

BERKELEY PURCHASE AGREEMENT ADDENDUM

This form is intended for use with the California Association of REALTORS® forms RPA “Residential Purchase Agreement” and/or RIPA “Residential Income Purchase Agreement”.

This Addendum is intended for use in the City of Berkeley. Please also review the separate Alameda County, Contra Costa County or city specific Ordinances and Regulations for property in the area you are either selling or buying. Disclosure documents and forms may contain references, including web site addresses and internet links (hyper-links), to additional important material that is not printed on the document itself. Buyers and Sellers should investigate those links if they are not entirely satisfied with the document as it is presented to them.

The information in this Addendum has been compiled by the Bridge Association of REALTORS® as a service to its members and is effective as of January 2023. This Addendum is not intended to be nor should it be considered to be an accurate reflection of all of the legal requirements that may be imposed by the governmental and quasi-governmental entities referenced in this Addendum either as of the date the document was created or at any time thereafter. Real Estate Brokers and their Sales Associates do not have the requisite training or skills to determine the legal sufficiency of this Addendum or the legal requirements that may be imposed upon the Property. If Seller or Buyer has any questions or concerns regarding their legal rights and obligations then they should consult with their own qualified California real estate attorney.

This is an Addendum to that Purchase Agreement dated _____ by and between

_____ (Seller) and

_____ (Buyer) for that

Property commonly known as _____, CA

(“Property”) Except as specified herein, all other terms and conditions remain unchanged.

1. SEWER LATERAL COMPLIANCE:

A. In Compliance: (If checked), Seller warrants that the Sanitary Sewer Lateral is in Compliance with the City of Berkeley Municipal Code Chapter 17.24. Seller shall provide Buyer with a Private Sewer Lateral Certificate prior to Close of Escrow.

B. Not in Compliance: Responsibility for Repairs: (If checked), the Property is not yet in compliance with the City of Berkeley Municipal Code Chapter 17.24. An inspection report has or has not been provided to Buyer. (Check 1 or 2 below)

1. Repairs to be made Prior to Close of Escrow:

- Repairs prior to Close of Escrow will be paid by Seller
- Repairs prior to Close of Escrow will be paid by Buyer

2. Repairs to be made after the Close of Escrow: Buyer assumes responsibility for repairs to be made after Close of Escrow: Buyer and Seller shall give mutual instructions to Escrow that: **(check one box below, but only if B2 is checked):**

- Seller shall pay the Mandatory Deposit for Sewer Lateral Compliance and after completion, any unused funds held by the City of Berkeley shall be paid to Seller.
- Buyer shall pay the Mandatory Deposit for Sewer Lateral Compliance and after completion, any unused funds held by the City of Berkeley shall be paid to Buyer.

If repairs are to be made after the Close of Escrow, there are two options for securing a Time Extension; however, Buyer assumes all responsibility for the repairs.

Prior to the Close of Escrow: A deposit of \$4500 shall be paid directly to the City of Berkeley Finance Customer Service Department as the Mandatory Deposit for Sewer Lateral Compliance along with the City of Berkeley's Agreement for Time Extension. **NOTE:** Fees are subject to change at any time. The required deposit (**check one box below, but only if this option is chosen**):

- Seller shall pay the Mandatory Deposit for Sewer Lateral Compliance
- Buyer shall pay the Mandatory Deposit for Sewer Lateral Compliance

OR

Prior to the Close of Escrow : Submit the City of Berkeley's Agreement for Time Extension along with a signed copy of a contract with a qualified licensed Plumbing Contractor for the lateral rehabilitation work indicating the deposit amount and date on which the work will start.

Buyer and Seller understand, acknowledge and agree that if all sewer lateral repairs are not completed within 6 months of the Close of Escrow, the Mandatory Deposit shall be forfeited to the City of Berkeley. Furthermore, the City of Berkeley will have the right to have all uncompleted work performed by a contractor selected by the City of Berkeley; the cost of those repairs shall be the responsibility of the Buyer. The City of Berkeley may or may not credit any of the deposit funds to the cost of repair. Buyers should contact the HOA of any condominium directly to determine responsibility for the sewer lateral.

2. SEISMIC TRANSFER TAX AND TAX CREDIT: The Parties understand, acknowledge and agree that the City of Berkeley currently imposes a transfer tax of 1.5% on the transfer of any real property for properties valued at \$1.8 million or less but that rate is increased to 2.5% for properties valued over \$1.8 million (and that value is adjusted annually on January 1st of every subsequent year by the Alameda County Assessor). The Party responsible for payment of this transfer tax shall be as specified in the Agreement.

NOTE: For Seller to claim the Transfer Tax Credit, a Declaration of Real Property Transfer Tax form must be approved by the City prior to the Close of Escrow. For Buyer to claim a Transfer Tax Rebate, Seismic work must be completed with permits and a Seismic Retrofit Verification form filed within 1 year of the Close of Escrow. Unless the Property conforms to Plan Set "A", additional engineering may be required prior to issuance of a building permit by the City of Berkeley. The additional costs and fees for such engineering design may NOT be paid from the Transfer Tax Credit.

If currently allowed, any available Seismic Transfer Tax Credit/Rebate (**Check one box below**):

- Shall be applied for and paid to Seller
- Shall be applied for and paid to Buyer

For further information about the Transfer Tax Credit/Rebate, review City of Berkeley Ordinance #6072-NS and/or how to apply for the Transfer Tax Credit/Rebate, contact the City of Berkeley Building Permits Department at 510-981-7500.

3. BUILDING ENERGY SAVINGS ORDINANCE ("BESO"): Berkeley Municipal Code Chapter 19.81 requires building and home owners to complete comprehensive energy assessments to uncover energy saving opportunities. The assessments are conducted by registered energy assessors who provide tailored recommendations in an Energy Report on how to save energy and link owners to incentives for energy efficiency upgrade projects.

BESO compliance is required before the building or home is listed for sale. Seller must hire a BESO Registered Energy Assessor to conduct a BESO Assessment. Seller must also submit an online application and filing fee to secure the **BESO Compliance Form A**. The BESO Assessment and BESO Compliance Form A must be disclosed to all potential buyers. Annual Energy Star Performance Reports must also be submitted depending upon the size of the building.

Deferral: A Seller's compliance may be deferred to the Buyer (or any subsequent buyer) for a period of 6 months after the original date that escrow closed but only if the Seller submits a timely on-line **Request Deferral to Buyer** form and pay a deferral fee. The Seller's request to defer responsibility must be submitted to the Administrator of the BESO program (the Director of Planning and Development or their designee) before listing the Property for sale.

Exemptions: Buildings that are 850 square feet or less, 25,000 square feet or more, and individually sold units within a larger building, such as an attached condominium.

Buyers and Sellers should check the building status by looking up the building address on the BESO Property Status List. If the building is already in compliance, copies of the compliance form are available by sending an email to BESO@cityofberkeley.info. This Addendum shall establish which of the undersigned Parties is responsible for compliance with this law.

A. PROPERTY EXEMPT: Seller states that the Property is exempt and Seller shall provide Buyer with proof of the exemption within 10 or ____ Days after Acceptance.

B. PROPERTY IS IN COMPLIANCE: Seller states that the Property is in compliance and Seller shall provide Buyer with proof of compliance within 10 or ____ Days after Acceptance.

C. PROPERTY IS NOT IN COMPLIANCE: The following Party shall be responsible for taking all steps necessary to comply with BESO:

1. Seller shall provide Buyer with proof of compliance prior to final verification of condition.
2. Within 3 or ____ Days after Acceptance, Seller shall Deliver to Buyer proof that Seller has received approval to defer BESO compliance and shall Deliver to Buyer a link that Seller has received from the City to their building's on-line Fuel Source Disclosure. Within 3 or ____ Days after receipt of Seller's proof of approval to defer compliance, Buyer shall submit an on-line application to receive BESO Deferral Form C which must be signed by Buyer and included with the transfer documents at Close of Escrow. Buyer shall then complete an energy assessment within 6 months of the Close of Escrow. Buyer shall be solely responsible for complying with BESO

4. WATER CONSERVING PLUMBING FIXTURES:

California Law requires owners of single-family residential property built before 1994 to install water conserving plumbing fixtures by 2017. Additionally, if any such Property is altered or improved, then water conserving plumbing fixtures must be installed as a condition of final permit approval (Cal. Civil Code Section 1101.4). Although California law does not make compliance with this statute a point of sale requirement

(condition of sale), this Addendum shall establish which of the undersigned Parties is responsible for compliance with this law. . **(Check either A or B below)** .

A. Seller Responsible: Seller either (a) has complied with retrofitting the Property with compliant water conserving plumbing fixtures; or (b) prior to the Close of Escrow, shall pay for the retrofit of all non-compliant water conserving plumbing fixtures with compliant fixtures of quality comparable to existing fixtures.

B. Buyer Responsible: Buyer shall be responsible and pay for all expenses in retrofitting all non-compliant water conserving plumbing fixtures with compliant fixtures after the Close of Escrow, or as specified in the Permit Work paragraph below.

5. POOL/SPA SAFETY DEVICES

To prevent drowning of children four (4) years of age and under, California law requires owners of single-family residential property with a pool and/or spa to install at least 2 of 7 safety devices. Home inspection reports used in the sale of single-family residence must disclose if the Property has any pool and/or spa safety devices. If the Property is altered or improved, then at least two (2) safety devices must be installed as a condition for final permit approval (Cal. Health & Safety Code Section 115925). Although California law does not make compliance with this statute a point of sale requirement (condition of sale), this Addendum shall establish which of the undersigned Parties is responsible for compliance with this law. . **(Check either A or B below)** .

A. Seller Responsible: Seller either (a) has complied with retrofitting the Property with at least two (2) drowning prevention devices; or (b) prior to the Close of Escrow, shall pay for and retrofit the Property with two (2) drowning prevention devices as required by state law.

B. Buyer Responsible: Buyer shall be responsible and pay for all expense in retrofitting the Property with two (2) drowning prevention devices as required by state law after the Close of Escrow, or as specified in the Permit Work paragraph below.

6. PERMIT WORK PRIOR TO CLOSE OF ESCROW

The Parties understand, acknowledge and agree that, in the event there is an agreement that the Seller will perform any repairs prior to the Close of Escrow that constitute alterations or improvements at the Property will require the issuance and finalization of a permit, the governing agency will require that the Property be retrofitted with compliant water conserving plumbing fixtures as a condition of finalizing the permit and/or at least two (2) drowning prevention devices; in the event, **the Party designated above shall be responsible for the expense of such retrofitting regardless of who is paying for the work necessitating the permit.**

NOTE: (a) the interpretation as to what constitutes an alteration or improvement may differ in different jurisdictions and (b) real estate licensees cannot predict what interpretation will be used at any point in time by any permit issuing entity.

7. NO SMOKING IN MULTI-UNIT RESIDENCES: REQUIRED CONTRACT & LEASE DISCLOSURES

The Parties understand and acknowledge that the City of Berkeley has enacted a No Smoking Ordinance to protect public health, protect the environment and to guarantee the right of nonsmokers to breathe smoke-free air which shall have a priority over the desire to smoke. Berkeley's ban on smoking applies to multi-unit residences which are defined as being more than 1 unit which is a personal dwelling space whether or not there are cooking facilities, such as renting out a room in a home.

The requirements of Berkeley Municipal Code Section 12.70.35 entitled “Smoking prohibited in multi-unit residences” are as follows:

- A. Effective May 1, 2014, smoking is prohibited in all units of multi-unit residences and all common areas of multi-unit residences.
- B. All common areas of multi-unit residences shall have signage indicating that smoking is prohibited consistent with the signposting requirements of Berkeley Ordinance Section 12.70.060.A.
- C. If the City receives a complaint of a violation of subdivision A, it may issue a notice to the person(s) responsible, informing him or her of the requirements of this Section. The tenant(s) of a unit, or owner-occupant(s) of an owner-occupied unit, shall be deemed the person(s) responsible for the violation where the violation was caused by the tenant(s) or owner-occupant(s) of the unit, or one or more persons subject to the control of, or present by invitation or permission of, the tenant(s) or owner-occupant(s).
- D. If within a six month period following issuance of a notice under subdivision C, the City receives at least two complaints from residents of at least two separate units of the same multi-unit residence, or in the case of a two-unit multi-unit residence, from a resident of the other unit of a violation of subdivision A by the same person(s) provided notice under subdivision C, the person(s) responsible for the violation shall be guilty of an infraction as provided for in Berkeley Municipal Code Chapter 1.20. In addition, the City may employ any other remedies permitted by law, including but not limited to Chapter 1.28. In order for the City to initiate enforcement under this Section, each person who makes a claim of a violation of this Section must lodge the complaint on a form specified by the City.
- E. Use of medical cannabis by a person for whom suing medical cannabis is not a crime under California law shall be exempt from this Section.
- F. Sales contracts for condominiums entered into on or after May 1, 2014 shall disclose the requirements of Section 12.70.035 and 12.70.037.

The requirements of Berkeley Municipal Code Section 12.70.37 entitled “Required Lease Term for New Leases” are as follows:

- A. Every lease or other rental agreement for the initial occupancy of a new or existing unit in a multi-unit residence entered into on or after May 1, 2014, shall include a clause providing that it is a material breach of the lease or other rental agreement for the tenant, or any other person subject to the control of the tenant or present by invitation or permission of the tenant, to engage in smoking in any unit of the multi-unit residence or any common area of the multi-unit residence.
- B. Landlords shall offer all current tenants a voluntary lease addendum providing that it is a material breach of the lease or other rental agreement for the tenant, or any other person subject to the control of the tenant or present by invitation or permission of the tenant, to engage in smoking in any unit of the multi-unit residence or any common area of the multi-unit residence.
- C. The use of medical cannabis by a person for whom suing medical cannabis is not a crime under California law shall not constitute smoking in a unit of a multi-unit residence under the mandatory clause under subdivision A or the voluntary clause under subdivision B, unless it is separately prohibited under another term of the lease or other rental agreement.
- D. Applications for tenancy shall include information from the landlord regarding Sections 12.70.35 and 12.70.037.

E. Landlords shall provide written notice to all existing tenants of the requirements of Section 12.70.035 and 12.70.037 no later than March 1, 2014.

8. **OTHER REGULATIONS:** Multiple jurisdictional entities may have ordinances and requirements that could affect the use, value, development or enjoyment of your property. You are advised to visit the website or offices of the appropriate jurisdictions to determine whether the Property is in an area regulated by such entities.

SUGGESTED SOURCES OF INFORMATION:

City of Berkeley: <https://berkeleyca.gov/>
2120 Milvia Street, Berkeley CA 94704
Tel: 510/981-7440

Berkeley Rent Control:
<https://rentboard.berkeleyca.gov/>
2125 Milvia Street, Berkeley, CA 94704
Tel: 510/644-6128

Berkeley Transfer Tax/Seismic Retrofit:
<https://berkeleyca.gov/construction-development/seismic-safety/funding-seismic-retrofits/transfer-tax-refunds-seismic-work>
Tel: 510/981-7440

Other areas in Alameda and Contra Costa counties:
<https://www.contracosta.ca.gov/> or
<https://www.acgov.org/>.
See office addresses on website.

East Bay Municipal Utility District (EBMUD):
<http://www.ebmud.com>

Police
<https://berkeleyca.gov/safety-health/police>
Tel: 510/981-5900

THE UNDERSIGNED AGREE TO ALL OF THE TERMS AND CONDITIONS ABOVE AND ACKNOWLEDGE RECEIPT OF ALL SIX (6) PAGES OF THIS DOCUMENT

Buyer

Dated: _____

Buyer

Dated: _____

Seller

Dated: _____

Seller

Dated: _____