Introduction

Caveat emptor, a Latin phrase meaning, let the buyer beware, is becoming a thing of the past. The buyer was put on notice to examine the property and buy it at his or her own risk. Now, several consumer protection laws place the responsibility of disclosing the condition of the property on the seller and the broker. As buying and selling of real property becomes more complex, so do the required disclosures. As a real estate agent, you will be required to guide all parties through the disclosure minefield.

Learning Objectives

After reading this unit, you should be able to:

• define disclosures.
• discuss the Real Estate Transfer Disclosure Statement (TDS).
• identify required disclosures in real estate.
• discuss how disclosure violations can be remedied.
• explain the legal consequences of not disclosing information and state two specific examples.
Disclosures Required in Agency Relationships

As we learned, brokers work within a legal relationship called agency. The agency relationship exists between the broker, as agent, and the principal. The essence of the agency relationship is that the agent has the authority to represent the principal in dealings with others. Agents and their sales associates are legally obligated to protect and promote the interests of their principals as they would their own.

Although homebuyers and sellers use the services of real estate agents, most of them have limited understanding of the agency representation. Therefore, real estate agents are required to discuss and complete the Agency Relationship Disclosure form at the first personal meeting with potential sellers or buyers. The disclosure form gives your potential clients the opportunity to find out who will represent them and if there are conflicts of interest.

Disclosures Required in a Real Estate Transfer

One of the most critical responsibilities imposed on real estate licensees is the duty of full disclosure. It is your responsibility to make sure you comply with the law for each disclosure required. Many of the required disclosures are enumerated in the deposit receipt, and it is your job to explain each one to your clients and customers.

Real estate agents must be prepared to meet the duties and obligations required by law. If real estate agents do not comply with the law, they may be subject to civil, criminal, and/or Department of Real Estate action and penalties. All over the country, courts and legislatures are continuing to hold real estate agents accountable for their activities. Increasingly, real estate agents must know what and how to disclose—as well as when, where, why, by, and to whom. The uninformed real estate agent is highly vulnerable to court action in our consumer-oriented society.

Easton v. Strassburger

The case of Easton v. Strassburger, 152 C.A. 3d 90, is about a home built on a landfill that had not been properly compacted, but was listed for sale. The owner did not tell the listing broker about the landslide problem that had developed as a result of the poor engineering on the slope. The property was sold and the buyer suffered a substantial loss as a result of land slippage.

In a court action, the buyer proved that one of the listing agents noticed the netting that had been placed on the slope to keep it in place, and another
agent had noticed an uneven floor in the house that had occurred as a result of the undisclosed soil problem. The court stated that the red flags should have indicated to the real estate agents there was a problem, and the problem should have been investigated. A **red flag** is something that alerts a reasonably observant person of a potential problem. Typically a red flag could include cracks in walls, foundations, and sidewalks; or stains from leaks in the roof, and similar items.

The court ruled that a broker has the duty to inspect a property and disclose any material facts affecting its value. A broker is required to uncover any reasonably discoverable problems and tell all interested parties. No property may be sold “as is” without a complete disclosure of the defect, even though a broker might possess a disclaimer of liability for the defect. The phrase “as is” in real estate refers to observable conditions. An “as is” clause does not relieve a seller from the responsibility to disclose all known material facts to the buyer. However, an “as is” clause indicates that the seller will not be responsible for the cost of repairing any defect. Real estate licensees should continue to encourage sellers to disclose any known defects in the property.

**Visual Inspection**

The *Easton v. Strassburger* case findings stated real estate agents could be liable for defects in property that they know about as well as defects that they should know about as a result of a visual investigation. All listing brokers of a residential property and any cooperating brokers must conduct a reasonably competent and diligent visual inspection of the property. Additionally, they must disclose to a prospective buyer all material facts that may affect value, desirability, and intended use of the property.

The real estate agent does not have to inspect areas of the property that are not reasonably accessible, public records, and permits. If the property is a condominium, the real estate agent is responsible for inspecting the unit, not the common area.

The required certification of the visual inspection is contained in the Real Estate Transfer Disclosure Statement.

**Transfer Disclosure Statement**

The **Real Estate Transfer Disclosure Statement** (TDS) is a document that the seller must provide to any buyer of residential property (one-to-four units). It is a detailed statement telling what the seller knows about the condition of the property. The statement must list all known defects as well as any potential
problems that might affect the property value. Usually a broker obtains this statement at the time the listing is taken and provides a copy to a buyer before an offer to purchase the property is presented. If the real estate agent gives a copy of the disclosure statement to the buyer after the offer to purchase the property is presented, the buyer may terminate the contract by written notice to the seller within three days after receiving the disclosure statement. A copy of this statement is included on the following pages.

The seller reveals any information that would be important to the buyer regarding the condition of the property in the TDS, and states that—to the seller’s knowledge—everything important has been disclosed. Many facts about a residential property could materially affect its value and desirability.

**Material Facts Affecting Desirability and Value of a Property**

- Age, condition, and any defects or malfunctions of the structural components and/or plumbing, electrical, heating, or other mechanical systems.
- Easements, common driveways, or fences.
- Room additions, structural alterations, repairs, replacements, or other changes, especially those made without required building permits. Flooding, drainage, or soil problems on, near, or in any way affecting the property.
- Zoning violations, such as nonconforming uses or insufficient setbacks.
- Homeowners’ association obligations and deed restrictions or common area problems.
- Citations against the property, or lawsuits against the owner or affecting the property.
- Location of the property within a known earthquake zone.
- Major damage to the property from fire, earthquake, or landslide.

Under California law, a seller of a residential property (one-to-four units) must deliver a written disclosure statement about the condition of the property to the prospective buyer. This requirement extends to 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.
REAL ESTATE TRANSFER DISCLOSURE STATEMENT
(CALIFORNIA CIVIL CODE §1102, ET SEQ.)
(C.A.R. Form TDS, Revised 11/10)

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF , COUNTY OF , STATE OF CALIFORNIA,

DESCRIBED AS

THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH SECTION 1102 OF THE CIVIL CODE AS OF (date) . IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I. COORDINATION WITH OTHER DISCLOSURE FORMS

This Real Estate Transfer Disclosure Statement is made pursuant to Section 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zone and purchase-money liens on residential property).

Substituted Disclosures: The following disclosures and other disclosures required by law, including the Natural Hazard Disclosure Report/Statement that may include airport annoyances, earthquake, fire, flood, or special assessment information, have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same:

- Inspection reports completed pursuant to the contract of sale or receipt for deposit.
- Additional inspection reports or disclosures:

II. SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S). IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

A. The subject property has the items checked below:

- Range
- Oven
- Microwave
- Dishwasher
- Trash Compactor
- Garbage Disposal
- Washer/Dryer Hookups
- Rain Gutters
- Burglar Alarms
- Carbon Monoxide Device(s)
- Smoke Detector(s)
- Fire Alarm
- TV Antenna
- Satellite Dish
- Intercom
- Central Heating
- Central Air Conditioning
- Evaporator Cooler(s)
- Wall/Window Air Conditioning
- Sprinklers
- Public Sewer System
- Septic Tank
- Sump Pump
- Water Softener
- Patio/Decking
- Built-in Barbecue
- Gazebo
- Security Gate(s)
- Garage
- Attached
- Not Attached
- Carport
- Automatic Garage Door Opener(s)*
- Number Remote Controls
- Sauna
- Hot/Tub Spa
- Locking Safety Cover*
- Pool
- Child Resistant Barrier*
- Pool/Spa Heater
- Gas
- Solar
- Electric
- Water Heater
- Gas
- Solar
- Electric
- Water Supply
- City
- Well
- Private Utility or
- Other
- Gas Supply:
- Utility
- Bottled (Tank)
- Window Screens
- Window Security Bars
- Quick Release Mechanism on Bedroom Windows*

Exhaust Fan(s) in
Gas Stater
Roof(s) Type:
Age:
Fireplace(s) in (approx.)
Other:

Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? Yes No. If yes, then describe. (Attach additional sheets if necessary):

(see footnote on page 2)

TDS REVISED 11/10 (PAGE 1 OF 3) Reviewed by Date

REAL ESTATE TRANSFER DISCLOSURE STATEMENT (TDS PAGE 1 OF 3)

Agent: Phone: Fax: Prepared using zipForm® software

Broker:
Property Address: ____________________________ Date: ____________________________

B. Are you (Seller) aware of any significant defects/malfunctions in any of the following? ☐ Yes ☐ No. If yes, check appropriate space(s) below.
☐ Interior Walls ☐ Ceilings ☐ Floors ☐ Exterior Walls ☐ Insulation ☐ Roof(s) ☐ Windows ☐ Doors ☐ Foundation ☐ Slab(s) ☐ Driveways ☐ Sidewalks ☐ Walls/Fences ☐ Electrical Systems ☐ Plumbing/Septic ☐ Other Structural Components
(Describe): 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III. AGENT'S INSPECTION DISCLOSURE

(To be completed only if the Seller is represented by an agent in this transaction.)

THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

☐ See attached Agent Visual Inspection Disclosure (AVID Form)
☐ Agent indicates no items for disclosure.
☐ Agent notes the following items:

[Blank lines for notes]

Agent (Broker Representing Seller) ____________________________ By ____________________________ Date ____________________________

(Please Print) (Associate Licensee or Broker Signature)

IV. AGENT'S INSPECTION DISCLOSURE

(To be completed only if the agent who has obtained the offer is other than the agent above.)

THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

☐ See attached Agent Visual Inspection Disclosure (AVID Form)
☐ Agent indicates no items for disclosure.
☐ Agent notes the following items:

[Blank lines for notes]

Agent (Broker Obtaining the Offer) ____________________________ By ____________________________ Date ____________________________

(Please Print) (Associate Licensee or Broker Signature)

V. BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller ____________________________ Date ____________________________ Buyer ____________________________ Date ____________________________

Seller ____________________________ Date ____________________________ Buyer ____________________________ Date ____________________________

Agent (Broker Representing Seller) ____________________________ By ____________________________ Date ____________________________

(Please Print) (Associate Licensee or Broker Signature)

Agent (Broker Obtaining the Offer) ____________________________ By ____________________________ Date ____________________________

(Please Print) (Associate Licensee or Broker Signature)

SECTION 1102.3 OF THE CIVIL CODE PROVIDES A BUYER WITH THE RIGHT TO RESCIND A PURCHASE CONTRACT FOR AT LEAST THREE DAYS AFTER THE DELIVERY OF THIS DISCLOSURE IF DELIVERY OCCURS AFTER THE SIGNING OF AN OFFER TO PURCHASE. IF YOU WISH TO RESCIND THE CONTRACT, YOU MUST ACT WITHIN THE PRESCRIBED PERIOD.

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

This form has been approved by the California Association of REALTORS® (C.A.R.) No representation is made as to the legal validity or adequacy of any provision in any specific transaction. A real estate broker is the person qualified to advise on real estate transactions. If you desire legal or tax advice, consult an appropriate professional.

The form is available for use by all real estate industry professionals. It is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by members of the National Association of REALTORS® who subscribe to its Code of Ethics.

Reviewed by ________________ Date ________________

REAL ESTATE TRANSFER DISCLOSURE STATEMENT (TDS PAGE 3 OF 3)
Transfers Exempt from the Disclosure Requirement

- Transfers pursuant to a court order
- Transfers by a foreclosure sale
- Transfers court-ordered by a fiduciary in the administration of a probate estate or a testamentary trust
- Transfers to a spouse or another related person resulting from a judgment of dissolution of marriage or of legal separation or from a property settlement agreement incidental to such a judgment
- Transfers from one co-owner to another
- Transfers by the state controller for unclaimed property
- Transfers resulting from the failure to pay taxes
- Transfers from or to any governmental entity
- Transfers of the first sale of a residential property within a subdivision and a copy of a public report is delivered to the purchaser or if such a report is not required

The required disclosure must be made to the prospective buyer as soon as possible before transfer of title, or in the case of a lease option, sales contract, or ground lease coupled with improvements, before the execution of the contract. Should any disclosure or amended disclosure be delivered after the required date, the buyer/transferee has three days after delivery in person or five days after delivery by deposit in the U.S. mail to terminate the offer or agreement to purchase. A written notice of termination must reach the seller/transferor or the seller's agent.

The seller, listing broker, and cooperating broker have the obligation to prepare and deliver the disclosure. If more than one real estate agent is involved in the transaction (unless otherwise instructed by the seller), the agent obtaining the offer is required to deliver the disclosure to the prospective buyer.

If the prospective buyer receives a report or an opinion prepared by a licensed engineer, land surveyor, geologist, structural pest control operator, contractor, or other expert (with a specific professional license or expertise), the liability of the seller and the real estate agents may be limited when making required disclosures. The overall intention is to provide meaningful disclosures about the condition of the property being transferred. A violation of the law does not invalidate a transfer; however, the seller may be liable for any actual damages suffered by the buyer.
Disclosures Included with the Transfer Disclosure Statement

**Environmental Hazard Disclosures**

Numerous federal, state, and local laws have been enacted to address the problems created by environmental hazards. Responsible parties, or persons considered responsible, for the improper disposal of hazardous waste and owners of contaminated property may be held liable for contamination cleanup.

Several disclosure laws relating to the transfer of land affected by hazardous waste contamination have been enacted. The California Real Estate Transfer Disclosure Statement requires sellers to disclose whether they are aware of the presence of hazardous substances, materials or products including—but not limited to—asbestos, formaldehyde, radon gas, lead-based paint, fuel, or chemical storage tanks, contaminated soil, water, or mold.

Any owner of nonresidential property who knows or suspects that there has been a release of a hazardous substance or that it may occur on or beneath the property must notify a buyer, lessee, or renter of that condition prior to the sale, lease, or rental of that property. Failure to give written notice may subject the owner to actual damages and/or civil penalties.

Under Proposition 65, certain businesses may not knowingly and intentionally expose any individual to a cancer-causing chemical or reproductive toxin without first giving clear, reasonable warning to such individuals. Proposition 65 has also imposed extensive asbestos disclosure requirements on owners of commercial buildings constructed prior to January 1, 1979.

**Residential Environmental Hazards Booklet**

The purpose of the Residential Environmental Hazards booklet is to help educate and inform consumers about environmental hazards that may affect real property. The booklet identifies common environmental hazards, describes the risks involved with each, discusses mitigation techniques, and provides lists
of publications and sources from which consumers can obtain more detailed information. The seller or seller’s agent should give each buyer a copy of this booklet.

**Hazards Discussed in the Residential Environmental Hazards Booklet**

- **Asbestos**: A mineral fiber used in construction materials, which has been found to cause lung and stomach cancer.
- **Radon**: A colorless gas known to cause cancer. Radon can be detected with a spectrometer.
- **Lead**: A mineral that causes major health problems.
- **Formaldehyde**: A chemical organic compound found in building materials, which may be a carcinogen.
- **Hazardous waste**: Materials—chemicals, explosives, radioactive, biological—whose disposal is regulated by the Environmental Protection Agency (EPA).
- **Household hazardous waste**: Consumer products, such as paints, cleaners, stains, varnishes, car batteries, motor oil, and pesticides that contain hazardous components.

Once the booklet is provided to a prospective buyer of real property, neither the seller nor a real estate agent involved in the sale has a duty to provide further information on such hazards. Although not required to, the buyer should read through the booklet. However, if the seller or agent has actual knowledge of environmental hazards on or affecting the subject property, that information must be disclosed on the TDS form.

**Window Security Bars**

A seller must disclose if there are window security bars on the windows and, if present, any safety release mechanism on the bars.

**Toxic Mold**

There is always a little mold everywhere—in the air and on many surfaces. **Mold** is a fungus that reproduces by means of spores. Molds themselves are not toxic or poisonous. However, certain molds are toxigenic because they can produce toxins (called mycotoxins). Currently, standards for judging what is an acceptable quantity of mold have not been established to determine toxicity. Therefore, no special disclosure requirements are in effect for toxic mold.
The California Department of Health Services is developing permissible exposure limits for toxic molds. The California Department of Health Sciences has prepared a consumer booklet on mold, which is available online. The Transfer Disclosure Statement has been modified to add the word mold in paragraph 11.C.1 and any transferor must disclose actual knowledge of mold on the property.

**Drug-Lab Illegal Controlled Substance**

The seller must inform the buyer in writing of toxic contamination by an illegal controlled substance on the property with receipt of notice from the Department of Toxic Substance Control or another agency. The seller discloses this information by checking item 11.C.1 of the TDS form or 3.B of the SSD form and attaching the DTSC notice, if there is one.

If the owner has actual knowledge of the presence of an illegal controlled substance release and knowingly and willfully fails to provide written notice to the buyer, the owner is liable for a civil penalty not to exceed five thousand dollars ($5,000) for each separate violation, in addition to any other damages provided by law.

**Industrial Use Disclosure**

The seller must disclose actual knowledge that the property is affected by or zoned for industrial use of the property. Examples of industrial use disclosure are manufacturing, commercial, or airport use. This information may be disclosed on the TDS form or the SSD form.
Military Ordnance Location

Federal and state agencies have identified certain areas once used for military training and which may contain live ammunition as part of the ordnance—or military supplies—from past activity. A seller of residential property (one-to-four dwelling units) located within one mile of such a hazard must give the buyer written notice as soon as possible before transfer of title. This obligation depends upon the seller having actual knowledge of the hazard. The location of military ordnance may be disclosed on the TDS form or SSD form.

Local Option Real Estate Transfer Disclosure Statement

If there is some local condition, which may materially affect a buyer’s use and enjoyment of residential property, an optional disclosure form may be required, called the Local Option Real Estate Transfer Disclosure Statement (LORETDS). Residential properties in cities and counties throughout California are typically subject to specific local ordinances on occupancy, zoning and use, building code compliance, fire, health and safety code regulations, and land subdivision descriptions. The various requirements for compliance as well as who and what is affected should be disclosed to the prospective buyer of the property by the seller or the seller’s agent and any agent acting in cooperation with such agent. For example, based on the Farm Practices Protection Act of 1996, many jurisdictions in the Central Valley have enacted Right to Farm ordinances to protect existing agricultural uses adjacent to new residential uses.

Mello-Roos Disclosure

Currently on purchase, property taxes are limited by Proposition 13 to a maximum of 1% of the assessed value of the property. The city, through the sale of municipal bonds, can include the cost and maintenance of infrastructure items in the property tax bill as a special assessment, exempt from the limitations of Proposition 13.

The Mello-Roos Community Facilities Act of 1982 authorizes the formation of community facilities districts, the issuance of bonds, and the levying of special taxes, which will finance designated public facilities and services. A Mello-Roos District is an area where a special tax is imposed on those real property owners within a Community Facilities District. Public services such as roads, sewers, parks, schools, and fire stations in new developments may be financed under this law.
Mello Roos Disclosure Statement
Notice of Special Tax

Community Facilities District 20-1
ABC Public Facilities Financing Agency
County of ______, State of California

To: The Prospective Purchaser of the Real Property Known as:

Address: ___________________________ Assessors Parcel Number: __________

THIS IS A NOTIFICATION TO YOU PRIOR TO YOUR PURCHASING THIS PROPERTY:

1. This property is subject to a special tax, which is in addition to the regular property taxes and other charges and benefit assessments on the parcel. This special tax may not be imposed on all parcels within the city or county where the property is located. If you fail to pay this tax when due each year, the property may be foreclosed upon and sold. The tax is used to provide public facilities or services that are likely to particularly benefit the property. You should take this tax and the benefits from the facilities and services for which it pays into account in deciding whether to buy this property.

2. The maximum annual tax to which this property is subject is ______ during the 20__ tax year and thereafter. The special tax will be levied each year until all of the authorized facilities are built and all special tax bonds are repaid.

3. The authorized facilities which are being paid for by the special taxes, and by the money received from the sale of bonds which are being repaid by the special taxes, are set forth on Exhibit A attached hereto. These facilities may not yet have all been constructed or acquired and it is possible that some may never be constructed or acquired.

4. The obligation to pay the special tax, attached to this property, was a condition required in order to permit this property to be developed. The payment of tax is intended to assure that there will be adequate capacity in the school district for the children that may come from this property. However, the payment of the special tax does not guarantee attendance at any particular school, nor does it guarantee attendance at a newly constructed school. School attendance boundaries are set by the School Board and are based on many criteria, only one of which is whether a property pays the special tax.

You may obtain a copy of the resolution of formation which authorized creation of the community facilities district, and which specifies more precisely how the special tax is apportioned and how the proceeds of the tax will be used, from the Comptroller of ABC Public Facilities Financing Agency by telephoning (555) 123-4567. There may be a charge for this document not to exceed the reasonable cost of providing this document.

I (we) acknowledge that I (we) have read this notice and received a copy of this notice prior to entering into a contract to purchase or deposit receipt with respect to the above-referenced property. I (we) understand that I (we) may terminate the contract to purchase or deposit receipt within three days after receiving this notice in person or within five days after it was deposited in the mail by giving written notice of that termination to the owner, subdivider, or agent selling the property.

Date: ___________________________
A Mello-Roos lien is placed on each parcel in a new development by the developer to pay off municipal bonds issued to fund off-site improvements for the development. The developer must make the payments on the bond until the homes are sold, and then the new owners are responsible. Mello-Roos liens are a way a developer can make improvements and have each homeowner pay for them without charging the improvements to property taxes.

Effective July 1, 1993, the seller of a property consisting of one-to-four dwelling units subject to the lien of a Mello-Roos community facilities district must make a good faith effort to obtain from the district a disclosure notice concerning the special tax and give the notice to a prospective buyer. Exempt from this requirement are the various transfers listed earlier for the Transfer Disclosure Statement. According to the California Tax Data website, Mello-Roos information should be on the property tax bill. Mello-Roos funds are used to finance subdivision costs. The transferor (seller) of residential property (one-to-four units) is responsible to disclose if a property is subject to a Mello-Roos assessment.

New buyers must be told by real estate agents that a project is subject to a Mello-Roos special assessment because their tax bill will be higher than if they only paid property taxes without the special assessment.

The listing agent does not have an affirmative duty to discover a special tax district or assessment not actually known to the agent. However, information about Mello-Roos assessments may be obtained from the county tax collector’s office. The Real Estate Commissioner can discipline a real estate agent for failure to provide a Mello-Roos disclosure. Failure to give notice to a buyer or lessee (if more than five years) before signing a sales contract or lease allows the buyer or lessee a three-day right to cancel after receiving the disclosure.

**Lead-Based Paint Hazards**

The Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X) became effective on September 6, 1996 for owners of property with four or fewer units. A lead-hazard information brochure and disclosure form must be provided to a buyer or lessee by a seller or landlord. Also, the presence of any known lead-based paint must be disclosed.

This disclosure pertains to residential housing built before 1978 because the Act banned lead based paint for residential use in that year. Some pre-1978 properties, called target housing, are exempt from the disclosure.
LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS DISCLOSURE, ACKNOWLEDGMENT AND ADDENDUM
For Pre-1978 Housing Sales, Leases, or Rentals
(C.A.R. Form FLD, Revised 11/10)

The following terms and conditions are hereby incorporated in and made a part of the: ☐ California Residential Purchase Agreement; ☐ Residential Lease or Month-to-Month Rental Agreement, or ☐ Other: __________, on property known as: ____________________________, dated __________, ("Property") in which __________, ("Property") is referred to as Buyer or Tenant and __________, ("Property") is referred to as Seller or Landlord.

LEAD WARNING STATEMENT (SALE OR PURCHASE) Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for suspected lead-based paint hazards is recommended prior to purchase.

LEAD WARNING STATEMENT (LEASE OR RENTAL) Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive federally approved pamphlet on lead poisoning prevention.

EPA'S LEAD-BASED PAINT RENOVATION, REPAIR AND PAINTING RULE: The new rule requires that contractors and maintenance professionals working in pre-1978 housing, child care facilities, and schools with lead-based paint be certified, that their employees be trained, and that they follow protective work practice standards. The rule applies to renovation, repair, or painting activities affecting more than six square feet of lead-based paint in a room or more than 20 square feet of lead-based paint on the exterior. Enforcement of the rule begins October 1, 2010. See the EPA website at www.epa.gov/lead for more information.

1. SELLER'S OR LANDLORD'S DISCLOSURE
I (we) have no knowledge of lead-based paint and/or lead-based paint hazards in the housing other than the following:

________________________________________________________________________

I (we) have no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing other than the following, which, previously or as an attachment to this addendum have been provided to Buyer or Tenant:

________________________________________________________________________

I (we), previously or as an attachment to this addendum, have provided Buyer or Tenant with the pamphlet "Protect Your Family From Lead In Your Home" or an equivalent pamphlet approved for use in the State such as "The Homeowner's Guide to Environmental Hazards and Earthquake Safety."

For Sales Transactions Only: Buyer has 10 days, unless otherwise agreed in the real estate purchase contract, to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

I (we) have reviewed the information above and certify, to the best of my (our) knowledge, that the information provided is true and correct.

______________________________
Seller or Landlord

Date

______________________________
Seller or Landlord

Date

Buyer's initials ( ________ ) ( ________ )

Reviewed by __________________ Date __________________

LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS DISCLOSURE (FLD PAGE 1 OF 2)

Agent: _______________________

Phone: _______________________

Fax: _______________________

Prepared using zipForm® software
2. LISTING AGENT’S ACKNOWLEDGMENT

Agent has informed Seller or Landlord of Seller’s or Landlord’s obligations under §42 U.S.C. 4852d and is aware of Agent’s responsibility to ensure compliance.

I have reviewed the information above and certify, to the best of my knowledge, that the information provided is true and correct.

(Please Print) Agent (Broker representing Seller or Landlord) By Associate-Licensee or Broker Signature Date

3. BUYER’S OR TENANT’S ACKNOWLEDGMENT

I (we) have received copies of all information listed, if any, in 1 above and the pamphlet “Protect Your Family From Lead in Your Home” or an equivalent pamphlet approved for use in the State such as “The Homeowner’s Guide to Environmental Hazards and Earthquake Safety.” If delivery of any of the disclosures or pamphlet referenced in paragraph 1 above occurs after Acceptance of an offer to purchase, Buyer has a right to cancel pursuant to the purchase contract. If you wish to cancel, you must act within the prescribed period.

For Sales Transactions Only: Buyer acknowledges the right for 10 days, unless otherwise agreed in the real estate purchase contract, to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; OR, (if checked) □ Buyer waives the right to conduct such an assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

I (we) have reviewed the information above and certify, to the best of my (our) knowledge, that the information provided is true and correct.

Buyer or Tenant Date Buyer or Tenant Date

4. COOPERATING AGENT’S ACKNOWLEDGMENT

Agent has informed Seller or Landlord, through the Listing Agent if the property is listed, of Seller’s or Landlord’s obligations under §42 U.S.C. 4852d and is aware of Agent’s responsibility to ensure compliance.

I have reviewed the information above and certify, to the best of my knowledge, that the information provided is true and correct.

Agent (Broker obtaining the Offer) By Associate-Licensee or Broker Signature Date
They include housing for the elderly and vacation housing. The seller, landlord, and real estate agent involved in the sale or rental of pre-1978 housing each have certain obligations under the new law.

**Seller/Landlord Obligations**

Sellers or landlords must:

- give buyers/tenants *Protect Your Family From Lead in Your Home* pamphlet.
- disclose all known lead-based paint and lead-based paint hazards in the dwelling and provide buyers/tenants with any available reports.
- include standard warning language as an attachment to the contract or lease.
- complete and sign statements verifying completion of requirements.
- retain the signed acknowledgment for three years.
- give buyers a 10-day opportunity to test for lead (for sale transactions only).

**Real Estate Agent Responsibilities**

Real estate agents must ensure that:

- sellers/landlords are aware of their obligations.
- sellers/landlords disclose the proper information to buyers and tenants.
- leases and sales contracts include proper disclosure language and signatures.
- sellers give buyers the opportunity to conduct an inspection for 10 days or another mutually agreed-upon time.

Real estate agents must comply with the law if the seller or landlord fails to do so. However, the agent is not responsible if an owner conceals information or fails to disclose information.

**Natural Hazard Disclosure Statement**

California took an important step to standardize natural hazard disclosure requirements in real property transactions with the passage of the Natural
Hazard Disclosure Law in 1998. In addition to the usual Transfer Disclosure Statement, the agent must give the prospective buyer a separate Natural Hazard Disclosure Statement (NHD) if the residential property lies within any of the following six statutorily specified areas:

1. a special flood hazard (Zone A or Zone V) area designated by the Federal Emergency Management Agency (FEMA).
2. an area of potential flooding in the event of a dam failure, designated by the California Office of Emergency Services.
3. a very high fire hazard severity zone designated by the California Department of Forestry and Fire Protection (CDF).
4. a designated wild land fire area that may contain substantial forest fire risks and hazards, designated by the State Board of Forestry.
5. an earthquake fault zone designated by the State Geologist.
6. a seismic hazard zone designated by the State Geologist.

All sellers and their real estate brokers must determine and disclose to prospective purchasers if a parcel is in certain officially mapped natural hazard zones (geologic, flood, and fire).

The law prescribes the contents of the Natural Hazard Disclosure Statement including a checklist. The statement warns prospective buyers: these hazards may limit your ability to develop the real property; to obtain insurance; or to receive assistance after a disaster. It also advises buyers and sellers that they may wish to obtain professional advice regarding those hazards. The disclosure must be made as soon as practicable before the transfer of title, unless the purchase contract provides for an earlier deadline. It is in the seller's and listing agent's best interest to disclose early because the buyer can annul the purchase contract during a certain period after getting the information. The rescission period is three days if the disclosures are hand-delivered or five days if the disclosures are mailed.

The new law requires six specific disclosures, but does not lessen the basic disclosure obligation a seller or agent has in telling prospective buyers of any other hazards of which they have actual knowledge.

Four of the six disclosures in the NHD statement are already required by law and deal with whether the property is located in an earthquake fault zone, a seismic hazard zone, a flood hazard area, or a state-responsibility fire area. The two new disclosures inform the buyer whether the property is located in an area subject to flooding in a dam failure or a very high fire hazard severity zone.
NATURAL HAZARD DISCLOSURE STATEMENT
(C.A.R. Form NHD, Revised 10/04)

This statement applies to the following property: ________________________________

The transferor and his or her agent(s) or a third-party consultant disclose the following information with the knowledge that even though this is not a warranty, prospective transferees may rely on this information in deciding whether and on what terms to purchase the subject property. Transferor hereby authorizes any agent(s) representing any principal(s) in this action to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

The following are representations made by the transferor and his or her agent(s) based on their knowledge and maps drawn by the state and federal governments. This information is a disclosure and is not intended to be part of any contract between the transferee and transferor.

THIS REAL PROPERTY LIES WITHIN THE FOLLOWING HAZARDOUS AREA(S):

A SPECIAL FLOOD HAZARD AREA (Any type Zone "A" or "V") designated by the Federal Emergency Management Agency.
Yes ________ No ________ Do not know and information not available from local jurisdiction ________

AN AREA OF POTENTIAL FLOODING shown on a dam failure inundation map pursuant to Section 8589.5 of the Government Code.
Yes ________ No ________ Do not know and information not available from local jurisdiction ________

A VERY HIGH FIRE HAZARD SEVERITY ZONE pursuant to Section 51178 or 51179 of the Government Code. The owner of this property is subject to the maintenance requirements of Section 51182 of the Government Code.
Yes ________ No ________

A WILDLAND AREA THAT MAY CONTAIN SUBSTANTIAL FOREST FIRE RISKS AND HAZARDS pursuant to Section 4125 of the Public Resources Code. The owner of this property is subject to the maintenance requirements of Section 4291 of the Public Resources Code. Additionally, it is not the state’s responsibility to provide fire protection services to any building or structure located within the wildlands unless the Department of Forestry and Fire Protection has entered into a cooperative agreement with a local agency for those purposes pursuant to Section 4142 of the Public Resources Code.
Yes ________ No ________

AN EARTHQUAKE FAULT ZONE pursuant to Section 2622 of the Public Resources Code.
Yes ________ No ________

A SEISMIC HAZARD ZONE pursuant to Section 2696 of the Public Resources Code.
Yes (Landslide Zone) ________ Yes (Liquefaction Zone) ________
No ________ Map not yet released by state ________

Buyer’s Initials ____________________________
Seller’s Initials ____________________________
Reviewed by ____________________________ Date ____________

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NATURAL HAZARD DISCLOSURE STATEMENT (NHD PAGE 1 OF 2)

Agent: ____________________________ Phone: ____________________________
Broker: ____________________________ Fax: ____________________________
Prepared using WINForms® software
THESE HAZARDS MAY LIMIT YOUR ABILITY TO DEVELOP THE REAL PROPERTY, TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER A DISASTER.

THE MAPS ON WHICH THESE DISCLOSURES ARE BASED ESTIMATE WHERE NATURAL HAZARDS EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A PROPERTY WILL BE AFFECTED BY A NATURAL DISASTER. TRANSFEREE(S) AND TRANSFEROR(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING THOSE HAZARDS AND OTHER HAZARDS THAT MAY AFFECT THE PROPERTY

Signature of Transferor(s) Date

Signature of Transferor(s) Date

Agent(s) Date

Agent(s) Date

Check only one of the following:

☐ Transferor(s) and their agent(s) represent that the information herein is true and correct to the best of their knowledge as of the date signed by the transferor(s) and agent(s).

☐ Transferor(s) and their agent(s) acknowledge that they have exercised good faith in the selection of a third-party report provider as required in Civil Code Section 1103.7, and that the representations made in this Natural Hazard Disclosure Statement are based upon information provided by the independent third-party disclosure provider as a substituted disclosure pursuant to Civil Code Section 1103.4. Neither transferor(s) nor their agent(s) (1) has independently verified the information contained in this statement and report or (2) is personally aware of any errors or inaccuracies in the information contained on the statement. This statement was prepared by the provider below:

Third-Party Disclosure Provider(s) Date

Transferee represents that he or she has read and understands this document. Pursuant to Civil Code Section 1103.8, the representations made in this Natural Hazard Disclosure Statement do not constitute all of the transferor’s or agent’s disclosure obligations in this transaction.

Signature of Transferee(s) Date

Signature of Transferee(s) Date
Disclosures Included on the Natural Hazard Disclosure Statement

*Special Flood Hazard Area (Any type Zone A or V)*

Flood hazard boundary maps identify the general flood hazards within a community. They are also used in flood plain management and for flood insurance purposes. These maps, developed by the Federal Emergency Management Agency (FEMA) in conjunction with communities participating in the National Flood Insurance Program (NFIP), show areas within a 100-year flood boundary, termed special flood zone areas. Also identified are areas between 100 and 500-year levels termed areas of moderate flood hazards and the remaining areas above the 500-year level termed areas of minimal risk.

A seller of property located in a special flood hazard area, or the seller's agent and/or any agent cooperating in the deal, must disclose to the buyer that federal law requires flood insurance as a condition of obtaining financing on most structures located in a special flood hazard area. Since the cost and extent of flood insurance coverage may vary, the buyer should contact an insurance carrier or the intended lender for additional information.

The Local Option Real Estate Transfer Disclosure Statement (LORETDS) also lists disclosures, providing the local jurisdiction has mandated the use of this form.

*Areas of Potential Flooding*

Designated on an inundation map are areas that may flood as the result of a dam failure. If the property is on a list of properties posted at the County Public Works/Engineering Offices, Assessors Office, Water Agencies, or Planning Agency, the seller or listing broker must disclose this information to a prospective buyer. If the owner has received federal flood disaster assistance, the seller must tell the buyer to buy flood insurance. This is disclosed on the NHD.

*Very High Fire Hazard Zone*

The seller must disclose if the property is in this zone. Properties in this zone are subject to property maintenance requirements, such as clearing brush and maintaining firebreaks. Generally, CDF requires a 30-foot clearance area around dwellings per the Public Resources Code. This disclosure is made on the NHD.
**State Fire Responsibility Area**

The Department of Forestry and Fire Protection has produced maps identifying rural lands classified as *state responsibility areas*. In such an area, the state, as opposed to a local or federal agency, has the primary financial responsibility for the prevention and extinguishing of fires. Maps of State Responsibility Areas and any changes, including new maps produced every five years, are to be provided to planning agencies in the affected counties.

Should the seller know his or her real property is located in a State Responsibility Area, or if the property is included on a map given by the department to the county assessor or planning agencies, the seller must disclose the possibility of substantial fire risk in such *wild land areas* and that the land is subject to certain preventative requirements.

With the department's agreement, and by ordinance, a county may assume responsibility for all fires, including those occurring in State Responsibility Areas. If there is such an ordinance, the seller of property located in the area must disclose to the buyer that the state is not obligated to provide fire protection services for any building or structure unless such protection is required by a cooperative agreement with a county, city, or district.

**Disclosure of Earthquake Fault Zones**

Geologists describe the surface of the earth as always changing. Some of these geological changes are relatively unimportant and do not require a disclosure. Other changes are apparent by casual inspection, i.e. they are of a nature that a potential buyer should be able to judge the impact of the existing geological condition on the intended property’s use.

In some cases, disclosure of a geological condition must be made. This is true of potential hazards from earthquakes, flooding, landslides, erosion, and expansive soils. One condition requiring such disclosure is *fault creep*, which is caused by stress and/or earthquake shaking.

Geology, in the context of the required disclosures, refers to the type of soil, and how that soil will respond to earthquakes. Soft sediments tend to amplify shaking, whereas bedrock soils tend to lessen the shaking. Generally, the closer in location to the fault, the more intense the shaking will be. However, soil types and conditions may be more important than distance from the epicenter.
The state geologist is in the process of identifying areas of the state susceptible to fault creep, to be shown on maps prepared by the State Division of Mines and Geology. These maps also identify known historic landslides. The seller or the seller’s agent and any agent acting in cooperation with such agent may usually rely on the identification of the designated earthquake fault zones by the state geologist for disclosure purposes.

In some instances, additional investigation may be required. Construction on real property of any structure for human occupancy may be subject to the findings and recommendations of a geologic report prepared by a geologist or soils engineer registered in or licensed by the state of California.

A seller of real property situated in a delineated earthquake fault zone (called special studies zones prior to 1994), or the agent of the seller and any agent acting in cooperation with such agent, must disclose to the buyer that the property is, or may be situated in such a zone as designated under the Alquist-Priolo Earthquake Fault Zoning Act.
This disclosure must be made on either the Natural Hazard Disclosure Statement (NHDS) or the Local Option Real Estate Transfer Disclosure Statement (LORETDS).

Earthquake Hazards Booklet

The Seismic Safety Commission developed a *Homeowner’s Guide to Earthquake Safety* booklet for distribution to real estate licensees and the general public. The guide includes information on geologic and seismic hazards for all areas, explanations of related structural and nonstructural hazards, and recommendations for mitigating the hazards of an earthquake. The guide states that safety or damage prevention cannot be guaranteed with respect to a major earthquake and that only precautions, such as retrofitting can be undertaken to reduce the risk of various types of damage.

If the buyer of real property receives a copy of the *Homeowner’s Guide to Earthquake Safety*, neither the seller nor the agent is required to provide additional information regarding geologic and seismic hazards. Sellers and real estate agents must disclose that the property is in a designated earthquake fault zone, however, and that there are known hazards affecting the real property being transferred.

**Requirement: Homeowner’s Guide to Earthquake Safety Booklet**

- Transfer of any real property with a residential dwelling built prior to January 1, 1960 and consisting of one-to-four units any of which are of conventional light-frame construction.
- Transfer of any masonry building with wood-frame floors or roofs built before January 1, 1975.

Certain exemptions apply to the obligation to deliver the booklet when transferring either a dwelling of one-to-four units or a reinforced masonry building. These exemptions are essentially the same as those that apply to delivery of the Real Estate Transfer Disclosure Statement described earlier in this section.

The buyer and/or agent may be responsible for making further inquiries of appropriate governmental agencies. The obligation of the buyer and/or agent to make further inquiry does not eliminate the duty of the seller’s agent to make a diligent inquiry to identify the location of the real property in relationship to a designated earthquake fault zone—and to determine whether the property is subject to any local ordinance regarding geological and soil conditions. Full and complete disclosure is required of all material facts regarding a designated
earthquake fault zone, local ordinances, or known structural deficiencies affecting the property.

The Seismic Safety Commission also has published the booklet *Commercial Property Owner's Guide to Earthquake Safety*. Each buyer receives a copy of DRE/OEHHA or the Seismic Safety Commission booklet from the seller or seller's agent.

**Megan’s Law (Data Base Disclosure)**

Every lease and sales contract is required to include a statutorily defined notice regarding the existence of public access to data base information regarding sex offenders in the neighborhood.

**Furnishing Controlling Documents**

The owner (other than a subdivider) of a separate legal share in a common interest development (community apartment project, condominium project, planned development, or stock cooperative) must provide a prospective buyer with the following:

- a copy of the governing documents of the development.
- should there be an age restriction not consistent with the law, a statement that the age restriction is only enforceable to the extent permitted by law, and applicable provisions of the law.
- a copy of the homeowners’ associations’ most recent financial statement.
- a written statement from the association specifying the amount of current regular and special assessments as well as any unpaid assessment, late charges, interest and costs of collection that are or may become a lien against the property.
- any information on any approved change in the assessments or fees not yet due and payable as of the disclosure date.
- a preliminary list of construction defects if the association has commenced or plans to commence an action for damages against the developer.
- after resolution, by settlement agreement or otherwise, of a dispute between the association and developer regarding construction defects, a general description of the defects that will be corrected; the association’s estimate of when the corrections will be completed; and the status of any claims for other defects.
HOMEOWNER ASSOCIATION INFORMATION REQUEST
FOR COMMON INTEREST DEVELOPMENTS
(C.A.R. Form HOA, Revised 11/10)

Property Address: 

Owner of Property: ________________________________________ ("Seller")
Owners Mailing Address: ________________________________________

To: Homeowner Association______________________________________ ("HOA")
Pursuant to California Civil Code §1368 and the request of Seller, within 10 calendar Days from the date of this request, please provide to Seller the items or information listed on page 2 at the mailing address indicated above, or (if checked) to □

______________________________________________________________

On page 2, please indicate whether the item is attached or not available. In the Explanation column provide the information requested, indicate if the item is not applicable or otherwise explain.

Seller or Seller's Agent __________________________________________ Date ___________________

The documents and information provided by the HOA referenced above were provided by:

(print name) Its
(title)

By signing below, the undersigned acknowledges that each has read, understands and has received a copy of this Homeowner Association Information Request.

Seller ___________________________ Date ___________________

Seller ___________________________ Date ___________________

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HOA REVISED 11/10 (PAGE 1 OF 2)
# HOMEOWNER ASSOCIATION INFORMATION REQUEST
## FOR COMMON INTEREST DEVELOPMENTS

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By

By

Title

Date

Date

I acknowledge receipt of a copy of each item checked above. This document may be executed in counterparts.

By

Date

By

Date

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This form has been approved by the California Association of REALTORS® (C.A.R.). No representation is made as to the legal validity or adequacy of any provision in any specific transaction. A real estate broker is the person qualified to advise on real estate transactions. If you desire legal or tax advice, consult an appropriate professional.

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Reviewed by

Date

HOMEOWNER ASSOCIATION INFORMATION REQUEST (HOA PAGE 2 OF 2)
Death and/or AIDS

Real estate agents must be careful when making disclosures about stigmatized properties. A stigmatized property, as defined by NAR, is a property that has been psychologically impacted by an event which occurred, or was suspected to have occurred, on the property, such event being one that has no physical impact of any kind. The most common properties associated with stigmatized property are those in which there have been murders, suicides, or criminal activity.

Neither the transferor (seller/lessor) nor the agent has to disclose the fact of any death that occurred on the property to the transferee if the death was more than 3 years prior to the current date. However, if a death occurs on a property within 3 years and the circumstances of that death are material (gruesome, offensive, or affected the reputation of the property), it must be disclosed. (Civil Code § 1710.2) Since it is difficult to judge what is considered material, it is better to disclose a death if it occurred within the last 3 years and let the buyer decide if it is a material fact. Death of an occupant on the property may be disclosed on the SSD form.

Owners and the agents do NOT have to disclose voluntarily that a person has or has died from Acquired Immune Deficiency Syndrome (AIDS). However, if the transferee (buyer/lessee) asks a direct question about a death on the property, the seller or agent must answer their question honestly.

Seller Instruction to Exclude Listing from MLS

A broker should discuss the benefits of submitting a listing to the multiple listing service (MLS) with the seller. When a seller does not want the listing submitted to the MLS, the broker should use the Seller Instruction to Exclude Listing from MLS form to document the seller’s request.

Market Conditions Advisory

Real estate market conditions are fluid; therefore, no one can guarantee that prices will continue to move in a particular direction. The Market Conditions Advisory form is used to document that a broker discussed market conditions with a buyer. In addition, it also advises about the risks of making non-contingent offers or removing contingencies.

Disclosures in Financing

One of the purposes of financing disclosures is to help consumers become better shoppers for loan and settlement services. The required disclosures are given to borrowers at various times during the transaction. Some disclosures spell out the costs associated with the loan or the settlement, outline lender
SUPPLEMENTAL STATUTORY
AND CONTRACTUAL DISCLOSURES
(C.A.R. Form SSD, Revised 11/09)

1. Seller makes the following disclosures with regard to the real property or manufactured home described as
situated in ____________________________, Assessor's Parcel No. ____________, County of ____________, California, "(Property)."

2. THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER AND ARE NOT THE REPRESENTATIONS
OF THE AGENT(S), IF ANY. THIS DISCLOSURE STATEMENT IS NOT A WARRANTY OF ANY KIND BY THE
SELLER OR ANY AGENT(S) AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE
PRINCIPAL(S) MAY WISH TO OBTAIN. A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE
TRANSACTIONS. IF SELLER OR BUYER DESIRE LEGAL ADVICE, CONSULT AN ATTORNEY.

3. Are you (Seller) aware of any of the following? (Explain any "yes" answers below.)
   A. Within the last 3 years, the death of an occupant of the Property upon the Property. □ Yes □ No
   B. An Order from a government health official identifying the Property as being contaminated by
      methamphetamine. (If yes, attach a copy of the Order.) □ Yes □ No
   C. The release of an illegal controlled substance on or beneath the Property. □ Yes □ No
   D. Whether the Property is located in or adjacent to an "industrial use" zone
      (In general, an area once used for military training purposes that may contain potentially explosive munitions.)
      □ Yes □ No
   E. Whether the Property is affected by a nuisance created by an "industrial use" zone
      □ Yes □ No
   F. Whether the Property is located within 1 mile of a former federal or state ordnance location
      □ Yes □ No
   G. Whether the Property is a condominium or located in a planned unit development or other
      common interest subdivision
      □ Yes □ No
   H. Insurance claims affecting the Property within the past 5 years
      □ Yes □ No
   I. Matters affecting title of the Property
      □ Yes □ No
   J. Material facts or defects affecting the Property not otherwise disclosed to Buyer
      Explanation, or □ (if checked) see attached.
      □ Yes □ No

4. Seller represents that the information herein is true and correct to the best of Seller's knowledge as of the date signed by
   Seller. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a Copy of this
   statement to any person or entity in connection with any actual or anticipated sale of the Property.
   Seller ____________________________ Date ____________________________
   Seller ____________________________ Date ____________________________

5. By signing below, Buyer acknowledges Buyer has received, read, and understands this Supplemental Statutory
   and Contractual Disclosures form.
   Buyer ____________________________ Date ____________________________
   Buyer ____________________________ Date ____________________________

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servicing and escrow account practices, and describe business relationships between settlement service providers.

Typically, financial disclosures include the Seller Financing Disclosure Statement, Mortgage Loan Disclosure Statement, Adjustable-Rate Loan Disclosure, Lender Compensation Disclosure, Real Estate Settlement Procedures Act, Truth-in-Lending Act (Reg Z), and the Equal Credit Opportunity Act (ECOA).

Subdivision Disclosures

Subdividers and developers are subject to laws designed to protect buyers when purchasing or leasing lots or parcels in new subdivisions.

Public Report of the Subdivided Lands Law

The Subdivided Lands Law is designed to protect buyers from fraud, misrepresentation, or deceit in the marketing of subdivided lots, parcels, units, and undivided interests in new subdivisions. This even applies to lands outside the state, if they are being marketed in California. Before any subdivision can be offered for sale in California, the Real Estate Commissioner must determine that the offering meets certain standards and issue a public report. The public report is a document disclosing all important facts about the property, its marketing and the financing of the subdivision. These disclosures may alert a potential buyer to any negative aspects in the subdivision (e.g., natural or environmental hazards, unusual costs, restrictions, easements, or financing arrangements). The public report must show that the subdivider (owner) can complete and maintain all improvements and that the lots or parcels can be used for the purpose for which they are being sold.

Use of Public Report

Before a subdivider can sell each lot in the project, he or she must give a copy of the Commissioner’s final report to the prospective buyer for approval. The buyer signs a receipt for the report on a form approved by the Commissioner stating it has been read. The seller (subdivider) must keep a copy of the statement for three years. The subdivider must post a notice in the sales office that says that a copy of the public report must be given to any member of the public who asks for it. The public report is valid for five years with any material changes in the development reported to the Commissioner, who then can issue an amendment to the original report.
Violations - Penalties

Anyone who is found guilty of violating the Subdivided Lands Law is punishable by a maximum fine of $10,000; imprisonment for up to one year in the county jail or state prison; or by both fine and imprisonment. The district attorney of each county is responsible for prosecuting violators. In addition to possible fine and imprisonment, the Real Estate Commissioner may impose disciplinary actions for violations of the Subdivided Lands Law.

Preliminary Public Report

It can take many months for a developer to get project approval, once all the proper paperwork is submitted to the Commissioner. During that time, the developer may want to begin marketing the project while waiting for the final report. By submitting a minimum application filing package, the developer can get a preliminary public report, which allows taking reservations for the project, but not accepting any non-refundable money or entering into any binding contracts until receiving the final report from the Commissioner. Preliminary public reports have a one-year term and may be renewed.

Interstate Land Sales Full Disclosure Act

This federal law regulates land sales when there are two or more states involved. Subdividers must conform to this law if they have 25 or more lots in one state and want to sell them in another state. A public report from the U.S. Department of Housing and Urban Development (HUD) must be given to each prospective buyer as a protection from less-than-truthful advertising in far-away places.

Other Disclosures

Staying informed is probably the most important task left to the real estate agent. Those who make continuing efforts to learn and stay current on the real estate industry will be the ones to successfully compete in the future. Two excellent sources of current information are the California Department of Real Estate (www.dre.ca.gov) and for members, the California Association of REALTORS® (www.car.org).

Pest Control Inspection and Certification Reports

The law does not require that a structural pest control inspection be performed on real property prior to transfer. Should an inspection report and certification be required as a condition of transfer or obtaining financing, it
must be done as soon as possible. Before transfer of title or before executing a real property sales contract, the selling agent must deliver to the buyer a copy of the report. There must also be written certification attesting to the presence or absence of wood-destroying termites in the visible and accessible areas of the property. Such an inspection report and written certification must be prepared and issued by a registered structural pest control company.

Upon request from the party ordering such a report, the company issuing the same must divide it into two categories: one to identify the portions of the property where existing damage, infection, or infestation are noted; and the other to point out areas that may have impending damage, infection, or infestation. Lenders usually require that any infestation or damage discovered in part one of the report be corrected prior to close of escrow. The cost of correction is usually paid for by the seller. Since part two of the inspection report does not show actual infestation—just a potential, the seller is not obligated to correct it.

Generally, there is more than one real estate agent in the transaction; the agent who obtained the offer is responsible for delivering the report unless the seller has given written directions regarding delivery to another agent involved in the transaction. Delivery of the required documents may be in person or by mail to the buyer. The real estate agent responsible for delivery must retain for three years a complete record of the actions taken to effect delivery. Anyone can get a copy of the pest control report by requesting it from the Structural Pest Control Board and paying a fee.

**Smoke Detector Statement of Compliance**

Whenever a sale or exchange of a single-family dwelling occurs, the seller must provide the buyer with a written statement representing that the property is in compliance with California law regarding smoke detectors. The state building code mandates that all existing dwelling units must have a smoke detector installed in a central location outside each sleeping area. In a two-story home with bedrooms on both floors, at least two smoke detectors would be required.

New construction, or any additions, alterations, or repairs exceeding $1,000 and for which a permit is required, must include a smoke detector installed in each bedroom and also at a point centrally located in a corridor or area outside the bedroom(s). This standard applies for the addition of one or more bedrooms, no matter what the cost. In new home construction, the smoke detector must be hard-wired with a battery backup. In existing dwellings, the detector may be only battery operated.
WATER HEATER AND SMOKE DETECTOR
STATEMENT OF COMPLIANCE
(C.A.R. Form WHSD, Revised 11/10)

Property Address: ____________________________

NOTE: A seller who is not required to provide one of the following statements of compliance is not necessarily exempt from the obligation to provide the other statement of compliance.

WATER HEATER STATEMENT OF COMPLIANCE

1. STATE LAW: California Law requires that all new and replacement water heaters and existing residential water heaters be braced, anchored or strapped to resist falling or horizontal displacement due to earthquake motion. "Water heater" means any standard water heater with a capacity of no more than 120 gallons for which a pre-engineered strapping kit is readily available. (Health and Safety Code §19211d). Although not specifically stated, the statute requiring a statement of compliance does not appear to apply to a property installed and bolted tankless water heater for the following reasons: If there is no tank that can overheat, pre-engineered strapping kits for such devices are not readily available, and bolting already exists that would help avoid displacement or breakage in the event of an earthquake.

2. LOCAL REQUIREMENTS: Some local ordinances impose more stringent water heater bracing, anchoring or strapping requirements than does California Law. Therefore, it is important to check with local city or county building and safety departments regarding the applicable water heater requirements for your property.

3. TRANSFEROR'S WRITTEN STATEMENT: California Health and Safety Code §19211 requires the seller of any real property containing a water heater to certify, in writing, that the seller is in compliance with California State Law. If the property is a manufactured or mobile home, Seller shall also file a required Statement with the Department of Housing and Community Development.

4. CERTIFICATION: Seller represents that the Property, as of the Close Of Escrow, will be in compliance with Health and Safety Code §19211 by having the water heater(s) braced, anchored or strapped in place, in accordance with those requirements.

Seller
(Signature) ____________________________ (Print Name) ____________________________
Date ____________________________

The undersigned hereby acknowledges receipt of a copy of this document.

Buyer
(Signature) ____________________________ (Print Name) ____________________________
Date ____________________________

SMOKE DETECTOR STATEMENT OF COMPLIANCE

1. STATE LAW: California Law requires that (i) every single-family dwelling and factory built housing unit sold on or after January 1, 1986, must have an operable smoke detector, approved and listed by the State Fire Marshal, installed in accordance with the State Fire Marshal's regulations (Health and Safety Code §13113.8) and (ii) all used manufactured or mobile homes have an operable smoke detector in each sleeping room.

2. LOCAL REQUIREMENTS: Some local ordinances impose more stringent smoke detector requirements than does California Law. Therefore, it is important to check with local city or county building and safety departments regarding the applicable smoke detector requirements for your property.

3. TRANSFEROR'S WRITTEN STATEMENT: California Health and Safety Code §13113.8(b) requires every transfer of any real property containing a single-family dwelling, whether the transfer is made by sale, exchange, or real property sales contract (installation sales contract), to deliver to the transferee a written statement indicating that the transferor is in compliance with California State Law concerning smoke detectors. If the Property is a manufactured or mobile home, Seller shall also file a required Statement with the Department of Housing and Community Development (HCD).

4. EXCEPTIONS: Generally, a written statement of smoke detector compliance is not required for transactions for which the Seller is exempt from providing a transfer disclosure statement.

5. CERTIFICATION: Seller represents that the Property, as of the Close Of Escrow, will be in compliance with the law by having operable smoke detector(s) (i) approved and listed by the State Fire Marshal installed in accordance with the State Fire Marshal's regulations Health and Safety Code §13113.8 or (ii) in compliance with Manufactured Housing Construction and Safety Act (Health and Safety Code §16629.6) located in each sleeping room for used manufactured or mobile homes as required by HCD and (iii) in accordance with applicable local ordinance(s).

Seller
(Signature) ____________________________ (Print Name) ____________________________
Date ____________________________

The undersigned hereby acknowledge(s) receipt of a copy of this Water Heater and Smoke Detector Statement of Compliance.

Buyer
(Signature) ____________________________ (Print Name) ____________________________
Date ____________________________

Buyer
(Signature) ____________________________ (Print Name) ____________________________
Date ____________________________

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Reviewed by ____________________________ Date ____________________________

WHSD REVISED 11/10 (PAGE 1 OF 1)
Disclosures in Real Estate

- Earthquake zone
- Structural damage
- Flood zone
- Fire zone
- Noise
- Meth lab

Stigmatized Property

- Haunted house
- Cemetery
- Criminal activity
- Nuclear power plant
Certification Regarding Water Heater’s Security Against Earthquake

Water heaters are the cause of many common problems in an earthquake. If they are not secured, they can fall and break gas or electrical lines and cause a fire as well as cause extensive water damage.

The seller of any residential property must certify, in writing, to the buyer that all water heaters have been braced, anchored, or strapped in accordance with local requirements to resist falling in an earthquake. The certification can be included in a transaction document, including, but not limited to, the Homeowner’s Guide to Earthquake Safety, the real estate purchase contract or receipt for deposit, or the Real Estate Transfer Disclosure Statement.

The seller of any residential property must certify, in writing, to the buyer that all water heaters have been braced, anchored, or strapped in accordance with local requirements to resist falling in an earthquake. Water heaters may be wrapped in an insulation blanket.

Energy Conservation Retrofit and Thermal Insulation Disclosures

State law prescribes minimum energy conservation standards for all new construction. Local governments also have ordinances that impose additional energy conservation measures on new and/or existing homes. Some local ordinances impose energy retrofitting as a condition of the sale of an existing
home. The seller and/or agent should disclose to a prospective buyer the requirements of the various ordinances, as well as who is responsible for compliance. Federal law requires that a new home seller (including a subdivider) disclose in every sales contract the type, thickness, and R-value (resistance to heat loss) of the insulation that has been or will be installed.

**Foreign Investment in Real Property Tax Act**

Both federal and state tax laws are affected by the Foreign Investment in Real Property Tax Act (FIRPTA). In both cases, the buyer is responsible for making sure either the proper disclosures have been made and/or the proper funds have been set aside. Generally, the broker and escrow agent make sure this is done. All documents must be kept by the broker and the buyer for five years.

**Federal FIRPTA Disclosure**

Federal law requires that a buyer of real property must withhold and send to the Internal Revenue Service (IRS) 10% of the gross sales price if the seller of the real property is a foreign person.

**Exceptions**

The following are exceptions from the FIRPTA withholding requirement:

- The buyer must sign a Buyer’s Affidavit of Residency, stating whether he or she is a resident or citizen, that the sales price of the property does not exceed $300,000, and that the property will be used as a residence.
- The seller, under penalty of perjury, must sign a Seller’s Affidavit of Nonforeign Status, stating that he or she is not a foreigner.
- The seller gives the buyer a qualifying statement obtained through the IRS saying arrangements have been made for the collection of or exemption from the tax.

Due to the number of exceptions and other requirements relating to this law, it is recommended that the IRS be consulted. Sellers and buyers and the real estate agents involved who desire further advice should consult an attorney, CPA, or other qualified tax advisor.

**California FIRPTA Disclosure**

California law requires that if property is sold by a non-citizen of the United States or a resident of another state, the buyer must withhold 3 1/3 % of the total sales price as state income tax and deliver the sum withheld to the State Franchise Tax Board. The escrow holder, in applicable transactions, is required by law to notify the buyer of this responsibility.
SOLER’S AFFIDAVIT OF NONFOREIGN STATUS AND/OR CALIFORNIA WITHOUTHOLDING EXEMPTION
FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA)
AND CALIFORNIA WITHOUTHOLDING LAW
(Use a separate form for each Transferor)
(C.A.R. Form AS, Revised 11/06)

Internal Revenue Code (IRC) Section 1445 provides that a transfer of a U.S. real property interest must withhold tax if the transferee is a "foreign person." California Revenue and Taxation Code Section 18962 provides that a transfer of a California real property interest must withold tax unless an exemption applies.

I understand that this affidavit may be disclosed to the Internal Revenue Service and to the California Franchise Tax Board by the transferee, and that any false statement I have made herein may result in a fine, imprisonment or both.

1. PROPERTY ADDRESS (property being transferred): __________________________ (“Property”)
2. TRANSFEROR’S INFORMATION:
   Full Name: ____________________________
   Telephone Number: ____________________
   Telephone Number: ____________________
   Address: ____________________________
   (Use IRS address for individual transferees. Use OFFICE address for an "Entity" i.e.: corporations, partnerships, limited liability companies, trusts and estates.)
   Social Security No., Federal Employer Identification No. or California Corporation No.

Note: In order to avoid withholding by providing this affidavit, IRC Section 1445 (b) (2) requires a Seller to provide the Buyer with the Seller’s taxpayer identification number (“TIN”).

3. AUTHORITY TO SIGN: If this document is signed on behalf of an Entity Transferor, THE UNDERSIGNED INDIVIDUAL DECLARES THAT HE/SHE
   WHOLLY AUTHORIZES TO SIGN THIS DOCUMENT ON BEHALF OF THE TRANSFEROR.
   (For individual Transferees) I am a nonresident alien for purposes of U.S. Income Taxation.
   (For Corporation, partnership, limited liability company, trust and estate Transferee) The Transferor is not a foreign corporation, foreign partnership, foreign limited liability company, foreign trust or foreign estate, as those terms are defined in the Internal Revenue Code and Income Tax Regulations.

4. FEDERAL LAW: I, the undersigned, declare under penalty of perjury that, for the reason checked below, if any, I am exempt (or if signed on behalf of an Entity Transferor, the Entity is exempt) from the federal withholding law (FIRPTA):
   (For individual Transferees) I am a nonresident alien for purposes of U.S. Income Taxation.
   (For Corporation, partnership, limited liability company, trust and estate Transferee) The Transferor is not a foreign corporation, foreign partnership, foreign limited liability company, foreign trust or foreign estate, as those terms are defined in the Internal Revenue Code and Income Tax Regulations.

5. CALIFORNIA LAW: I, the undersigned, declare under penalty of perjury, that, for the reason checked below, if any, I am exempt (or if signed on behalf of an Entity Transferor, the Entity is exempt) from the California withholding law.

Certifications which fully exempt the sale from withholding:

☐ The total sales price for the Property is $100,000 or less.
☐ The Property qualifies as my principal residence (or the decedent’s, if being sold by the decedent’s estate) within the meaning of IRC Section 121 (owned and occupied for at least two of the last five years).
☐ The Property was last used as my principal residence (or the decedent’s, if being sold by the decedent’s estate) within the meaning of IRC Section 121 without regard to the two-year-time period.
☐ The transaction will result in a loss or zero gain for California income tax purposes. (Complete FTB Form 593-L)
☐ The Property has been compulsorily or involuntarily converted (within the meaning of IRC Section 1033) and Transferor intends to acquire property similar or related in service or use to be eligible for nonrecognition of gain for California income tax purposes under IRC Section 1033.
☐ Transferor is a corporation classified as a corporation that is either qualified through the California Secretary of State or has a permanent place of business in California.
☐ Transferor is a partnership (or an LLC that is not a disregarded single member LLC, classified as a partnership) and recorded title to the Property in the name of the partnership or LLC. If the partnership or LLC must withhold from nonresident partners or members as required.
☐ Transferor is exempt from tax under California or federal law.
☐ Transferor is an insurance company, qualified pension/profit-sharing plan, IRA or charitable remainder trust.

☐ The Property qualifies as my principal residence (or the decedent’s, if being sold by the decedent’s estate) within the meaning of IRC Section 121 (owned and occupied for at least two of the last five years).
☐ The Property was last used as my principal residence (or the decedent’s, if being sold by the decedent’s estate) within the meaning of IRC Section 121 without regard to the two-year-time period.
☐ The transaction will result in a loss or zero gain for California income tax purposes. (Complete FTB Form 593-L)
☐ The Property has been compulsorily or involuntarily converted (within the meaning of IRC Section 1033) and Transferor intends to acquire property similar or related in service or use to be eligible for nonrecognition of gain for California income tax purposes under IRC Section 1033.
☐ Transferor is a corporation classified as a corporation that is either qualified through the California Secretary of State or has a permanent place of business in California.
☐ Transferor is a partnership (or an LLC that is not a disregarded single member LLC, classified as a partnership) and recorded title to the Property in the name of the partnership or LLC. If the partnership or LLC must withhold from nonresident partners or members as required.
☐ Transferor is exempt from tax under California or federal law.
☐ Transferor is an insurance company, qualified pension/profit-sharing plan, IRA or charitable remainder trust.

☐ The Property is being, or will be, exchanged for property of like kind within the meaning of IRC Section 1031.
☐ The Property is subject to an installment sale, that Transferor will report as such, and Buyer has agreed to withhold on each principal payment instead of withholding the full amount at the time of transfer.
☐ As a result of the sale of the Property, Seller’s tax liability, calculated at the maximum tax rate regardless of Seller’s actual rate, will be less than 3.13% withholding otherwise required. Seller will be required to sign a certification, under penalty of perjury, specifying the amount to be withheld. (Not to be used for sales closing prior to January 1, 2007)

By:
(Transferor’s Signature) (Indicate if you are signing as the grantor of a revocable/grantor trust.)

Date:

Buyer’s unauthorized use or disclosure of Seller’s TIN could result in civil or criminal liability.

Buyer
(Buyer acknowledges receipt of a Copy of this Seller’s Affidavit)

Buyer
(Buyer acknowledges receipt of a Copy of this Seller’s Affidavit)

Type or print name: ____________________________

Title: ____________________________

(If signed on behalf of Entity Transferor)

Date: ____________________________

Reviewed by: ____________________________

Date: ____________________________

AS REVISED 11/06 (PAGE 1 OF 2)

SELLER’S AFFIDAVIT OF NONFOREIGN STATUS AND/OR CALIFORNIA WITHOUTHOLDING EXEMPTION (AS PAGE 1 OF 2)

Agent: ____________________________

Phone: ____________________________

Fax: ____________________________

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A buyer’s failure to withhold and deliver the required sum may result in penalties. Should the escrow holder fail to notify the buyer, penalties might be levied against the escrow holder.

**Transactions Subject to the Law**

- Seller shows an out-of-state address, or sale proceeds are to be disbursed to the seller’s financial intermediary.
- Sales price exceeds $100,000.
- Seller does not certify that he or she is a California resident, or that the property being conveyed is his or her personal residence.

Remember, both the buyer and the agent are responsible for making sure this law is observed. The paperwork is usually completed through escrow.

*For further information, contact the Franchise Tax Board. Their website is www.ftb.ca.gov.

**Transactions Exempt from the Law**

- Sales price is $100,000 or less.
- Home is the seller’s principal residence.
- Seller signs the Seller’s Affidavit of Nonforeign Status and the Buyer’s Affidavit of Residency for California.

**Notice of Supplemental Property Tax Bill**

A seller or his or her agent must give prospective purchasers a Notice of Supplemental Property Tax Bill (C.A.R. Form SPT). The notice informs purchasers that county assessors revalue real property at the time the ownership of the property changes. Therefore, the buyer may receive one or two supplemental tax bills, depending on when escrow closes.

**Home Inspection Notice**

A borrower, who wants an FHA loan for any residential property of one-to-four units, must receive and sign the notice called The Importance of a Home Inspection.

**Notice Regarding the Advisability of Title Insurance**

In an escrow for a sale (or exchange) of real property in which no title insurance is to be issued, the buyer (or both parties to an exchange) must receive and sign the following notice as a separate document in the escrow:
**Important:** In a purchase or exchange of real property, it may be advisable to obtain title insurance in connection with the close of escrow where there may be prior recorded liens and encumbrances which affect your interest in the property being acquired. A new policy of title insurance should be obtained in order to ensure your interest in the property that you are acquiring.

While the law does not expressly assign the duty, it is reasonable to assume that the escrow holder is obligated to deliver the notice. A real estate agent conducting an escrow also would be responsible for delivering the notice.

**Disclosure of Sales Price Information**

A broker must inform both buyer and seller, in writing, the sale price on a property within one month of close of escrow. The Escrow Closing Statement meets this requirement.

**Commissions**

A notice printed in 10-point type must be given to the person paying the Real Estate Commission that commissions are negotiable.

A broker can share his or her commission with an unlicensed buyer or seller if the broker discloses this to all parties.

**Summary**

One of the most important tasks that a real estate agent will perform is the duty of full disclosure. Full disclosure includes property defects, environmental hazards, ordinances, and special taxes. Real estate agents are legally required to explain disclosures to their clients and customers. If the real estate agent does not comply with California disclosure law, they become vulnerable to court action.

The **real estate agent** is responsible for documenting on the **Real Estate Transfer Disclosure Statement** (TDS) all visual and known defects found on the property. The buyer receives a copy of the TDS before the offer to purchase the property. If the buyer receives a copy of the TDS after the offer to purchase the property, the buyer has the option of terminating the contract within three days after receiving the statement.

The list of real estate disclosures is long and detailed. Included in the disclosure list are **Mello-Roos**, Megan’s Law, association financial statements, pest control, smoke detectors, and water heater stabilization. Additional disclosure information includes real estate commissions, real estate taxes, and land sales.
The real estate agent also provides the buyer with written material to help educate and inform the consumer. Examples of written material are the Natural Hazard Disclosure Statement, Protect Your Family From Lead in Your Home, and Homeowner’s Guide to Earthquake Safety. Once the buyer receives the printed material, the real estate agent is not obligated to provide additional information.

Local residential properties in cities and counties in California typically have zoning ordinances and building, health, and safety codes. These ordinances have an effect on a potential buyer’s use and enjoyment of residential property. The seller or real estate agent may need to complete an optional form for local disclosures (the Local Option Real Estate Transfer Disclosure Statement). The buyer also receives a copy of this form from the seller or real estate agent.

A real estate agent needs to remain current on all California disclosures or risk court action.
UNIT 7 REVIEW

Matching Exercise

Instructions: Write the letter of the matching term on the blank line before its definition. Answers are in Appendix B.

Terms
A. 100-year flood
B. as is
C. asbestos
D. caveat emptor
E. Easton v. Strassburger
F. fault creep
G. FIRPTA
H. formaldehyde
I. hazardous household waste
J. hazardous waste
K. lead
L. Mello-Roos District
M. mold
N. public report
O. radon
P. red flag
Q. stigmatized property
R. Subdivided Lands Law
S. target housing
T. Transfer Disclosure Statement (TDS)

Definitions
1. _______ Term stating the seller will not be responsible for the cost of repairing any defect.
2. _______ Materials—chemicals, explosives, radioactive, biological—which disposal is regulated by the EPA.
3. _______ Housing exempt from the lead based paint disclosure.
4. _______ Something that alerts a reasonably observant person of a potential problem.
5. _______ Boundary indicating areas of special flood zone areas.
6. _______ A fungus that reproduces by means of spores.
7. _______ State law designed to protect buyers when buying property in new subdivisions.
8. _______ A colorless, odorless, gas that is a carcinogen and can be detected by a spectrometer.
9. _______ A detailed statement telling what the seller knows about the condition of the property.

10. _______ Consumer products, such as paints, cleaners, stains, varnishes, car batteries, motor oil, and pesticides that contain hazardous components.

11. _______ Special tax is imposed on real property owners within a Community Facilities District.

12. _______ A mineral fiber used in construction materials, which has been found to cause lung and stomach cancer.

13. _______ Movement along an earthquake fault caused by stress and/or earthquake shaking.

14. _______ A chemical organic compound found in building materials, which may be a carcinogen.

15. _______ Tax withholding requirement if the seller of the real property is a foreign person.

**Multiple Choice Questions**

Instructions: Circle your response and go to Appendix B to read the complete explanation for each question.

1. The phrase “as is” in real estate refers to _______ conditions.
   a. habitable
   b. observable
   c. concealed
   d. any and all

2. A private seller advertises a single-family home for sale “as is”. Since the seller is not using the services of a real estate broker, the seller:
   a. has met the legal requirement of caveat emptor by putting the term “as is” in the newspaper advertisement.
   b. is not obliged to disclose any defects in the property because the property is being sold “as is”.
   c. must give a Real Estate Transfer Disclosure Statement to prospective buyers.
   d. is not obliged to give a Real Estate Transfer Disclosure Statement to prospective buyers.
3. Broker Dana had a listing on a residential property and showed it to prospective Buyer Brown. Brown agreed to accept the property in an “as is” condition and submitted an offer, which was accepted by the seller. Although Dana knew there was a major plumbing problem that was not apparent to an ordinary prudent person, Dana did not tell Brown. After escrow closed, Brown discovered the plumbing problem, and sued the seller for damages on grounds of fraud. In this instance, the lawsuit would probably be:
   a. unsuccessful because the “as is” provision in the deposit receipt shows there is a mutual understanding of possible defects.
   b. unsuccessful because the deposit receipt prepared by the buyer specifically states that the buyer agreed to accept the property in an “as is” condition.
   c. successful because the duty to disclose a material fact cannot be avoided by using an “as is” clause.
   d. unsuccessful because an “as is” provision refers only to obvious structural defects.

4. Chris sells a house to Jordan using the services of broker Logan. Shortly after buying the house, Jordan discovers a serious leak in the roof. Chris stated that he had told broker Logan about the leaking roof when broker Logan came to the house for the listing appointment. What legal recourse is available to Jordan?
   a. Jordan could sue Chris and Logan; Chris in turn has a claim against Logan.
   b. Jordan could sue Chris, provided that there was no “as is” clause in the purchase agreement.
   c. Jordan could sue broker Logan for failure to disclose a material fact.
   d. Jordan has no recourse because the doctrine of caveat emptor applies.

5. During negotiations for the purchase of a house, the buyer was never informed that the house was served by a septic tank. Escrow closed and the buyer moved in. What recourse does the buyer have?
   a. Revoke the offer.
   b. Rescind the contract with the seller.
   c. Sue the broker.
   d. Sue the title company.

6. A Real Estate Transfer Disclosure Statement is required in the _________ of one-to-four residential units.
   a. sale
   b. lease
   c. foreclosure
   d. all of the above
7. Pat’s home suffered damage to the foundation during an earthquake that caused the house to settle and created cracks down the walls. Pat didn’t want to absorb the cost of repairing the damage so he just covered the cracked walls with new wallpaper and fresh paint and had new carpet and flooring installed to make the home move-in ready. Then he listed the property with broker Jordan, not mentioning any of the damage. Broker Jordan made a visual inspection and did not notice any obvious problems. Jordan marketed the home as move-in ready and in pristine condition. Buyer Davis bought the home and did not discover the damage until six months later. Under these circumstances:
   a. both Pat and Jordan are open to civil action, and Jordan has later recourse against Pat.
   b. only Jordan is liable because he had a duty to disclose material facts to the buyer.
   c. only Pat is liable because he withheld information from Jordan.
   d. nothing happens, according to the doctrine of caveat emptor.

8. Regarding environmental hazards, what should the listing broker and seller disclose to a prospective buyer?
   a. Give a copy of the Environmental Hazards booklet to the buyer.
   b. Disclose any known environmental hazards to the buyer.
   c. Complete the Transfer Disclosure Statement.
   d. All of the above

9. Seller Sam listed his newer ranch-style home built in 2002 with broker Bob. Regarding the lead based paint disclosure, Sam must:
   a. give the buyer the pamphlet, Protect Your Family From Lead in Your Home.
   b. complete statements verifying completion of the disclosure requirements.
   c. must give the buyers a 10-day opportunity to test for lead.
   d. do none of the above.

10. Broker Logan took a listing on a residential property and now is filling out the Natural Hazard Disclosure Statement. Which of the following is not included in the NHDS?
    a. Flood hazard
    b. Seismic hazard
    c. Mold hazard
    d. Fire hazard
11. When a condominium is sold, the seller must, upon request, provide to the buyer:
   a. CC&Rs.
   b. bylaws.
   c. financial statements.
   d. all of the above

12. A broker took a listing on a property where a person died from AIDS. Does the broker have to disclose this information?
   a. Yes, the broker must disclose all material facts.
   b. No, the broker does not have to voluntarily disclose this information.
   c. Yes, but only if the death was within the previous three years.
   d. No, the law does not allow this disclosure to be made.

13. In the sale of real property, a copy of the structural pest control certification report, if requested, must be given to the:
   a. broker.
   b. escrow company.
   c. lender.
   d. buyer.

14. A pest-control company discovered no evidence of termite infestation or infection in a house offered for sale. But it did discover conditions that are likely to lead to infestation or infection. The cost of correcting such conditions is:
   a. always paid by the seller.
   b. always paid by the buyer.
   c. split 50/50 by the seller and the buyer.
   d. paid by the buyer only if he or she wishes to have these conditions corrected.

15. A copy of an inspection report filed by a licensed structural pest control operator may be obtained, for a fee, from the Structural Pest Control Board by:
   a. anyone.
   b. the seller only.
   c. the buyer only.
   d. only the seller or the buyer or their respective agent.