

## Seller Refusing or Limiting Entry

**Buyer Contractual Right of Entry:** C.A.R. Form RPA provides that a buyer's offer is contingent upon the buyer approving the condition of the property (paragraph 12A). The buyer is given the right to conduct inspections, investigations, tests, survey and studies (collectively, "Investigations"). The seller has a contractual duty to make the property available to the buyer to conduct such Investigations. However, even if a buyer writes an offer without an Investigation contingency, or subsequently waives or removes such a contingency, the buyer is nonetheless entitled to access the seller's property for 17 days (unless specified otherwise) to conduct inspections and investigations.. The buyer also has the right to enter the property to conduct a final verification within 5 days of the close of escrow. The purpose of the final verification is to make sure the property has been maintained as specified in the contract. Thus, even if the seller does not agree to make any repairs, the buyer has the right of entry to confirm the property is in the same condition it was in on the date of acceptance. Selling the property "as-is" does not change the buyer's contractual rights of entry.

**Seller Limiting Right of Access:** The current Coronavirus pandemic has resulted in various Stay Home Orders and a need for social distancing and other safe practices. As a result, many sellers have chosen to limit entry into Property by buyers and others. Such a limiting instruction by the seller could put the seller in breach of contract if not properly addressed by an appropriate addendum at the time of contract formation, or by a mutually signed amendment thereafter. The Coronavirus Addendum or Amendment (C.A.R. Form CVA) addresses a right of a buyer to an extension of time to remove contingencies, or of either party to close escrow, or creates a mutual cancellation. The Property Entry, Advisory and Declaration (C.A.R. Form PEAD) addresses safe practices if entry is allowed. Neither form address limiting the contractual right of entry. As a result, sellers need to be advised that limiting entry could contractually compromise the seller unless addressed by language agreed to by both buyer and seller.

**Only an Attorney Should Draft Language Modifying the Preprinted Clauses in the RPA:** Listing agents should have a discussion with sellers regarding the potential impacts of seller limiting access to the property by buyers and others. These impacts include the potential impact on the value or desirability of the property to those who cannot access it, as well the need to address the seller's instructions contractually. A licensee should NOT draft clauses changing preprinted contractual terms. However, a licensee may discuss potential alternatives that can be implemented by language drafted and approved by legal counsel. What would be appropriate for one seller may not be appropriate for another. Issues for discussion and consideration by sellers that may require legal guidance and language modification include:

- **Physical Entry Investigations/Limitations:** Only allowing investigations or verification that do not require entry to the interior of the property. Or, allowing all investigations or verification provided safe practices are followed, such as by requiring C.A.R. Form PEAD as a prerequisite.
- **Specific Physical Entry Investigations:** Allowing only specified investigations such as: a) Homeowner's Association site inspection, b) Appraisal or buyer insurance inspection, c) County or other municipal or government inspections or permit approvals, d) Agent's visual inspection and disclosure, e) Pest control inspections and tenting, f) Home inspection, and any necessary follow-up inspections, and/or g) Other entry identified in writing.
- **Seller Separate Written Consent:** Only allowing investigations upon request and with separate written consent by Seller.