any new financing will be a first or second trust deed. **Enter** the amount of the loan, the monthly payment, the term of the loan and the rate of interest. **Check** whether the interest will be adjustable (ARM) and if so, **enter** the index name. **Enter** loan point information.

7. *Bond or assessment assumed:* **Enter** the balance owed on bonds and special assessment liens (such as Mello-Roos improvement bonds) which are not ad valorem property taxes and will remain unpaid and become the responsibility of the buyer on closing.

Note — Improvement bonds are obligations of the seller which are assumed by the buyer. Thus, the bonds become part of the price paid for the property. Some purchase agreements place these bonds under “property tax” but then fail to prorate and charge the unpaid amount to the seller as is done for ad valorem taxes.

8. Seller’s carryback: **Enter** the amount of the carryback note to be executed by the buyer. **Enter** the monthly payment, interest rate and the due date for the final/balloon payment.

8.1 *Special carryback provisions:* **Check** or **enter** any special provisions to be included in the carryback note or trust deed.

8.2 *Carryback disclosure:* **Fill out** and **attach** the Carryback Disclosure Statement as an addendum.

Note — Further approval in escrow creates a buyer’s contingency allowing for cancellation until time of closing on one-to-four residential units.

8.3 *Notice of Delinquency:* The buyer consents to a Request for Notice of Delinquency and agrees to pay the costs of recording and serving it on senior lenders.

8.4 *Buyer creditworthiness:* The buyer is to provide the seller with a completed credit application. **Enter** the number of days in which the seller may cancel the transaction for reasonable disapproval of the buyer’s credit application and report.

9. Seller’s sale price: **Enter** the total amount the seller is to receive as the sale price by totalling lines 3, 3.1, 4, 5, 6, 7 and 8.

9.1 *Buyer’s broker fee:* **Enter** the fee due the buyer’s broker to be paid by the buyer in addition to the price paid the seller.

Note — The defaulting party is to pay this fee.

9.2 *Buyer’s total purchase price:* **Enter** the total amount of lines 9 and 9.1.

10. Acceptance and performance periods: **Check** the appropriate box indicating the time period for acceptance of the offer. If applicable, **enter** the number of days in which the seller may accept this offer and form a binding contract.

Note — Acceptance occurs on the return delivery to the buyer or his broker of a copy of the buyer’s purchase agreement offer containing the seller’s signed acceptance.

10.1 *Extension of performance dates:* Brokers have the authority to extend the performance dates up to one month to meet the objectives of the agreement — time not being of the essence in this agreement as a matter of policy. This authority does not extend to the acceptance period.

10.2 *Confirmation of loan qualification:* **Check** the box to allow the seller to cancel the agreement if the buyer is to obtain a new loan and fails to deliver documentation indicating he has been qualified for a loan.

10.3 *Sale of other property:* **Check** the box if the purchase is contingent on funding from the net proceeds of a sale of other property by the buyer. **Enter** the address of the property to be sold.

11. Closing conditions:

- 11.1 *Escrow closing agent:* **Enter** the name of the escrow company handling the closing.
- a. *Escrow instructions:* **Check** the box to establish this purchase agreement as the mutual escrow instructions of the buyer and the seller. The escrow company will typically prepare supplement instructions needed to close the transaction.
- 11.2 *Closing date:* **Enter** the number of days anticipated as necessary for all parties to perform and close escrow.
- 11.3 *Title restrictions:* **Enter** any further approval contingency the buyer may need to confirm that title conditions set forth in the preliminary title report will not interfere with the buyer's intended use of the property.
- 11.4 *Vesting:* **Enter** the name of the title insurance company. **Check** the box for the type of title insurance policy to be issued. **Enter** any endorsements to be issued with the policy.
- a. **Check** whether the buyer or seller is to pay the title insurance premium.
- 11.5 *Homeowner's association (HOA):* **Check** the appropriate box for delivery of HOA documents to the buyer. The seller is to pay all HOA charges on the transaction. **Enter** the monthly payments assessed by the HOA.
- Note — Belated disclosures in escrow creates a buyer's contingency allowing for cancellation by the buyer within five days after receipt of the HOA documentation.*
- 11.6 *Fire insurance:* The buyer is to **provide** a new policy of hazard insurance.
- 11.7 *Prorates and adjustments:* **Authorizes** taxes, insurance premiums, rents, interest, loan balances, service contracts and other property operating expenses, prepaid or assumed, to be prorated and adjusted on the close of escrow. [See §4.2]
- 11.8 *Personal property as security:* **Authorizes** any property transferred by bill of sale to be additional security under a security agreement and UCC-1 financing statement if a carryback note is provided for in §8.
- 11.9 *Property destruction:* The seller bears the **risk of loss** from casualty losses prior to the close of escrow. Thus, the buyer may terminate the agreement if the seller is unable to provide a marketable title or should the property improvements suffer major damage.
- 11.10 *Exchange cooperation:* Both parties **agree** to cooperate in an IRS §1031 transaction on further written notice by either the seller or the buyer. [See **first tuesday** Form 172-2 or 173-2]
- 11.11 *Liability limitations:* **Check** the box and **enter** the maximum dollar amount of seller money losses the buyer will be liable for on any breach of the agreement by the buyer, or **check** the box if liability is limited to the deposit received under §1.

Note — The clause avoids the unenforceable forfeiture under liquidated damage clauses which are still included in most purchase agreement forms provided by others.

12. Property Conditions:

- 12.1 *Seller to furnish:* **Check** the box(es) indicating items the seller is to furnish prior to closing.
- a. *Pest control:* **Check** the box if the seller is to furnish a structural pest control report and clearance.
 - b. *Home warranty:* **Check** the box if the seller is to furnish an insurance policy for home repairs. **Enter** the name of the insurer and the type of coverage.
 - c. *Local ordinance certificate:* **Check** the box if the seller is to furnish a certificate of occupancy or other clearance required by local ordinance.
 - d. *Sewer or septic certificate:* **Check** the box if the seller is to furnish a certificate of the condition of the sewage disposal system.
 - e. *Potable well water:* **Check** the box if the seller is to furnish a certificate stating the well supply meets water standards.
 - f. *Well water capacities:* **Check** the box if the seller is to furnish a certificate stating the amount of water the well supplies. **Enter** the number of gallons per minute the well is expected to produce.

- g. **Check** the box and **enter** any other report, certification or clearance the seller is to furnish.

12.2 *Property condition(s):* **Check** the box noting whether the seller's Condition of Property (Transfer) Disclosure is attached and if so, **attach** it. Thus, the property's condition is approved by the buyer prior to completion of negotiations over the price to be paid. (Use of the form is mandated on one-to-four unit residential property.) [See [first tuesday Form 304](#)]

- a. **Check** the box if the Condition of Property Disclosure (TDS) is to be **delivered later** to the buyer for confirmation of the previously observed (by the buyer) and orally disclosed (by the seller and agents) condition of the property.

Note — Failure of the seller or the listing broker to disclose known defects in the property prior to acceptance of the purchase agreement (or counteroffer) triggers the need for the seller to make corrections on notice from the buyer. Unless made, the buyer may cancel the agreement or make a price adjustment and close under §12.2b.

- b. *Repair of defects:* Provides for the buyer to cancel or adjust the price should the seller fail to correct the defects noticed under §12.2a.

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- 12.3 *Buyer's inspection*: The buyer is to inspect the property twice during the escrow period to verify its condition is *as disclosed* by the seller at the time of acceptance — once immediately after acceptance and again within five days before closing. [See **first tuesday** Forms [269](#) and [270](#)]
- 12.4 *Seller's Natural Hazard Disclosure (NHD) Statement*: **Check** the appropriate box to denote whether the NHD statement is attached and if so, **attach** it. Thus, the hazards are approved by the buyer prior to completion of negotiations over the price to be paid. If the NHD is not attached, it is to be handed to the buyer for approval within five days after receipt. (Disclosure by the seller is mandated on one-to-four unit residential property.) [CC §1103.2]
- 12.5 *Natural Hazard Disclosure*: **Check** the box(es) indicating the buyer's receipt of relevant hazard booklets.
- 12.6 *Other property disclosures*: Check the appropriate box(es) for other disclosures made regarding the location of the property.
- 12.7 *Safety compliance*: Smoke detectors and water heater bracing exist or will be installed by the seller.
- 12.8 *Buyer's possession*: **Check** the appropriate box for delivery of possession to the buyer — at closing or under an attached buyer's interim occupancy or seller's holdover agreement. [See **first tuesday** Forms [271](#) and [272](#)]
- 12.9 *Property maintenance*: The seller is **required** to maintain the condition of the property until the close of escrow. See §12.3 for the buyer's final property inspection to confirm the condition of maintenance at closing.
- 12.10 *Fixtures and fittings*: This agreement **includes** real estate fixtures and fittings in the sales transaction.
- Note — Trade fixtures are personal property to be noted on an attached inventory. [See §1]*
- 12.11 *Sex offender disclosure*: The seller is **required** to disclose the existence of a sex offender database on the sale (or leasing) of one-to-four residential units.
- Note — By the existence of the disclosures in the form, the seller and brokers are relieved of any duty to make further disclosures regarding registered sex offenders.*
- 13. Disclosure of Sales Data**: Brokers are **authorized** to report the transaction to trade associations or listing services.
- 14. Agency disclosures**: **Attach** a copy of the mandated Rules-of-Agency Disclosure. The disclosure is mandated to be presented in the offer if the property involved contains one-to-four residential units. [See **first tuesday** Form [305](#)]
- Agency Identification:**
- Buyer's broker identification*: **Enter** the name of the buyer's broker. The agent **signs** his own name as acting on behalf of the broker. **Check** the appropriate box for the agency created as evidenced by the broker's (and his agents') conduct with the parties.
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Seller's broker identification: **Enter** the name of the seller's broker. The agent **signs** his own name as acting on behalf of the broker. **Check** the appropriate box for the agency created as evidenced by the broker's (and his agents') conduct with the parties.

Signatures:

Buyer's signature: **Enter** the date the buyer signs, and **enter** his name. **Obtain** the buyer's signature.

Seller's broker's fee: **Enter** above the seller's signature the fee due only to the seller's broker and to be paid by the seller — the buyer's broker being paid a fee by the buyer under §9.1.

Seller's signature: **Enter** the date the seller signs, and **enter** his name. **Obtain** the seller's signature.

Observations:

As a matter of policy, this purchase agreement **does not contain** clauses which tend to increase the risk of litigation or are generally felt to work against the best interests of the buyer, seller and broker. Excluded provisions include:

- an *attorney fees provision*, which tends to promote litigation and inhibit contracting;
- an *arbitration clause*, which absolutely **waives** the buyer's and seller's right to a fair and correct decision by trial and appeal; and
- a *time-essence clause*, since future performance (closing) dates are, at best, estimates of the time needed to close and are used for the wrong reason by sellers in rising markets to cancel the transaction before the buyer or broker can comply with the terms of the purchase agreement. [See §10.1]