# <u>NEW AND REVISED PRDS® FORMS</u>

As a result of new laws, new regulations, and member requests, PRDS® has created four new forms, modified three forms, and eliminated one form for May/June 2021. This is a quick summary of those forms.

## NEW PRDS® FORMS:

### <u>Cancellation of Contract Advisory (Form CCA)</u>

California real estate attorneys have noted a significant increase in the number of real estate purchase contract cancellations. If a dispute arises between the Buyer and Seller regarding the legitimacy of the cancellation and/or who is entitled to the deposit, the real estate licensees are often blamed for whatever problems arise. The claims against real estate licensees following a deposit dispute often turn on whether or not the Agents can prove that they gave their clients the right advice at the right time.

The new CCA form is designed to be given to an Agent's client whenever that Client, or the other Party to the transaction, expresses an intent to cancel. The Agent does not need to provide the form to another Broker's client. The best practice is to provide the Advisory to the Client and encourage the Client to consult with a qualified California real estate attorney before notifying the other Party about the possibility of cancelling and before the Agent prepare any cancellation paperwork.

The introductory paragraphs explain that California law requires Parties to act in good faith when cancelling any contract. The form explains that real estate licensees cannot provide any opinions about or determine three issues: (1) the potential legal and financial consequences of either Party cancelling; (2) whether either Party is acting in good faith; and/or (3) who is entitled to the deposit. Therefore, the clients are urged to consult with a qualified California real estate attorney <u>before they attempt to cancel the Contract</u>.

The form is then divided into two sections to give appropriate advice to Buyers who intend to cancel and Sellers who intend to cancel. Buyers will be able to review the information that applies to Sellers and Sellers will be able to review the information that applies to Buyers, but it is not necessary for the client to sign the form in both sections.

### <u>Cooperating Broker Compensation Agreement (Form CBCA)</u>

Due to an expected increase in the number of Buyer's Agents who will want to try to renegotiate the offer of compensation in the MLS as well as to aid Buyer's Agents to get paid on off market listings, PRDS has created the CBCA form. The form is designed to be used whether the Property is listed for sale or lease. Unlike the CAR CBC form, it explains that the term "Seller" may also apply to an Owner and the term "Buyer" may also apply to a Tenant.

Although there is no obligation to contractually confirm the Buyer's Agent's acceptance of the amount of commission offered in the MLS, the form includes that option along with the option to modify the offer of compensation. The form can also be used when the Buyer's Broker is not a cooperating broker member of the MLS or a reciprocal MLS but wants to be paid the amount of commission that is offered in the MLS. The new CBCA form also enables the Buyer's Agent to get paid a commission if the Tenant purchases the Property during the term of the lease (or any extension of the term). However, unlike the CAR form (which does not take into consideration whether the Seller's Agent is actually involved in that subsequent sale and/or is paid anything in that sale) the CBCA specifies that the amount to be paid to the Buyer's Agent is either the agreed upon amount in that Agreement or half the amount that the Seller's Broker is paid, whichever is less. If the Brokers include this optional paragraph, the Seller's Broker must approve the Agreement.

The CBCA enables the Brokers to disclose to the Buyer and Seller the agreed upon compensation; however, the Buyer and Seller are not Parties to the Agreement and do not need to sign the Agreement to make it legally binding on the Brokers.

If the amount of commission offered in the MLS is to be reduced, then the Buyer's Agent's Broker or Manager must approve the reduction. If the amount of commission offered in the MLS is to be increased or paid to a non-member or there is no offer in the MLS, then the Seller's Agent's Broker or Manager must approve the Agreement.

**Fire Hardening/Defensible Space Disclosure and Addendum (Form FHDS)**

This new form enables a Seller of residential property of 1 to 4 units located in a high or very high fire hazard zone who must complete the TDS to disclose information about both Seller's Home Fire Hardening and Defensible Space requirements.

Section I of the FHDS explains the two different disclosures and which Sellers are legally obligated to complete the two disclosure portions of the form. If the Seller is exempt from completing the TDS or it is not residential 1 to 4 units, the Seller is not obligated to use the form at all. If the Property is not located in a high or very high fire hazard zone, then the Seller is not obligated to use the form.

Section II enables the Seller to indicate whether or not the Property is in a high or very high fire hazard zone and whether it was built before January 1, 2010. If both of those facts are true, then the Home Fire Hardening Notice in Paragraph IIB applies, and the Seller is to disclose the Seller's awareness of the existence of 6 different features that may make the Property more susceptible to wildfires and burning embers in Paragraph IIC.

Section III enables the Seller to indicate whether or not the Property is in a high or very high fire hazard zone; if the Property is in that zone, then Paragraph IIIB applies, and the Parties must reach an agreement in Section IV regarding who is responsible for complying with defensible space requirements.

Many local jurisdictions have yet to enact a vegetation management ordinance. If there is no local vegetation management ordinance in effect at the time of sale, then either (A) the Buyer shall be responsible for obtaining any compliance documentation that exists or (B) the Seller has obtained such documentation within the past 6 months or will voluntarily agree to do so within an agreed amount of time. If no such documentation is available, then option A is the most logical choice.

Many of the jurisdictions that have a vegetation management ordinance have yet to create any method for securing compliance documentation. If there is a local vegetation management ordinance in effect at the time of sale, then either (C) the Buyer shall be responsible for obtaining the compliance documentation or (D) the Seller is responsible for doing so within an agreed upon amount of time. If the local jurisdiction has yet to create any method for securing compliance documentation, then option C is the most logical choice.

This form replaces the Home Hardening Disclosure Form (Form **HHD**) which has been eliminated.

**Listing Agreement Addendum – Seller Instructions to Broker re Buyer Support Letters (Form "LABS")**

Because of real estate industry concerns about the potential bias that can be created by Buyer Support Letters, a separate Addendum was created by PRDS to enable Sellers to give clear instructions to their Broker regarding what to do if Buyer Support Letters are submitted. These instructions were put on an Addendum so that it could be added to existing Listing Agreements that did not contain any instructions on this topic.

This new Addendum makes it clear that the Broker does not recommend that Sellers agree to accept Buyer Support Letters, but the decision is left to the Seller. Sellers are given two choices:

First choice: Seller will **not** accept the letters and the Broker is authorized to not only communicate that decision to other Brokers (in any medium chosen by Broker) but authorizes the Broker to return the letters to whoever submitted those documents.

Second choice: Seller instructs Broker to present all Buyer Support Letters. Seller agrees that they are choosing that option against the advice and recommendation of the Broker and are urged to consult with Seller's own qualified California real estate attorney.

This is a temporary form and will be eliminated when these issues are added to the PRDS® Listing Agreement.

## REVISED PRDS® FORMS

**Cancellation of Contract Agreement Including Escrow Instructions & Disposition of Deposit (Form CC)**

The CC form is designed to be used solely when Buyer and Seller have mutually agreed to cancel the Contract. The form was modified to explain in the "NOTE" paragraph that Real estate licensees are not qualified to give any opinions about, or to determine, whether either Party is acting in good faith which is required when a Party attempts to cancel.

The bold print warning above the signature lines strongly encourages Buyer and Seller to consult with their own qualified California real estate attorney prior to signing the Agreement because real estate licensees are not qualified to give any opinions regarding the potential legal and financial consequences of either Party canceling.

**Real Estate Purchase Contract (REPC)**

The REPC form was modified to expand the chart in Paragraph 5B regarding the included personal property items. The Wine Cooler reference now includes the term "Refrig" to avoid disputes and Back-up generator was added to the list. There are now three "Other" checkboxes available.

The introductory paragraph above the chart notes that "**Unless specified below as excluded, if an item is checked in 5B it shall mean that all of those items at the Property are included**."

Paragraph 6 was streamlined to exclude those PRDS® Addenda form that are not currently available.

Paragraph 10 now includes a check box and brief explanation about the Fire Hardening Defensible Space Disclosure and the reference to the Home Hardening Disclosure (Form **HHD**) was eliminated.

Since the most effective time to use the PRDS® Advisory Regarding Market Conditions, Multiple and Non-Contingent Offers, Financing/Appraisal and Property Condition (Form **AMC**) is before the Buyer decides what terms to include in the Offer, the AMC form will now be bundled with the PRDS® Purchase Contract, along with the PRDS® Agency Disclosure and PRDS® Advisory and Consent Regarding Multiple Agency and Dual Agency.

## San Mateo/Santa Clara Counties Advisory (Form SMSCA)

The SMSCA was updated to include an explanation about the new Home Hardening and Defensible Space disclosure requirements in the section about Fire Hazards. The Coastal Conditions paragraph was also expanded to explain the threat of sea level rise.

## Seller Advisory Instructions and Agreement to Exclude Listing from MLS (Form EXMLS)

The EXMLS form was revised to explain to Sellers the requirements of the Clear Cooperation Policy.