



CALIFORNIA ASSOCIATION OF REALTORS®

presents

Disclosures...What You Need to Know!

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Introduction

Overwhelming. That may be the best (polite) word to use to describe the process of providing disclosures when selling real estate. Disclosure laws come at us from all directions, be it federal, state, or local law. To make matters worse, each disclosure law has its own set of complexities, including what is required, when it's required, and who must comply. To top it off, the world of disclosures is ever changing with new laws introduced every year and existing laws often modified.

Given the complexities of providing disclosures, it's no wonder that getting professional assistance for this daunting task is a major reason for sellers and buyers to seek out the services of real estate agents. But what if you're the real estate agent? How are you going to make sense of it all? Often times, as the agent, it's not enough to know what's required. You need to know the practical implications, and how to properly address the many questions your own clients pose to you about disclosures.

This course aims to help real estate agents cut through the confusion on these disclosure laws. It explains the disclosure requirements by delving a little deeper into who, what, when, and why. It also provides many Practice Pointers so you'll know how to do what you'll need to do. Although this course covers most common disclosure requirements under California and federal law, it does not cover all disclosures required by law or practice.

The California Association of REALTORS® (C.A.R.) is one of the largest state trade organizations in the United States, with over 200,000 members dedicated to the advancement of professionalism in real estate. C.A.R. provides many legal services to its members to assist in the performance of real estate services. Some member services that can help cut through the confusion on disclosures are as follows:

- The Legal Section of C.A.R. Online at www.car.org provides many useful legal publications for members only. Two of our most popular publications are the ***Sales Disclosure Chart for REALTORS®*** and the ***Summary Disclosure Chart for REALTORS®***. These helpful charts summarize the disclosure laws for you to refer to in your day-to-day practice. We also have many other legal publications covering many disclosure topics available at qa.car.org.
- Realegal® is an electronic legal information service that notifies you by e-mail whenever there is a breaking legal development. Realegal® is free for members who have their e-mail address on file with C.A.R. To sign up, go to realegal@car.org and give us your e-mail address.
- For your particular legal concerns, call Member Legal Hotline at 213.739.8282, Monday through Friday (9 a.m. to 6 p.m.), to consult with a C.A.R. attorney.

Transfer Disclosure Statement

Overview

It's the granddaddy of them all. **To ensure a meaningful disclosure of the condition of residential properties when transferred, the California Legislature created the Real Estate Transfer Disclosure Statement (TDS).** This three-page form addresses many aspects of a property that may be of interest or concern to a prospective buyer. Sellers of most residential properties of one-to-four units in California must complete and deliver the TDS to their buyers.

The TDS contains two main sections. The first one is the seller's section. It is essentially a questionnaire of what the seller knows about the property, including its amenities (e.g., dishwasher, air conditioning, automatic garage door openers), any significant defects (e.g., roof, foundation, electrical system), and other items of interest or concern (e.g., permits, neighborhood nuisances, CC&R's).

The second part of the TDS is the agent's section. It provides space for both the listing agent and the buyer's agent to write down the results of their visual inspection of the property. By law, real estate agents of residential properties consisting of one-to-four units must conduct a reasonably competent and diligent visual inspection of the property, and disclose all facts materially affecting the value or desirability of the property that an investigation would reveal (Cal. Civ. Code Section 2079). The only exception to the agent's visual inspection requirement is subdivision sales that fall under the public report requirement or one of its exemptions, unless the property has been previously occupied (Cal. Civ. Code Section 2079.6).

PRACTICE POINTER. C.A.R. publishes two TDS forms: the **Real Estate Transfer Disclosure Statement** (Form TDS) for real property, and the **Manufactured Home and Mobilehome: Transfer Disclosure Statement** (Form MHTDS). These and other standard forms for your real estate practice are available at C.A.R., your local Board/Association, or through WINForms. Be sure to familiarize yourself with the forms you use before you present them to your clients for review or completion, so you won't be caught off-guard if your clients ask you questions about what they're signing.

Applicability

The TDS is required for the transfer of most residential properties of one-to-four units. More specifically, with certain exceptions listed below, the law requires delivery of the TDS in the following transactions:

- Any transfer by sale, exchange, installment land sale contract, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements of real property or residential stock cooperative, improved with one-to-four dwelling units.
- Resale transaction for a personal property manufactured home or mobilehome intended for residential use.

EXCEPTIONS: The following transactions are exempt from the TDS requirement:

- Transfers in subdivisions subject to the public report requirement, or exempt from the public report requirement.
- **Transfers by court order, such as sales by probate court order, writ of execution, foreclosure, bankruptcy trustee, eminent domain, or decree of specific performance.**
- Transfers to lenders by borrowers in default, to buyers under power of sale, or to buyers by lenders who have acquired the property under power of sale (i.e., REO or real estate owned sales).
- Transfers by a fiduciary administering a decedent's estate, guardianship, conservatorship or trust. For trusts, however, a TDS is required if the trustee is a natural person who is sole trustee of a revocable trust, and he or she is a former owner of the property or has occupied the property within the preceding year.

PRACTICE POINTER. The rule for trusts is rather convoluted. Generally speaking, if the seller is a trust, the TDS is not required. However, if the individual selling the property on behalf of the trust (i.e., the trustee) has personally owned or occupied the property within the last year, the TDS is likely to be required.

- Transfers from one co-owner to another.
- Transfers to a spouse (e.g., divorce).
- Transfers to someone in the lineal line of consanguinity (e.g., from parent to child, or from grandparent to child).
- Transfers by the Controller under the Unclaimed Property Law.
- Transfers to or from any governmental entity (including tax sales).

PRACTICE POINTER. Agents, beware! **Even if a transaction is exempt from the TDS requirement, a real estate agent is generally not exempt from the duty to visually inspect residential properties of one-to-four units.** In this situation, you may use C.A.R.'s **Agent's Visual Inspection Disclosure** (Form AVID) (release date April 2007) to show that you have conducted a visual inspection of the property, and to write down the results of that inspection. Even for transactions that are subject to the TDS requirement, you may complete

and attach the AVID to the TDS to document your visual inspection.

The Seller's Duties

A seller subject to the TDS law must complete the TDS in good faith and deliver it to the buyer (Cal. Civ. Code Section 1102.7). Sellers should complete the TDS using the knowledge they have personally gained from their own experience. Thus, agents should not complete the seller's section of the TDS.

For sales transactions, the TDS must be delivered to the buyer as soon as practicable before transfer of title. For transfers by installment land sale contracts, lease with option to purchase, and ground lease coupled with improvements, the TDS must be delivered as soon as practicable before entering into a contract (Cal. Civ. Code Section 1102.3).

Sellers should not attempt to waive the TDS requirement by characterizing a transaction as an "as is" sale. Any waiver of the TDS requirement is void as against public policy and unenforceable (Cal. Civ. Code Section 1102)(c)).

The Duties of the Buyer's Agent

A buyer's agent must generally deliver the TDS to the buyer. In the event a buyer's agent cannot obtain the TDS from the seller or listing agent, the buyer's agent must advise the buyer in writing of the buyer's right to the TDS (Cal. Civ. Code Section 1102.12).

The Buyer's Rights

If the TDS (or any amendment) is delivered to the buyer after the execution of the buyer's offer to purchase, the buyer has three days after delivery in person (or five days after delivery by mail) to terminate the offer by notifying the seller or the seller's agent in writing. The buyer, however, has no right to rescind if the seller delivers the TDS *before* the buyer writes an offer (Cal. Civ. Code Section 1102.3).

Source: California Civil Code Section 1102 et seq.

Self-Check Questions

1. Transfers exempt from the TDS requirement include:

- a. probate sales
- b. trust sales if the trustee has occupied the property within the last year
- c. properties to be demolished within one year
- d. all of the above

2. What is the Transfer Disclosure Statement (TDS)?

- a. disclosure statement about the condition of a commercial property
- b. disclosure statement about the condition of a residential property
- c. disclosure statement of natural hazard zones
- d. both b and c

3. Under the Transfer Disclosure Statement (TDS) law, when can a buyer rescind the purchase contract?

- a. within 5 days of receiving the TDS by personal delivery
- b. within 5 days of receiving the TDS by mail
- c. within 7 days of receiving the TDS by fax
- d. within 5 days of receiving an amendment to the TDS

4. For residential properties with one-to-four units, if the transaction is exempt from the TDS requirement, the real estate agent does not have to conduct a visual inspection of the property.

- a. True
 - b. False
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Natural Hazard Zones

Overview

Fires, floods, earthquakes--California may be one of the most desirable places on earth to live but, like other places, its residents bear their share of risks. Recognizing this, the California Legislature has enacted extensive laws over the years aimed at identifying geographical zones susceptible to natural hazards and requiring sellers and real estate agents to disclose zone-related information to buyers.

In 1997, the California Legislature enacted the Natural Hazards Disclosure Law to comprehensively restructure disclosure laws pertaining to natural hazards. This law expanded the disclosure requirements somewhat, but it also attempted to unify and simplify them. **This law also introduced the Natural Hazard Disclosure Statement which is a single-page form for disclosing natural hazard zones.**

What Are These Hazard Zones?

The law regulates the disclosure of six specific natural hazard zones: two flood zones, two fire zones, and two earthquake zones. Here's a brief summary:

- **SPECIAL FLOOD HAZARD AREAS.** As the name implies, these are areas subject to unusual flood risks and are designated as Zone A or Zone V. Flood hazard zones are identified by the Federal Emergency Management Agency (FEMA).
- **DAM INUNDATION ZONES.** These are areas subject to potential flooding in the event of a dam failure. Dam inundation zones are designated by the State Office of Emergency Services and the Department of Water Resources.
- **WILDLAND FIRE AREAS.** Also known as State Fire Responsibility Areas or SRA's, these hazard zones contain substantial forest fire risks and hazards. Wildland fire areas are designated by the State Board of Forestry.
- **VERY HIGH FIRE HAZARD SEVERITY ZONES.** These are areas of very high fire hazard outside the State Fire Responsibility Areas. Property owners in these hazard zones usually have special fire mitigation duties, such as clearing brush and installing fire-retarding roofs. Very high fire hazard severity zones are designated by the State Board of Forestry.
- **EARTHQUAKE FAULT ZONES.** These are areas, usually one-fourth of a mile wide, demarcated by surface traces of known active faults. These hazard zones are identified by the Division of Mines and Geology (also known as the California Geological Survey).
- **SEISMIC HAZARD ZONES.** Seismic hazard zones are areas subject to unusual ground movement during earthquakes. They are categorized as "landslide zones" or "liquefaction zones." Seismic hazard zones are designated by the Division of Mines and Geology (also known as the California Geological Survey).

Applicability

Disclosure of natural hazard zones must be made for all sales of real property, and resales of personal property mobilehomes and manufactured homes. Aren't some transactions exempt? The answer is "no." One of the most common misunderstandings in providing disclosures is that certain sellers are exempt from the natural hazard disclosure laws. In fact, **there are no exemptions from the duty to disclose natural hazard zones.**

For example, even if a transaction is a probate sale or a lender's REO sale, it is **not** exempt from natural hazard zone disclosures. In addition, although many other disclosure rules apply only to the sale of residential properties of one-to-four units, **the duty to disclose natural hazards also applies to the sale of residential properties of one-to-four units, apartment buildings, commercial buildings, industrial structures, and vacant land.**

Natural Hazard Disclosure Statement

As stated above, the Natural Hazard Disclosure Law created a new disclosure document known as the Natural Hazard Disclosure (NHD) Statement. With certain exceptions discussed below, the NHD Statement must be used to disclose natural hazard zones for most residential properties consisting of one to four units. More specifically, the NHD Statement is required for the following types of transactions:

- Any transfer by sale, exchange, installment land sale contract, lease with option to purchase, any other option to purchase, or ground lease coupled

- with improvements, of any real property or residential stock cooperative, improved with or consisting of one-to-four dwelling units.
- Any resale of a personal property manufactured home or mobilehome intended for use as a residence.

Certain transactions are exempt from the NHD Statement requirement, such as probate sales, foreclosure sales, and trust sales. The NHD Statement is also not required when selling residential properties with five or more units or non-residential properties. Does this mean that, for these exempt transactions, there is no requirement to disclose natural hazards? **No!** Remember what we said — natural hazard disclosures must be made for **all** sales of real property, and resales of mobilehomes and manufactured homes. If a transaction is exempt, the seller or seller's agent need not provide the NHD Statement. However, he or she must still tell the buyer in some manner (preferably in writing) that the property is located in a hazard zone.

This rule is confusing, so it bears repeating. For non-exempt properties, such as most residential properties consisting of one-to-four units, the NHD Statement is **mandatory**. For exempt properties, disclosure that a property is located in a hazard zone is still **mandatory**, but the use of the NHD Statement is **voluntary**.

PRACTICE POINTER. Sellers and listing agents may use C.A.R.'s standard form **Natural Hazard Disclosure Statement** (Form NHD) to satisfy this requirement.

Getting the Information

How do you determine whether a property is located in a natural hazard zone? The law does not specifically require anyone in particular to complete the NHD Statement. Your clients can go down to the appropriate county offices to check the maps and parcel lists or some of the responsible governmental agencies provide the information in other ways.

PRACTICE POINTER. Sellers may choose to complete the NHD Statement for their own properties. If, however, a seller encounters a map that is difficult to read, the law is forgiving in this regard. If a map or accompanying information of a certain natural hazard zone is not of sufficient accuracy or scale for a reasonable person to determine a property's location, you simply mark "Yes" on the NHD Statement, indicating that the property is located in that hazard zone. If, however, you obtain a report from an expert indicating that the property is **not** in that hazard zone, then you can mark "No" and attach the expert's report. This "when-in-doubt-mark-yes" rule does not apply to flood hazard zones or dam inundation zones, because properties in those hazard zones are identified by **parcel lists**, not maps. (Cal. Civ. Code Section 1103.2(b)).

Instead of completing the NHD Statement themselves, many real estate agents and their clients find it more convenient to hire a disclosure reporting company to provide

the information. These companies conduct research and investigation to determine whether a particular property is located in the hazard zones, and generally provide clients with comprehensive reports detailing their findings.

PRACTICE POINTER. A purchase agreement between a buyer and seller may require more than what the law requires. It is not uncommon for buyers to ask, as part of their purchase offer, for a NHD Statement from a certain disclosure reporting company. For example, C.A.R.'s ***California Residential Purchase Agreement and Joint Escrow Instructions*** (Form RPA-CA), gives a buyer the option to request that the seller pay for a natural hazard zone disclosure report prepared by a certain disclosure reporting company. If the seller agrees, that seller becomes ***contractually*** obligated to provide a NHD Statement prepared by that disclosure company, even though an expert's report is not required by law.

PRACTICE POINTER. When looking for a disclosure reporting company, be sure to shop around. Factors to consider when choosing a disclosure reporting company include the range of services provided, the turnaround time, and a company's qualifications, experience, reputation, and insurance coverage.

Substituted Disclosure

For transactions that fall within the NHD Statement requirement, if a seller uses a disclosure reporting company, the seller and seller's agent will not be held liable for any error or inaccuracy in the expert's report or opinion given to the buyer, as long as the seller or seller's agent has no personal knowledge of that error or inaccuracy (Cal. Civ. Code Section 1103.4). When using a disclosure reporting company, the seller and seller's agent should check the box on the NHD Statement that they have exercised good faith in selecting a report provider as required by the law, that they have not independently verified the information, and that they are not personally aware of any errors or inaccuracies in the information (Cal. Civ. Code Section 1103.2).

PRACTICE POINTER. In 1999, a dispute arose between some disclosure reporting companies as to what the law requires. Some companies argued that an NHD Statement not prepared by a geologist did not satisfy legal requirements to the same extent as a statement prepared by a geologist and bearing a geologist's seal. To help resolve this issue, the California legislature enacted Section 1103.4(c) of the California Civil Code. This legislation specifically states that sellers and agents may discharge their disclosure duties by obtaining a report or opinion prepared by a "licensed engineer, land surveyor, geologist, or expert in natural hazard discovery dealing with matters within the scope of the professional's license or expertise."

Local Option Statements

What is this! A **Local Option Real Estate Disclosure Statement** is a form that a local jurisdiction may require sellers to use to disclose local issues. This local option statement is not commonly used in California. However, it is a valid substitute for the NHD Statement if it provides substantially the same information and warning language contained in the NHD Statement.

The Seller's and Listing Agent's Duties

The duty to disclose falls upon the seller or the seller's agent depending on the type of natural hazard zone. The duty to disclose, however, does not arise until the information is made available. The following list breaks down who is responsible for what, and when the disclosure duty arises:

- **SPECIAL FLOOD HAZARD AREAS:** Seller's agent or the seller if there is no seller's agent. For properties exempt from the NHD Statement requirement, disclosure is required only when one of the following conditions is met: (1) The seller or seller's agent has actual knowledge that the property is within a special flood hazard area; or (2) The local jurisdiction has compiled a parcel list of affected properties and has posted a notice at the offices of the county recorder, county assessor, and county planning agency identifying the location of the parcel list (Cal. Gov't Code Section 8589.3).
- **DAM INUNDATION ZONES:** Seller's agent, or the seller if there is no seller's agent. For properties exempt from the NHD Statement requirement, disclosure is required only when one of the following conditions is met: (1) The seller or seller's agent has actual knowledge that the property is within an inundation area; or (2) The local jurisdiction has compiled a parcel list of affected properties and as posted a notice at the offices of the county recorder, county assessor, and county planning agency identifying the location of the parcel list (Cal. Gov't Code Sections 8589.4 and 8589.5).
- **VERY HIGH FIRE HAZARD SEVERITY ZONES:** The seller. For properties exempt from the NHD Statement requirement, disclosure is required only when one of the following conditions is met: (1) The seller or seller's agent has actual knowledge that the property is within a high fire hazard severity zone; or (2) The local agency has a map including the property and has posted a notice at the offices of the county recorder, county assessor, and county planning agency identifying the location of the map and any changes (Cal. Pub. Res. Code Section 51183.5).
- **WILDLAND FIRE AREAS:** The seller. For properties exempt from the NHD Statement requirement, disclosure is required only when one of the following conditions is met: (1) The seller or seller's agent has actual knowledge that the property is within a wildland fire zone; or (2) The local agency has a map including the property and has posted a notice at the offices of the county

recorder, county assessor, and county planning agency identifying the location of the map and any changes to the map (Cal. Pub. Res. Code Section 4136).

- **EARTHQUAKE FAULT ZONES:** Seller's agent, or the seller if there is no seller's agent. For properties exempt from the NHD Statement requirement, disclosure is required only when one of the following conditions is met: (1) The seller or seller's agent has actual knowledge that the property is within a delineated earthquake fault zone; or (2) The city or county has a map including the property and has posted a notice at the offices of the county recorder, county assessor, and county planning agency identifying the location of the map and any changes to the map (Cal. Pub. Res. Code Section 2621.9).
- **SEISMIC HAZARD ZONES:** Seller's agent, or the seller if there is no seller's agent. For properties exempt from the NHD Statement requirement, disclosure is required only when one of the following conditions is met: (1) The seller or seller's agent has actual knowledge that the property is within a seismic hazard zone; or (2) The city or county has a map including the property and has posted a notice at the offices of the county recorder, county assessor, and county planning agency identifying the location of the map and any changes to the map (Cal. Pub. Res. Code Section 2694).

Duties of the Buyer's Agent

A buyer's agent is not obligated to disclose natural hazard zones. He or she need only deliver to the buyer the NHD Statement provided by the listing agent or seller. However, in the event the buyer's agent cannot obtain the NHD Statement required and does not have written assurance from the buyer that the buyer has been received, the buyer's agent must advise the buyer in writing of his or her rights to the disclosure. The buyer's broker must retain a record of this advisory for three years (Cal. Civ. Code Section 1103.12).

The Buyer's Rights

Once a seller or agent provides the disclosures required by this law, the next logical question is, what can the buyer do with that information? In transactions which require an NHD Statement (i.e., most one-to-four unit residential sales), the buyer may have the right to rescind the purchase contract. For these transactions, if the NHD Statement or any required amendment is delivered after the execution of the buyer's offer to purchase, the buyer has three days after delivery in person, or five days after delivery by mail, to terminate his or her offer by delivering a written notice of termination to the seller or listing agent. For transactions that do not require the NHD Statement, the seller must still disclose the hazard zones, but the buyer does not have an automatic rescission right.

PRACTICE POINTER. Flood disaster areas are subject to a separate disclosure law. It applies to sellers of both residential and commercial properties who have received federal disaster relief assistance that was conditioned upon maintaining flood insurance. These sellers must disclose to their buyers that the buyers must obtain and maintain flood insurance under applicable federal law. Details of this disclosure law are fully set forth at 42 U.S.C. 5154a or go to www.hud.gov.

Source: California Civil Code Sections 1103 et seq. (and underlying laws for each natural hazard zone).

Self-Check Questions

1. The Natural Hazard Disclosure Statement is:

- a. a part of the Agency Disclosure Statement
- b. one of the key components of the Natural Hazard Disclosure Law
- c. a single-page form for disclosing natural hazard zones
- d. both b and c

2. Certain transfers are exempt from the requirement to disclose natural hazard zones.

- a. True
- b. False

3. What properties are affected by the Natural Hazard Disclosure Law?

- a. residential properties with one-to-four units, and personal property mobilehomes and manufactured homes
- b. commercial and industrial properties
- c. both a and b
- d. none of the above

Mello-Roos Taxes and 1915 Bond Act Assessments

Overview

A Mello-Roos Community Facilities district is an entity formed by a local government, district, or agency to finance a public service or public facility,

such as police protection, fire protection, schools, and libraries. A Mello-Roos district finances these projects by levying special taxes against the property owners within the area who benefit from these projects.

1915 Bond Act assessments are fixed lien assessments collected in installments to secure bonds issued under the Improvement Bond Act of 1915. This Improvement Bond Act was enacted in the year 1915 to allow local governments to issue bonds and collect assessments as a way of paying for the costs of constructing streets, public ways, and other work and improvements.

The law requires a seller of real property, under certain circumstances, to disclose to a prospective buyer that the property is located in a Mello-Roos district, or subject to a 1915 Bond Act assessment. Although these are two separate disclosure requirements, they are discussed together here, because they are set forth together in one statute (California Civil Code Section 1102.6b).

Applicability

With certain exceptions, the Mello-Roos tax and 1915 Bond Act assessment disclosure requirements apply to the transfer of most residential properties consisting of one-to-four units. More specifically, this disclosure law applies if **both** of the following conditions are met:

- Property being transferred is subject to a Mello-Roos tax or 1915 Bond Act assessment; and
- Transfer involves a sale, exchange, installment land sale contract, lease with option to purchase, any other option to purchase, or ground lease coupled with improvements, of any real property or residential stock cooperative, improved with or consisting of one-to-four dwelling units.

Transfers exempt from this disclosure law are virtually identical to the exemptions from the TDS requirement discussed above, such as, but not limited to, probate sales, foreclosure sales, REO sales, and trusts. For subdivision sales, however, although technically exempt from this particular statute, subdividers of two or more parcels must nevertheless comply with Mello-Roos requirements as further discussed below.

The Seller's Duties

The seller's obligations under this law are a bit unique. **The seller must make a *good faith effort* to obtain a notice of Mello-Roos special tax or notice of 1915 Bond Act assessment from each levying local agency.** "Good faith" means honesty in fact in the conduct of the transaction. Thus, under a strict reading of the statutory language, a seller apparently satisfies the requirements of this law upon exerting a good faith effort to obtain the disclosure notices from the local agency, even though the seller never gets one.



PRACTICE POINTER. Let's say, despite a seller's good faith efforts, a disclosure notice cannot be obtained, and yet, the seller or agent has **actual knowledge** that the property is subject to a special tax. It would be prudent to share that information with the buyer (preferably in writing), because it would likely be construed as a **material fact** that needs to be disclosed anyway.

Local governmental agencies must respond to the seller's request for disclosure notices **within five days**, and may charge a reasonable fee for their services. Once the seller obtains a notice, he or she must provide it to the buyer as soon as is practicable. The notice may be mailed to the buyer or delivered personally.

SUBDIVISIONS. There are special disclosure rules for subdivision sales. For example, a subdivider of two or more lots, parcels, or units, who sells the property, or who leases it for over five years, must provide the buyer or lessee with a Notice of Special Tax, and must obtain an acknowledgement of receipt from the buyer or lessee. This Notice of Special Tax must be delivered to the buyer before the signing of a purchase or lease agreement.

Disclosure under this law provides sellers with a protection from liability. Delivery of the Mello-Roos and 1915 Bond Act disclosure notices to the buyer shall be deemed to satisfy any responsibility the seller may have to inform the buyer about special taxes, assessment installments, or the existence of any levying district. No additional information is required.

Substituted Disclosures for 1915 Bond Act Assessments

Although notices of Mello-Roos taxes are usually readily available, certain counties in California do not currently provide notices of 1915 Bond Act assessments. This situation could have posed a big problem for sellers and real estate practitioners because the law apparently requires the disclosure notice to be prepared by a local governmental agency.

To address this potential problem, the California Legislature enacted a C.A.R.-sponsored amendment to clarify that, **in lieu of a 1915 Bond Act notice prepared by a governmental agency, the seller may provide the buyer with a disclosure notice obtained from a nongovernmental source, such as a disclosure reporting company, if the notice conforms to certain statutory requirements. First, disclosure companies can change the statutory notice forms or consolidate information from two or more levying districts as long as the information is presented clearly and accurately. Secondly, disclosures prepared by nongovernmental sources must contain the following information:**

FOR MELLO-ROOS:

- The name of the Mello-Roos levying taxes against the property.
- The annual tax due for the current tax year.
- The maximum tax that may be levied against the property in any year.
- The percentage by which the maximum tax may increase per year.

- The date until which the tax may be levied.
- A contact telephone number, if available.

FOR 1915 BOND ACT:

- The name of the 1915 Bond Act special assessments and bonds.
- The current annual tax on the property.
- A contact telephone number, if available.

The Agent's Duties

The law does not impose any specific obligations on real estate licensees when it comes to Mello-Roos or 1915 Bond Act disclosures. In fact, the law provides that delivery of the Mello-Roos and 1915 Bond Act disclosure notices to the buyer shall be deemed as satisfying any responsibility the seller and the agent may have, to inform the buyer about special taxes, assessment installments, or the existence of any levying district.

Failure to Comply

A seller who fails to comply with this disclosure law may be liable to the buyer for any damages suffered by the buyer. For subdivision sales, a subdivider who willfully violates the Mello-Roos disclosure rules may be held liable for actual damages, attorney's fees, and a fine up to \$500.

The Buyer's Rights

Once the seller discloses Mello-Roos special taxes or 1915 Bond Act assessments to the buyer, what can the buyer do with that information? Because this disclosure law is part of the TDS law, the buyer has the same rescission rights as those under the TDS rules.

If delivery occurs after the signing of an offer to purchase, **the buyer has three days after personal delivery of the disclosure notices (or five days after delivery by mail) to terminate the purchase contract by delivering a written notice of that termination to the seller or listing agent.**

Source: California Civil Code Section 1102.6b and California Government Code Section 53341.5.

Self-Check Questions

1. What is/are (an) acceptable substitute(s) to a 1915 Bond Act notice prepared by a governmental agency?

- a. the seller's most recent year's property tax bill
- b. the preliminary title report

- c. a disclosure notice from a disclosure reporting company
- d. all of the above

2. What is/are a seller's obligation(s) under the Mello-Roos disclosure law?

- a. to make a good faith effort to obtain a Notice of Special Tax
 - b. to provide a Notice of Assessment to the buyer
 - c. both a and b
 - d. none of the above
-

Supplemental Property Tax Bills

Overview

A change of ownership may trigger a reassessment of property taxes. Yet, buyers may not realize they must pay supplemental tax bills, which could amount to a lot of money and cause hardship. Hence, in 2005, the California legislature enacted a new law requiring sellers to disclose to their prospective buyers that they may owe supplemental taxes.

Application

This law applies to most sellers of residential property containing one to four units. More specifically, this law applies to the following:

- Any transfer by sale, exchange, installment land sale contract, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements of real property or residential stock cooperative, improved with one-to-four dwelling units.
- Resale transaction for a personal property manufactured home or mobilehome intended for residential use.

Transfers exempt from this disclosure law are the same as the exemptions from the TDS requirement discussed above. Exemptions include, but are not limited to, probate sales, foreclosure sales, REO sales, and trusts. For subdivisions, however, a Notice of "Supplemental" Property Tax Bills (see below) must be included in a notice of intention filed with the Department of Real Estate to offer subdivided lands for sale or lease (Cal. Business & Professions Code Section 11010).

The Seller's and Agent's Duties

A seller or agent subject to this law must deliver to the prospective buyer the following disclosure notice:

Notice of Your 'Supplemental' Property Tax Bill

"California property tax law requires the Assessor to revalue real property at the time the ownership of the property changes. Because of this law, you may receive one or two supplemental tax bills, depending on when your loan closes.

The supplemental tax bills are not mailed to your lender. If you have arranged for your property tax payments to be paid through an impound account, the supplemental tax bills will not be paid by your lender. It is your responsibility to pay these supplemental bills directly to the Tax Collector.

If you have any question concerning this matter, please call your local Tax Collector's Office."

The law requires the supplemental property tax notice to be in at least 12-point type or a contrasting color. Moreover, the title must be at least 14-point type or a contrasting color.

PRACTICE POINTER. Sellers and agents may provide their buyers with C.A.R.'s standard-form **Statewide Buyer and Seller Advisory** (Form SBSA) which includes a paragraph that complies with the supplemental property tax disclosure requirement. C.A.R. also publishes a separate form called the **Notice of Your "Supplemental" Property Tax Bill** (Form SPT). Because the notice should be of at least 12-point type and the title should be of at least 14-point type, be sure not to reduce the size of the print by copier, fax, or computer if the buyer has not yet signed.

Source: California Civil Code Section 1102.6c

The Residential Environmental Hazards Booklet

Overview

Environmental hazards affecting our homes are a health concern and social issue of obvious importance. They are also rapidly becoming an equally important legal concern. California has addressed these issues by developing a booklet entitled "**Residential Environmental Hazards: A Guide for Homeowners, Buyers, Landlords and Tenants.**" This booklet provides information on environmental hazards that may affect a property. The environmental hazards covered by the booklet are asbestos, formaldehyde, hazardous waste, household hazardous waste, lead, mold, and radon.

PRACTICE POINTER. C.A.R. publishes a three-part booklet which includes,

as the first part, the 2005 edition of "**Residential Environmental Hazards: A Guide for Homeowners, Homebuyers, Landlords and Tenants.**"

Applicability

The **environmental hazards booklet** is designed to be used when selling or renting real property, but, believe it or not, this particular booklet **is not a mandatory disclosure in any transaction.**

The Seller's and Agent's Roles

Although delivery of the environmental hazards booklet is purely voluntary, it is highly recommended. This booklet provides a valuable shield from liability. **By law, delivery of the booklet will be deemed to be adequate to inform a buyer about the environmental hazards described in the booklet.** No additional information is required. This protection applies to both sellers and their agents, either of whom can provide the booklet to the buyer. Because the law does not specify any particular method of delivery, any reasonable means of getting the booklet into the buyer's hands should be acceptable.

PRACTICE POINTER. To document delivery of C.A.R.'s three-part booklet, agents may use the buyer's acknowledgement of receipt provided on the last page of the booklet.

Disclosure of Actual Knowledge

Delivering the environmental hazards booklet does not satisfy a seller's or agent's duty to disclose any actual knowledge of environmental hazards as required by the TDS law or as a material fact that affects the value or desirability of the property. It's understandable for a seller or agent to feel reluctant to flag environmental hazards issues for prospective buyers. However, when in doubt, it is better to err on the side of caution by disclosing what reasonably might be considered an environmental hazard, because the failure to do so may result in dire legal consequences.

Source: California Civil Code Section 2079.7.

Self-Check Questions

1. The environmental hazards booklet satisfies the disclosure duties of a seller and his or her agent with regard to environmental issues addressed in the booklet.

- a. True
- b. False

2. The environmental hazards booklet does not satisfy a seller's or agent's duty to disclose any actual knowledge of an environmental hazard.

- a. True
 - b. False
-

Lead-Based Paint Hazards

Overview

Lead poisoning is a very serious concern. In young children, it can cause irreversible health effects, including brain damage, mental retardation, convulsions, and even death. Yet, according to the U.S. Department of Housing and Urban Development (HUD), nearly one million children under 6 years of age have lead in their blood above the level of concern.

To protect families from exposure to lead, Congress passed the **Residential Lead-Based Paint Hazard Reduction Act of 1992 (also known as Title X)**. This law directed HUD and the U.S. Environmental Protection Agency (EPA) to establish disclosure standards when selling and leasing homes built before 1978. Because these are federal rules, they are somewhat different from what you've encountered under California law. Let's take a closer look.

Applicability

This disclosure law applies to both sales and leases (including month-to-month tenancies) of "target housing" which includes most residential properties built before 1978. The following transactions and properties are exempt from the lead disclosure requirements:

- o Housing built after 1977.

PRACTICE POINTER. In case anyone is wondering, 1978 was the year the government banned the use of lead paint in housing.

- o Non-residential properties.

PRACTICE POINTER. Note that lead disclosures are required for the sale of multi-family target housing, such as apartment buildings (even those with 5 units or more).

- **Housing for the elderly, unless any child under the age of 6 lives there.**
- Housing for the disabled, unless any child under the age of 6 lives there.
- Zero-bedroom dwellings, such as studio apartments, dormitories, and rentals of individual rooms in residential dwellings.
- Sale of target housing through foreclosure.
- Lease of target housing found free of lead-based paint by a certified inspector.
- Short-term lease of 100 days or less, where no renewal or extension can occur (e.g., a fixed term vacation rental).

Personal property mobilehomes are not specifically addressed by this law. However, HUD has indicated that it does consider pre-1978 mobilehomes to be covered by the law.

The Seller's Duties

A seller has a lot of obligations under this law, but they are quite manageable in practice if grouped into four main tasks as follows:

22. Provide the buyer with an EPA-approved lead hazard information pamphlet.

PRACTICE POINTER. To satisfy this first requirement, you can use C.A.R.'s three-part booklet which includes, as the second part, the pamphlet entitled "**Protect Your Family from Lead in Your Home.**" The other two sections are "**Residential Environmental Hazards: A Guide for Homeowners, Buyers, Landlords and Tenants**" and "**The Homeowners Guide to Earthquake Safety,**" both discussed elsewhere.

23. Provide the buyer with a 10-day opportunity to conduct an inspection or risk assessment for lead-based paint and lead-based paint hazards. The parties can mutually agree in writing to change the time frame for inspection, or to waive the inspection entirely, by indicating so in writing.

PRACTICE POINTER. C.A.R.'s **California Residential Purchase Agreement and Joint Escrow Instructions** (Form RPA-CA) complies with this second requirement by providing a 17-day opportunity for the buyer to inspect the property, but the parties can change the timeframe if desired.

- 24.
25. Fill out and sign a disclosure statement attached to the purchase contract, which includes a standard **Lead Warning Statement** and other information. The seller must deliver this disclosure statement to the buyer for signature, and then retain a copy of the completed statement for at least 3 years.

PRACTICE POINTER. C.A.R.'s standard form **Lead-Based Paint and Lead-Based Paint Hazards Disclosure, Acknowledgment and Addendum** (Form FLD) may be used to satisfy this third requirement.

26. Disclose the presence of any known lead-based paint or lead-based paint hazards in the property, and provide any available records or reports (including common areas). The seller should also disclose any additional information available, such as the basis for determining the presence of lead-based paint or lead-based paint hazards, its location, and the condition of the painted surfaces.

PRACTICE POINTER. To satisfy this fourth requirement, sellers may use C.A.R.'s Standard Form **Real Estate Transfer Disclosure Statement** (Form TDS) and attach any available records or reports. The first question in Section IIC of the TDS prompts the seller to disclose any knowledge of substance that may be an environmental hazard, including lead-based paint.

Despite the numerous tasks related to lead-based paint hazards, sellers may be glad to know about the things they need not do. A seller has no obligation under this law to conduct any evaluation, reduction, or elimination of lead-

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azards.

PRACTICE POINTER. HUD regulates lead-based paint hazards affecting federal housing under its Lead Safe Housing Regulation. This law requires the evaluation and reduction of lead-based paint hazards in housing that is owned and being sold by the federal government (e.g., HUD's REO), or receives financial assistance from the federal government (e.g., Section 8 rental assistance). This law does not make any substantive changes to existing lead disclosure rules. To obtain a copy of the Lead Safe Housing Regulation, go to HUD's website at www.hud.gov/offices/lead/leadsaferule/index.cfm, or contact the National Lead Information Center at 800.424.LEAD.

The Landlord's Duties

With one exception, landlords of target housing must perform the same tasks for their tenants as sellers must perform for their buyers (as discussed above). The one exception is that **landlords are not legally required to provide tenants with an opportunity to inspect the property for lead-based paint or lead-based paint hazards.**

PRACTICE POINTER. Although this disclosure law does not require landlords to abate lead, the presence of lead could be a habitability issue under California law which may require removal depending on the facts and circumstances.

When Must Compliance Occur?

Federal law requires sellers/lessors to perform these disclosure activities before entering into a sales or lease agreement. This rule does not coincide with the general practice in California of providing disclosures after acceptance of an offer to purchase. Thus, **HUD/EPA approved C.A.R.'s request for lead disclosures to be provided after a sales contract is entered into, but only if the following two conditions are met:**

- The buyer has a contractual right to cancel the transaction after receipt of the lead disclosures; and
- The buyer's 10-day opportunity to inspect does not begin to run until after receipt of the lead disclosures.

PRACTICE POINTER. C.A.R.'s Standard Form **California Residential Purchase Agreement and Joint Escrow Instructions** (Form RPA-CA) satisfies these HUD/EPA guidelines so that sellers do not have to provide lead disclosures until after they enter into a sales contract. First, the RPA-CA requires the seller to deliver disclosures within seven days after acceptance of the contract. Second, the RPA-CA provides the buyer with a total of 17 days after acceptance to inspect the property and cancel the contract.

The Agent's Duties

Agents involved in sales or lease transactions have three general responsibilities in regards to lead-based paint and lead-based paint hazards disclosures. First, agents must inform sellers/lessors of their obligations under this law. Second, agents must ensure that sellers/lessors have complied with their obligations, or personally ensure compliance. An agent who performs these first two tasks will not be responsible for any lead-based paint or lead-based paint hazards that the seller or lessor knows, but fails to disclose to the agent.

Third, the agent must provide a statement that: (1) the agent has informed the seller of the seller's obligations; and (2) the agent is aware of his or her own duty to ensure compliance.

BUYER'S AGENT: These agency duties do not apply to a buyer's agent if the buyer pays that agent's entire compensation.

PRACTICE POINTER. You don't have to try to memorize the agent's three general responsibilities. They are all set forth in the Listing Agent's section of **C.A.R.'s Lead-Based Paint and Lead-Based Paint Hazards Disclosure, Acknowledgment and Addendum** (Form FLD).

Source: 42 U.S.C. 4852d and 24 C.F.R. Part 35 (subpart H).

Self-Check Questions

1. Under the federal lead-based paint disclosure law, the seller must:

- a. provide the buyer with the appropriate pamphlet explaining possible hazards of lead in the home
- b. give the buyer a 10-day opportunity to test for lead
- c. disclose any lead-based paint and lead-based paint hazards of which the seller is aware
- d. all of the above

2. The federal lead-based paint disclosures apply to the following:

- a. residential property constructed after 1978
- b. housing for the elderly if a child under 6 does not live there
- c. leases (including month-to-month tenancies)
- d. all of the above

The Homeowner's Guide to Earthquake Safety and the Commercial Property Owner's Guide to Earthquake Safety

Overview

Given the notoriety of California's earthquakes, requiring sellers to tell buyers there might be an earthquake may seem unnecessary. However, the intent of this disclosure law is to teach people how to ensure the strength of their properties, because our past experiences have proven that earthquake-preparedness saves lives and property. To accomplish this goal, the California Seismic Safety Commission drafted the Homeowner's Guide and the Commercial Guide to provide general information about earthquakes, and specific information about how to find and fix earthquake-related weaknesses in real properties.

PRACTICE POINTER. C.A.R. publishes a three-part booklet which includes, as the third part, "**The Homeowner's Guide to Earthquake Safety.**" The other two sections in this three-part booklet are "**Residential Environmental Hazards: A Guide for Homeowners, Buyers, Landlords and Tenants**" and "**Protect Your Family from Lead in Your Home,**" both discussed above. C.A.R. also publishes a separate booklet entitled "**The Commercial Property Owner's Guide to Earthquake Safety**" (2006 edition).

Applicability

The earthquake booklets are mandatory disclosures for the following transactions:

HOMEOWNER'S GUIDE. Unless exempt, a seller must deliver the Homeowner's Guide if the property:

- Has one-to-four residential dwellings units;
- Was built before January 1, 1960; and
- Is made of conventional light-frame construction.

COMMERCIAL GUIDE. Unless exempt, a seller must deliver the Commercial Guide if the property:

- Was built before January 1, 1975;
- Is made of precast concrete or reinforced/unreinforced masonry with wood frame floors or roofs; and
- Is located within any county or city.

PRACTICE POINTER. Don't be fooled by the word "commercial." Despite its name, the Commercial Guide may be a required disclosure for both commercial and residential properties built before 1975 of precast concrete or reinforced/unreinforced masonry.

EXCEPTIONS: The exemptions to this law are generally, but not exactly, the same as the TDS exemptions. The exemptions to both the Homeowner's Guide and Commercial Guide are as follows:

- Transfers in subdivisions subject to the public report requirement.
- Transfers pursuant to court order, such as sales by probate court order, writ of execution, bankruptcy trustee, eminent domain, or decree of specific performance.
- Transfers to lenders by borrowers in default, to buyers under power of sale, or to buyers by lenders who have acquired the property (i.e., REO sales).
- Transfers by a fiduciary administering a decedent's estate, guardianship, conservatorship or trust.
- Transfers from one co-owner to another.
- Transfers to a spouse (e.g., divorce).
- Transfers to someone in the lineal line of consanguinity (e.g., from parent to child, or from grandparent to child).

- Transfers by the Controller under the Unclaimed Property Law.
- Transfers by certain tax sales.
- Transfers where the buyer agrees in writing that the building will be demolished within one year of transfer.

The Seller's Duties

Sellers must provide the Homeowner's Guide or Commercial Guide, where applicable, to their buyers as soon as practicable before transfer of title. Sellers providing the Homeowner's Guide have one additional task. **They must complete and deliver the Residential Earthquake Hazards Report**, which is a short questionnaire about the structural deficiencies and earthquake weaknesses, if any, in the property.

PRACTICE POINTER. The Residential Earthquake Hazards Report is a one-page form found in the back of the "**Homeowner's Guide to Earthquake Safety.**"

Delivery of the Homeowner's Guide or Commercial Guide will be deemed to be adequate to give a buyer general information about geologic and seismic hazards described in that booklet and mitigating measures that might be considered. No additional information is needed. This valuable shield from liability pertains to both sellers and their agents.

PRACTICE POINTER. This liability shield is apparently applicable to all transfers of real property. Thus, even if a certain transaction is exempt, the seller and agent may nevertheless want to benefit from the protection by delivering the Homeowner's Guide or Commercial Guide to the buyer.

The Agent's Duties

This law requires the real estate agent to provide the Homeowner's Guide to the seller, who, in turn, is obligated to give it to the buyer. **There is, oddly enough, no specific legal requirement for the agent to deliver the booklet to the buyer directly.** For the Commercial Guide, the law requires either the seller or agent to deliver the booklet to the buyer.

PRACTICE POINTER. For the Homeowner's Guide, even though the law does not specifically require the agent to deliver it directly to the buyer, a prudent agent would, of course, make sure the buyer receives it, one way or another.

Source: California Government Code Sections 8897.1 et seq. and California Civil Code Section 2079.8 (Homeowner's Guide). California Government Code

Sections 8893.1 et seq. and 8875 et seq., and California Civil Code Section 2079.9 (Commercial Guide).

Self-Check Questions

1. A seller must deliver the "Homeowner's Guide to Earthquake Safety" if:

- a. the property is made of conventional light-frame construction
- b. the property was built before January 1, 1960
- c. the property has one-to-four residential units
- d. all of the above

2. When the "Homeowner's Guide to Earthquake Safety" is a required disclosure, what else is also required?

- a. seller must complete and deliver the Residential Earthquake Hazards Report
 - b. seller must correct earthquake weaknesses
 - c. both a and b
 - d. nothing additional is required
-

Military Ordnance Locations

Overview

Military what? And isn't "ordnance" misspelled? Military ordnance may sound obscure, but it is a major issue in some communities. **Military ordnance locations are areas officially designated as former military training grounds which contain potentially explosive munitions.** Underground explosives in former military installations have, in the past, resulted in some serious tragedies, including the loss of lives. Addressing this problem, the California Legislature enacted a law requiring disclosure of these military ordnance locations.

Applicability

This law applies to residential sellers of one-to-four units subject to the TDS law who have actual knowledge of any military ordnance locations within one mile of the property. The same rule applies to landlords of residential properties.

PRACTICE POINTER. Even if certain sellers are legally exempt from this

disclosure requirement, it is always prudent for sellers and agents of any property to disclose actual knowledge of what may be construed as a material fact affecting the value or desirability of that property.

The Seller's or Landlord's Duties

For sellers, any actual knowledge of a military ordnance location within one mile of the property must be disclosed in writing as soon as practicable. For residential landlords, the disclosure must be made in writing before entering into a rental agreement. This law only requires the disclosure of the seller/landlord's actual knowledge, and so sellers/landlords apparently have no duty to investigate the existence of military ordnance locations. For purposes of this disclosure law, a military ordnance is defined as an area identified by a federal or state government agency or instrumentality as an area once used for military training purposes which may contain potentially explosive munitions.

PRACTICE POINTER. Sellers may use the **Supplemental Statutory and Contractual Disclosures** form (C.A.R. Form SSD) to disclose the presence of a nearby military ordnance location. Landlords using C.A.R.'s **Residential Lease** or **Month-to-Month Rental Agreement (Form LR)** may check the box in the Military Ordnance provision if applicable.

The Agent's Duties

This law does not specifically impose any duty on real estate agents. However, a real estate agent should always disclose any material facts affecting the value or desirability of a property.

The Buyer's Rights

Because the military ordnance disclosure is part of the TDS law, **the buyer has a three-day right to rescind after delivery in person, or five days after delivery by mail.**

Source: California Civil Code Sections 1102.15 and 1940.7.

Self-Check Questions

1. In transactions requiring a military ordnance location disclosure, the seller simply has to disclose actual knowledge of a military ordnance location within one mile of the property.

a. True

b. False

2. Military ordnance locations are defined as:

- a. former military storage facilities for tanks and other vehicles
- b. former military training grounds with contain potentially explosive munitions
- c. former military installations which contain lead-based paint hazards
- d. places for conducting military court proceedings

Industrial Use Zoning

While showing a house to a young couple, the real estate agent said, "There are advantages and disadvantages to owning this house. The disadvantage is there's a chemical plant one block to the south, and a slaughterhouse half a block to the north." The couple was horrified. One of them immediately asked, "What's the advantage?" Without skipping a beat, the agent replied, "You'll always know which direction the wind is blowing."

Overview

When a municipality designates an area for commercial or industrial use, the law is highly unlikely to construe normal business operations in that area as a nuisance, even though homes nearby may be adversely affected. So to address this issue, the California Legislature enacted a law requiring disclosure of commercial and industrial zones to protect unsuspecting buyers.

Applicability

This disclosure law applies to sellers of residential properties with one-to-four dwelling units subject to the TDS. The exemptions are the same as the TDS exemptions.

The Seller's Duties

A seller subject to this law must disclose any actual knowledge that the property is affected by or zoned to allow commercial, manufacturing, or airport uses. This disclosure must be made in writing as soon as practicable before the transfer of title. This law only requires the disclosure of the seller's actual knowledge, so apparently there's no duty to investigate the existence of industrial zones.

PRACTICE POINTER. Sellers may use C.A.R.'s standard-form **Supplemental Statutory and Contractual Disclosures** (Form SSD) to disclose commercial, manufacturing, or airport use in the vicinity of the property.

The Agent's Duties

This particular law does not specifically impose any duty on real estate agents. However, a real estate agent should always, as a matter of prudence, disclose any material facts affecting the value or desirability of a property.

Source: California Civil Code Section 1102.17.

Self-Check Questions

1. A seller may satisfy the industrial zone disclosure requirement by orally disclosing that an industrial zone affects the property.

- a. True
- b. False

2. To comply with the industrial zone disclosure law, a seller must disclose actual knowledge that the property is affected by or zoned to allow:

- a. manufacturing
- b. commercial operations
- c. airports
- d. all of the above

3. The industrial zone disclosure law does not specifically impose duties upon real estate licensees.

- a. True
- b. False

Meth Lab Activity

Overview

Here's a disclosure requirement that's befuddling. What does it matter if a property was once used as a methamphetamine lab? The answer is: Safety.

You may need a little background information about meth labs to understand. These days, people can illegally manufacture methamphetamine in the privacy of their own homes using legal, over the counter products and any of the hundreds of recipes available on the Internet or other sources. However, for every pound of meth produced, there are many more pounds of unwanted chemical by products. These potentially toxic chemical by products can end up virtually anywhere on the property, such as down the sink, down the

toilet, in the floors, in the backyard, and even in the paint and plaster. Homes used as drug labs become potential hazardous waste sites requiring evaluation and possibly cleanup by hazardous waste professionals.

Applicability

This disclosure law applies to sellers of residential properties with one-to-four dwelling units subject to the TDS law. The exemptions are also the same as those under the TDS law. This law also applies to landlords of residential dwelling units. Although owners of mobilehomes and manufactured homes must comply with this law, those located in mobilehome parks are exempt until January 1, 2008 (Cal. Health and Safety Code Section 25400.10(q)(3)).

The Seller's Duties

A seller subject to this law must disclose in writing to a prospective buyer of a pending order issued by a local health officer prohibiting the use or occupancy of a property contaminated by meth lab activity. The seller must also give a copy of the pending order to the buyer to acknowledge receipt in writing. This disclosure requirement persists until the seller receives a notice from the local health officer that the property has been remediated and requires no further action. Failure to comply with these requirements may subject the seller to, among other things, a civil penalty up to \$5,000 (Cal. Health & Safety Code Sections 25400.28 and 25400.45).

PRACTICE POINTER. A seller may use C.A.R.'s standard form **Supplemental Statutory and Contractual Disclosures** (Form SSD) to disclose a pending order of meth lab contamination and attach a copy of the order

The Landlord's Duties

A landlord subject to this law must provide a written notice of a remediation order to all prospective tenants who have completed an application to rent an affected dwelling unit. The landlord must also provide the prospective tenant with a copy of the order to acknowledge, in writing, the receipt of the notice and pending order before signing a rental agreement. The notice must be attached to the rental agreement. Failure to comply with these requirements may subject the landlord to, among other things, a civil penalty up to \$5,000, and the prospective tenant may void the rental agreement (Cal. Health & Safety Code Sections 25400.27(b) and 25400.45).

PRACTICE POINTER. A landlord may use C.A.R.'s standard form **Methamphetamine Contamination Notice** (Form MCN) to disclose to all prospective tenants who have completed a rental application that a property is contaminated by meth lab activity (and attach a copy of the order). Additionally, if the parties enter into the C.A.R. Residential Lease or Month to Month Rental Agreement (Form LR), the landlord may check the Methamphetamine Contamination box and attach copies of the notice and order.

The Agent's Duties

This particular law does not specifically impose any duty to real estate agents. However, a seller's agent should always, as a matter of prudence, disclose any material facts affecting the value or desirability of a property.

The Buyer's Rights

Because this law is part of the TDS law, the buyer has a three-day right to rescind after delivery in person, or five days after delivery by mail.

Source: California Health and Safety Code Sections 25400.10 et seq.

Self-Check Questions

1. What does the Health and Safety Code require a seller to do if he or she knows the property has been contaminated by methamphetamine?

- a. provide the buyer with written notice of a pending order prohibiting use or occupancy of the property
 - b. provide the buyer with a list of hazardous waste experts
 - c. clean up any toxic contamination of the property
 - d. all of the above
-

Registered Sex Offenders

Overview

In 1994, seven-year old Megan Kanka was raped and murdered by the man who lived across the street in a small, suburban neighborhood in New Jersey. No one in the neighborhood knew he was a twice-convicted sex offender. This tragedy sparked the enactment of Megan's Law in many states throughout the country. In California, Megan's Law provides public access to a database of the whereabouts of dangerous sex offenders. It further authorizes local law enforcement to notify members of its community that high-risk and serious sex offenders live in the neighborhood. Of course, it comes as no surprise that these laws gave rise to a new disclosure requirement.

Applicability

This law applies to residential sellers of properties with one-to-four units and residential landlords. This law applies with equal force to leases with an option to purchase, ground leases of land on which one-to-four dwelling units have been constructed, and real property sales contracts defined under Section

2985 of the California Civil Code. **There are no exemptions to this law, except for certain subdivisions.**

The Seller's and Landlord's Duties

Sellers and landlords subject to this disclosure law must ensure that their sales or rental agreement contains, in **at least 8-point type**, a statutory notice about the availability of a database of registered sex offenders.

NOTICE: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on the offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides.

PRACTICE POINTER. C.A.R.'s **California Residential Purchase Agreement** (Form RPA-CA) and other purchase agreements, as well as our **Residential Lease or Month-to-Month Rental Agreement** (Form LR) both include the required database disclosure notice. C.A.R. also offers a stand-alone **Data Base Disclosure Regarding Sex Offenders** (Form DBD). Because the notice must be in at least 8-point type, be sure not to reduce the size of the print by copier, fax, or computer if the buyer has not yet signed.

Upon delivery of the Megan's Law notice, the seller, landlord or broker is not required to provide any additional information regarding the proximity of registered sex offenders. The information in the notice shall be deemed to be adequate to inform buyers or tenants about the existence of a statewide database of the location of registered sex offenders and information from the database regarding those locations. Additionally, the information in the notice shall not give rise to any cause of action against the disclosing party by the registered sex offender.

However, the law also states that the database disclosure does not alter any existing legal duty of the seller or landlord. Hence, to prevent costly litigation, a prudent seller or landlord should disclose actual knowledge of a registered sex offender in the neighborhood depending on the particular facts and circumstances. Under California case law, a seller must disclose any material fact affecting the value or desirability of the property.

Accessing Megan's Law Database

Information provided on the Megan's Law Web site may only be used to protect a person at risk. Except to protect a person at risk or as otherwise authorized by another provision of the law, use of the information for the following purposes is specifically prohibited (Cal. Penal Code Section 290.46(l)):

- 45. housing or accommodations
- 46. loans

- 47. credit
- 48. insurance
- 49. employment
- 50. education
- 51. benefits or services provided by a business establishment

Any person who uses information from the Web site to commit a crime is subject to, among other things, a fine of \$10,000 to \$50,000 for a misdemeanor, and five years imprisonment for a felony (Cal. Penal Code Section 290.46(j)).

The Agent's Duties

This law does not specifically set forth requirements for real estate agents. However, the law states that delivery of the database disclosure shields not only the seller and landlord from liability as stated above, but the broker as well. Yet, the law also states that the database disclosure does not alter the broker's existing legal duty. Hence, as a matter of prudence, a broker should disclose any actual knowledge of a registered sex offender in the neighborhood depending on the particular facts and circumstances. Under California Civil Code Section 2079, a broker must disclose any material fact affecting the value or desirability of the property that is not known to, or within the diligent attention and observation of, the parties.

Source: California Civil Code Section 2079.10a and California Penal Code Section 290.46.

Self-Check Questions

1. The database disclosure under Megan's Law informs buyers:

- a. when a registered sex offender lives within one mile of the property
- b. of the availability of a database of registered sex offenders
- c. of the availability of a "900" telephone service for the location of registered sex offenders
- d. both b and c

2. The database disclosure requirement under Megan's Law does not apply to the following:

- a. probate sales
- b. leases
- c. certain subdivisions
- d. all of the above

Toxic Mold

Overview

We're surrounded. They're in the air, they're in our homes. We're talking, of course, about mold. These microscopic organisms have been with us since time immemorial. In recent years, however, there's been concern about the potential health impacts of indoor mold. Those health impacts may range from allergic reactions, headaches, fatigue, to even death.

Laws are now evolving to ensure that buyers and tenants of real property understand the potential risks of mold, and that they not be exposed to them unnecessarily. California's most noteworthy attempt to date at addressing mold hazards is **the Toxic Mold Protection Act. This legislation gives rise to possible new disclosure requirements sometime in the future** depending on the results of studies to be conducted by the California Department of Health Services (CDHS).

Applicability

The new disclosures under this law will potentially:

- Affect residential landlords.
- Affect commercial and industrial sellers.
- Affect commercial and industrial landlords.
- Contain no new disclosure requirements for residential sellers.
- Contain no new requirements for real estate agents.

The Seller's Duties

The law directs the CDHS to determine, among other things, whether it would be feasible to adopt permissible exposure limits to indoor mold.

If the CDHS adopts permissible exposure limits, then commercial and industrial sellers will be required to disclose any knowledge of mold that exceeds those limits or poses a health threat. This requirement becomes effective the first January 1 or July 1 that occurs at least six months after the CDHS adopts permissible exposure limits and other guidelines.

PRACTICE POINTER. Even if mold disclosure requirements have not yet come into effect, a seller should disclose any actual knowledge of mold as required under the TDS law or as a potential material fact affecting the desirability of the property.

RESIDENTIAL SELLERS: The Toxic Mold Protection Act does not apply to residential sellers. However, in 2002, the California Legislature amended the TDS law to address the concern about mold. Question IIC1 of the TDS requires a residential seller to disclose any knowledge of substances that may be an environmental hazard, such as asbestos, formaldehyde, and radon gas. In 2002, mold was added to this list of environmental hazards.

PRACTICE POINTER. Many sellers are concerned about their potential liability for indoor mold that they do not know about. You may want to remind them that, by law, the voluntary delivery of the booklet "**Residential Environmental Hazards: A Guide for Homeowners, Buyers, Landlords and Tenants,**" which includes a chapter on mold, will be deemed adequate to inform a buyer about the environmental hazards contained in that booklet.

The Landlord's Duties

Residential, commercial, and industrial landlords have the same disclosure duties as those for commercial and industrial sellers discussed above. Landlords also have additional duties as follows:

RESIDENTIAL LANDLORDS: In addition to the disclosure duty, residential landlords will, sometime in the future, be required to provide a consumer-oriented booklet about mold to their tenants before entering into a rental agreement. This requirement does not come into effect until the first January 1 or July 1 that occurs at least six months after the CDHS approves the booklet.

PRACTICE POINTER. In the meantime, it's prudent for residential landlords to give their tenants the booklet entitled "**Residential Environmental Hazards: A Guide for Homeowners, Buyers, Landlords and Tenants,**" which includes information about mold.

COMMERCIAL AND INDUSTRIAL LANDLORDS: If the CDHS adopts permissible exposure limits, this law will require commercial and industrial landlords with actual knowledge of the presence of mold or a chronic water intrusion to take any necessary remedial action (unless the tenant is contractually responsible for maintaining the property). This requirement does not come into effect until the first January 1 or July 1 that occurs at least six months after the CDHS adopts permissible exposure limits to mold and other guidelines.

The Agent's Duties

This law does not create any new duties for real estate agents. However, agents of residential properties of one-to-four units have a pre-existing duty to conduct a reasonably competent and diligent visual inspection, and disclose

all material facts revealed by that investigation. Agents should be careful in carrying out this duty. Unlike other environmental hazards which are undetectable to the naked eye (e.g., asbestos, radon gas, lead-based paint), some mold conditions may be detectable through visual inspection.

PRACTICE POINTER. To minimize potential liability, if any, agents may provide buyers with C.A.R.'s **Buyer's Inspection Advisory** (Form BIA). This advisory explains to buyers that agents have no expertise in hazardous substances, and encourages buyers to conduct their own inspections for environmental hazards, including mold.

PRACTICE POINTER. There are many sources of information about mold. For example, go to www.cal-iaq.org which has helpful publications (e.g., CDHS's "**Mold in My Home: What Do I Do?**") and a list of Indoor Air Quality (IAQ) consultants. C.A.R. also publishes a separate booklet entitled "**A Brief Guide to Mold, Moisture, and Your Home.**"

Source: California Health and Safety Code Sections 26100 et seq. and California Civil Code Section 1102.6.

Self-Check Questions

1. The environmental hazards booklet does not contain information about mold.

- a. True
- b. False

2. The Toxic Mold Protection Act imposes new disclosure requirements on residential sellers and agents.

- a. True
- b. False

Smoke Detectors

Overview

California law requires smoke detectors to be installed in all residential properties. Why? It's very simple. Smoke detectors save lives. According to the National Fire Prevention Association, smoke detectors are the modern-day success story of residential fire safety. Since single station smoke detectors became available to consumers in the 1970's, the home fire death rate has been reduced by half.

Applicability

There are two set of rules involving smoke detectors. One pertains to the smoke detector installation. The other pertains to a written statement provided to a buyer that a property is in compliance with the smoke detector requirements.

SMOKE DETECTOR INSTALLATION: An operable smoke detector must be installed in every single family dwelling and factory built housing that is sold, according to California Health & Safety Code Section 13113.8. Although certain transactions are exempt from Section 13113.8, another statute requires -- without exception -- a smoke detector to be installed in every dwelling intended for human occupancy (Cal. Health & Safety Code Section 13113.7). A dwelling unit intended for human occupancy includes a condominium, stock cooperative, duplex, apartment complex, lodging house, hotel, motel, and time share project. An operable smoke detector must also be installed in all used manufactured homes and used mobilehomes (Cal. Health & Safety Code Section 18029.6).

PRACTICE POINTER. For manufactured homes and mobilehomes, the smoke detector requirement is satisfied if, within 45 days before the date of transfer, the seller signs a declaration stating that the smoke detectors in the property are operable as of the date the declaration is signed.

SMOKE DETECTOR STATEMENT OF COMPLIANCE: The statement of compliance requirement applies to seller of a single family dwelling or factory built housing. Transactions exempt from the statement of compliance requirement are essentially the same as the exemptions to the TDS law.

PRACTICE POINTER. A seller exempt from the statement of compliance requirement may nevertheless voluntarily choose to provide the statement to the buyer to establish written verification that the smoke detectors are in compliance.

The Seller's Duties

Unless exempt, a seller must not only comply with the smoke detector requirements, but also provide the buyer with a statement of compliance.

PRACTICE POINTER. Sellers and listing agents may use C.A.R.'s Standard Form **Water Heater and Smoke Detector Statement of Compliance** (Form WHSD) to satisfy the statement of compliance requirement for smoke detectors.

The smoke detector installation requirements are as follows:

- **DWELLINGS BUILT OR REMODELED ON OR AFTER AUGUST 14, 1992:** Smoke detectors must be located in each bedroom and centrally located outside each sleeping area. For a split-level property, a smoke detector must be located on the upper level, even if the bedrooms are located on the lower level. For newly built dwellings, the smoke detector must be hard wired with a battery backup. The wiring must be permanent and contain no disconnecting switch (other than those required for overcurrent protection). The smoke detector must emit a signal when the batteries are low and must sound an alarm audible in all sleeping areas of the dwelling unit in which they are located.

- **DWELLINGS BUILT BEFORE AUGUST 14, 1992 (AND NOT REMODELED ON OR AFTER AUGUST 14, 1992):** A smoke detector must be centrally located in the corridor or area giving access to each sleeping area. For example, a two story home with bedrooms upstairs and downstairs would need at least two smoke detectors – one in the hallway outside the bedroom(s) upstairs and one in the hallway outside the bedroom(s) downstairs. The smoke detector may be battery operated if approved and listed with the State Fire Marshal.

- **MULTIPLE-DWELLING COMPLEXES:** A smoke detector must be installed in any common stairwell.

For purposes of this regulation, “remodeled on after August 14, 1992” refers to a dwelling remodeled, altered, or repaired after August 13, 1992 in an amount exceeding \$1,000 and for which a permit is required, or if a bedroom is added, regardless of the amount. Dwellings remodeled on or after August 14, 1992 must meet the same requirements stated above as newly built dwellings, except that the smoke detectors may be battery operated.

Local Ordinances

Property owners may be required to comply with more stringent local regulations than state law. Affected parties should check the smoke detector requirements, if any, with the local fire department or the city or county building and safety department.

The Landlord's Rights and Duties

A smoke detector must be operable at the time the tenant takes possession. An apartment complex tenant must notify the landlord or manager if the tenant becomes aware of an inoperable smoke detector within his or her unit. Upon receiving notice from the tenant, the landlord or landlord’s agent must correct any deficiencies in the smoke detector. Absent notice from the tenant, the landlord or landlord’s agent will not be in violation of the smoke detector requirements. However, for lodging houses and the common stairwells in

multiple dwelling complexes, the owner is responsible for testing and maintaining the smoke detectors.

An owner or owner's agent may enter any dwelling unit to install, repair, test, and maintain single station smoke detectors. Except in cases of emergency, the owner or owner's agent must give the tenant reasonable notice in writing of the intention to enter and shall enter only during normal business hours. Twenty four hours shall be presumed reasonable notice in the absence of evidence to the contrary.

PRACTICE POINTER. The landlord or landlord's agent may use C.A.R.'s Standard Form **Notice of Entry** (Form NOE) to provide a tenant with written notice of an intent to enter to install, repair, test, or maintain a smoke detector.

Source: California Health & Safety Codes Sections 13113.7, 13113.8, and 18029.6; State Fire Marshal Bulletin (Regs 92-04, dated August 31, 1992).

Water Heater Bracing

Overview

Water heaters that overturn during earthquakes pose a serious threat to our safety. If a water heater is not securely anchored, its movement during an earthquake can obviously cause injury and property damage. What may not be as obvious is that water heater movement may also cause damage to gas lines, water lines, and electrical wiring, which may result in fire, explosion, and electrocution. California law therefore requires all water heaters to be braced, anchored, or strapped to resist falling or horizontal displacement due to earthquake motion. Water heaters must be secured according to the California Plumbing Code or as modified by local authorities.

The Division of the State Architect of the Department of General Services has prepared installation instructions with diagrams for the strapping, bracing, and anchoring of water heaters in single-family homes that comply with the legal requirements. This publication is called Guidelines of Earthquake Bracing of Residential Water Heaters and is available at the California Seismic Safety Commission's Web site at www.seismic.ca.gov/HOG/waterheaterbracing_08-11-04.pdf.

Applicability

The water heater bracing requirement applies to all existing residential water heaters, as well as all new and replacement water heaters. A water heater is defined under this law as any standard water heater with a capacity of not more than 120 gallons for which a pre-engineered strapping kit is readily available. Additionally, a certification requirement applies to the seller of any real property containing a water heater. There are no specific exemptions to

these rules. There are no exemptions for probate sales, foreclosure sales, or other sales.

The Seller's Duties

Any property owner's residential water heater must be braced, anchored or strapped to resist falling or horizontal displacement due to earthquake motion. The seller of any real property containing a water heater must also certify in writing to the prospective buyer that the water heater has been properly secured. This certification must stand alone. It cannot be included a real estate sales contract, TDS, or other transactional documents. Cal. Health & Safety Code Section 19211(b).

PRACTICE POINTER. Sellers and listing agents may use C.A.R.'s standard form Water Heater and Smoke Detector Statement of Compliance (Form WHSD) to satisfy this requirement.

The Landlord's Duties

As with any other property owner, a landlord's residential water heater must be braced, anchored or strapped to resist falling or horizontal displacement due to earthquake motion. A landlord cannot evict anyone on the basis that eviction is required to comply with water heater bracing requirements.

Source: California Health & Safety Code Sections 19210 and 19211.

Appendix

Downloadable Files

If you have Adobe Acrobat Reader installed, you can view and print these files offline. To view a file, click on its link, or SHIFT and right-click to save it to your computer. The file sizes are provided to allow you to gauge the download time for each file.

Course Content

[Disclosures...What You Need to Know!](#) (file size: 369k)

Additional C.A.R. Publications and Tools

Publications

- ***Your Guide to the California Residential Purchase Agreement:***
An in-depth look at C.A.R.'s purchase agreement. Learn what's new with the form as well as how to complete it step-by-step. Suggested Member Price \$11.95

- ***Your Guide to the Listing Process***: Walks the agent through the entire listing process. Includes prospecting tips to help get listings, listing presentation steps, how to fill out the C.A.R. Form RLA, the escrow process once an offer is accepted, and follow-up tips after closing. Suggested Member Price \$14.95.

- ***The Residential Real Estate Transaction Guide***: This practical guide walks you through a typical residential real estate transaction step-by-step. From getting a listing agreement to getting paid! Suggested Member Price \$14.95.

- ***The Relationship Between You and The Buyer in a Residential Real Estate Transaction***: This newly revised booklet explains how to work effectively with buyers while utilizing C.A.R.'s Buyer Representation forms. Suggested Member Price \$9.95.

- ***Minimizing Legal Problems in a Real Estate Transaction***: Get acquainted with the basics of lawsuits, the legal basis for filing complaints, alternatives to court and practical advice for minimizing risk. Suggested Member Price \$14.95.

- ***New Agent JumpStart™ Guide***: This guide will help you in all aspects of getting started: From creating a marketing plan, to prospecting, working with buyers and sellers, and explaining the escrow process. Suggested Member Price \$14.95

- ***Office Policy Manual – Policies and Procedures***: This manual is the definitive answer to running a real estate office and comes with a computer disk for easy customization. A must for every office. Suggested Member Price \$39.95

- ***Office Policy Manual – for Assistants and Transactional coordinators***: This manual is the answer for real estate office assistants and transaction coordinators. It comes with a computer disk for easy customization. A necessity for every office assistant and transaction coordinator. Suggested Member Price \$29.95

Other Tools

- ***New Agent JumpStart™ Kit***: This how to kit enables the new agent to dive into their real estate career with confidence and with a competitive edge. Includes conveniently pre-assembled forms to start a buyer or seller side transaction and four key publications including the New Agent QuickStart™ Guide. Value of contents sold separately \$70.00. Suggested Member Price \$49.95

- ***Transaction Training Kit (Formerly Platinum Risk Management Kit)***: A collection of reference publications for the Broker/Manager. Sold separately, the retail value is approximately \$244.00. Suggested Member Price \$149.00

- ***Gold Risk Management Kit***: A collection of reference publications for the top producer. Sold separately, the retail value is approximately \$174.00. Suggested Member Price \$89.00

- ***Transaction Survival Kit (Formerly Silver Risk Management Kit)***: A collection of reference publications for the agent. Sold separately, the retail value is approximately \$92.00. Suggested Member Price \$44.00

- ***Transaction Management Tool***

- ***RELAY™***: Recently introduced to assist you in your real estate transactions – C.A.R. has released a transaction management system called RELAY™ to help you conduct a virtually “paperless” transaction. To obtain more information about RELAY™ , please visit www.rebt.com.

Final Exam

You have now completed reviewing the contents of this course.

[» Click Here to Launch the Final Exam](#)