Disclosures in Real Estate

Unit 7



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.

Unless exempt, when people sell their homes, or any 1-4 residential property, they must give the buyers several statutory disclosures and reports regarding the condition of the property and any matters known to seller affecting title, whether of record or not. **Statutory disclosures** are those that are required by statute or law. Additionally, there are optional disclosures and reports that the buyers or lender may require. Sometimes the sellers will need to fill out and sign a form; other times the sellers (or broker) give the buyers informational booklets.

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 completing this Unit, you should be able to:

6A indicate disclosures required in a real estate transfer.

6B recall subdivision disclosures required by federal and state laws.

6C name other disclosures pertinent to real estate transactions.

SELLER'S STATUTORY DISCLOSURES

The Purchase Agreement itemizes several statutory disclosures that the sellers must provide the buyers within specified timeframes. The listing agent must ensure that the sellers are aware of their obligations regarding these disclosures and the timeframes in which the disclosure must be given to the buyers. Delivery of these statutory disclosures is important because the buyers can cancel the Purchase Agreement if the sellers have not delivered the disclosures within the time specified in the Purchase Agreement.

As a result of the *Easton v. Strassburger* case, real estate agents must perform a visual inspection of the property and sellers must complete a Transfer Disclosure Statement.

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; 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.

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. [CC §2079].

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. Depending on the brokerage firm's practices, the listing agent also may need to complete an **Agent Visual Inspection Disclosure** form (AVID).

Transfer Disclosure Statement

The **Real Estate Transfer Disclosure Statement** (TDS) is a statutory disclosure that most sellers of residential property (1-4) must provide to prospective buyers.

Disclosing Material Facts

The TDS is a detailed statement telling what the seller knows about the condition of the property. The sellers must disclose, in writing, any and all known **material facts** that affect the value of their property whether the buyers ask or not. Even if a home is sold "as is" in its present condition, the seller must disclose any observable **(patent)** defects as well as any hidden **(latent)** defects. The "**as is**" language in the contract gives notice of patent defects and means that the buyer accepts the property in the condition in which it is **reasonably observable by him or her**. Selling a property "as is" means that the seller is not going to fix any of the problems.

Material Facts that Could Affect 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
- Presence of **window security bars**, with/without any quick-release safety release mechanisms on the bars
- Common walls, fences or driveways
- Easements or encroachments
- 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

Material Facts that Could Affect Desirability and Value of a Property (continued)

- Major damage to the property from fire, earthquake, or landslide
- 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

Sellers must disclose whether they are aware of the presence of substances, materials or products that may be an **environmental hazard** including—but not limited to—asbestos, formaldehyde, radon gas, lead-based paint, mold, fuel or chemical storage tanks, and contaminated soil or water on the property. 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 Sciences has prepared a consumer booklet on mold, which is available online.



Toxic mold can generally be found in kitchens and bathrooms.

Timing of the TDS

Usually the listing broker obtains the TDS 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. If the TDS is delivered to the prospective buyer after the required date, the buyer/transferee has 3 days after delivery in person or 5 days after delivery by deposit in the 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.

Sellers Exempt from the TDS Requirements

Under California law, a seller of a residential property (1-to-4 units) must prepare and deliver a written residential transfer disclosure statement to the prospective buyer. This requirement extends to any transfer by: sale, exchange, installment land sale contract, lease-option, or ground lease coupled with improvements.

Transfers Exempt from the Disclosure Requirement

- Transfers from one co-owner to another
- Transfers to a spouse or another related person resulting from a dissolution of marriage, legal separation, or a property settlement agreement
- Transfers pursuant to a court order, foreclosure sale, or probate estate sale
- 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 newly constructed home in a subdivision, provided a copy of a public report is delivered to the purchaser

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REAL ESTATE TRANSFER DISCLOSURE STATEMENT

(CALIFORNIA CIVIL CODE §1102, ET SEQ.)
(C.A.R. Form TDS, Revised 4/14)

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.

Seller ☐ is ☐ is not occupying the property.

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
☐ Water-Conserving Plumbing Fixtures

Exhaust Fan(s) in _____ 220 Volt Wiring in _____ Fireplace(s) in _____
☐ Gas Starter _____ ☐ Roof(s): Type: _____ Age: _____ (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 note on page 2)

Buyer's Initials (_____) (_____) Seller's Initials (_____) (_____)

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Reviewed by _____ Date _____

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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/Sewers/Septics ☐ Other Structural Components

(Describe: _____)

If any of the above is checked, explain. (Attach additional sheets if necessary.): _____

*Installation of a listed appliance, device, or amenity is not a precondition of sale or transfer of the dwelling. The carbon monoxide device, garage door opener, or child-resistant pool barrier may not be in compliance with the safety standards relating to, respectively, carbon monoxide device standards of Chapter 8 (commencing with Section 13260) of Part 2 of Division 12 of, automatic reversing device standards of Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of, or the pool safety standards of Article 2.5 (commencing with Section 115920) of Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code. Window security bars may not have quick-release mechanisms in compliance with the 1995 edition of the California Building Standards Code. Section 1101.4 of the Civil Code requires all single-family residences built on or before January 1, 1994, to be equipped with water-conserving plumbing fixtures after January 1, 2017. Additionally, on and after January 1, 2014, a single-family residence built on or before January 1, 1994, that is altered or improved is required to be equipped with water-conserving plumbing fixtures as a condition of final approval. Fixtures in this dwelling may not comply with section 1101.4 of the Civil Code.

C. Are you (Seller) aware of any the following:

1. Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, mold, fuel or chemical storage tanks, and contaminated soil or water on the subject property . . . . . ☐ Yes ☐ No
2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property . . . . . ☐ Yes ☐ No
3. Any encroachments, easements or similar matters that may affect your interest in the subject property . . . . . ☐ Yes ☐ No
4. Room additions, structural modifications, or other alterations or repairs made without necessary permits. . . . . ☐ Yes ☐ No
5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes. . . . ☐ Yes ☐ No
6. Fill (compacted or otherwise) on the property or any portion thereof . . . . . ☐ Yes ☐ No
7. Any settling from any cause, or slippage, sliding, or other soil problems . . . . . ☐ Yes ☐ No
8. Flooding, drainage or grading problems . . . . . ☐ Yes ☐ No
9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides . . . . . ☐ Yes ☐ No
10. Any zoning violations, nonconforming uses, violations of "setback" requirements . . . . . ☐ Yes ☐ No
11. Neighborhood noise problems or other nuisances . . . . . ☐ Yes ☐ No
12. CC&R's or other deed restrictions or obligations . . . . . ☐ Yes ☐ No
13. Homeowners' Association which has any authority over the subject property . . . . . ☐ Yes ☐ No
14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others) . . . . . ☐ Yes ☐ No
15. Any notices of abatement or citations against the property . . . . . ☐ Yes ☐ No
16. Any lawsuits by or against the Seller threatening to or affecting this real property, claims for damages by the Seller pursuant to Section 910 or 914 threatening to or affecting this real property, claims for breach of warranty pursuant to Section 900 threatening to or affecting this real property, or claims for breach of an enhanced protection agreement pursuant to Section 903 threatening to or affecting this real property, including any lawsuits or claims for damages pursuant to Section 910 or 914 alleging a defect or deficiency in this real property or "common areas" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others) . . . . . ☐ Yes ☐ No

If the answer to any of these is yes, explain. (Attach additional sheets if necessary.): _____

D. 1. The Seller certifies that the property, as of the close of escrow, will be in compliance with Section 13113.8 of the Health and Safety Code by having operable smoke detector(s) which are approved, listed, and installed in accordance with the State Fire Marshal's regulations and applicable local standards.

2. The Seller certifies that the property, as of the close of escrow, will be in compliance with Section 19211 of the Health and Safety Code by having the water heater tank(s) braced, anchored, or strapped in place in accordance with applicable law.

Buyer's Initials (_____) (_____)

Reviewed by _____ Date _____

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Property Address: _____ Date: _____

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller _____ Date _____

Seller _____ Date _____

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 notes no items for disclosure.
☐ Agent notes the following items: _____

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 notes no items for disclosure.
☐ Agent notes the following items: _____

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.

I/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.

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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.

Exempt Seller Disclosure

Some brokers use this form in addition to the "Transfer Disclosure Statement." The form includes the following representations made by the seller, which are not representations of the agents.

Disclosures Included on the ESD

- Death on the property
- Methamphetamine contamination or release of an illegal controlled substance on or beneath the property
- Industrial use zone location
- Military ordnance location
- Common interest homeowner's association
- Insurance claims affecting the property
- Matters affecting title of the property
- Undisclosed material facts or defects affecting the property
- Any non-compliant plumbing fixtures as defined by Civil Code §1101.3

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EXEMPT SELLER DISCLOSURE

(C.A.R. Form ESD, Revised 12/15)

1. Seller (☐ landlord) makes the following disclosures with regard to the real property or manufactured home described as _____, situated in _____ (City), _____ (County), California, _____ (Zip Code) Assessor's Parcel No. _____ ("Property").
2. Under California law (Civil Code §1102, et seq.) most Sellers of real property containing 1-4 residential units are required to provide prospective Buyers with a completed Real Estate Transfer Disclosure Statement ("TDS"). Certain Sellers are exempt from completing the TDS but not exempt from making other disclosures. Sellers who are not legally required to complete a TDS can use this form to make other required disclosures, including the disclosure of material facts of which they are aware.
3. **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.**
4. **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 ☐ Yes ☐ No (In general, a zone or district allowing manufacturing, commercial or airport uses.)
   - **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 ordinance location ☐ Yes ☐ No (In general, an area once used for military training purposes that may contain potentially explosive munitions.)
   - **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 ☐ Yes ☐ No

   Explanation, or ☐ (if checked) see attached; _____
5. 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/Landlord _____ Date _____
   Seller/Landlord _____ Date _____
6. **By signing below, Buyer acknowledges Buyer has received, read, and understands this Exempt Seller Disclosure form.**

   Buyer/Tenant _____ Date _____
   Buyer/Tenant _____ Date _____

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Stigmatized Property

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, illness, or criminal activity.

Death

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 before the transferee (buyer/lessee) made an offer to buy or lease the property. 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 ESD form.

AIDS/HIV

Owners and the agents do NOT have to disclose that an occupant of a property was living with human immunodeficiency virus (HIV) or died from AIDS-related complications. [Civil Code §1710.2(1)(B)].

Stigmatized Property


Haunted house


Cemetery



Criminal activity


Nuclear power plant

Registered Sex Offenders (Megan's Law)

Every lease and sales contract is required to include a statutorily defined notice regarding the existence of public access to data base information regarding registered sex offenders in the neighborhood. Seller and brokers are not required to check the website (www.meganslaw.ca.gov). If a buyer wants more information, a broker should recommend that the buyer obtain information from the website during the buyer's inspection contingency period. Real estate licensees do not have expertise in this area.

Clean-up of Illegal Drug-Labs

No one wants a meth lab as a neighbor. The use and production of methamphetamine use may contaminate the property by hazardous chemicals. In the event a property is contaminated by an illegal controlled substance, the owner may receive **clean-up order** from the California Department of Toxic Substances Control (DTSC) or a local health officer. When selling or renting the property, the owner must give a copy of this order to the prospective buyer or tenant. The seller discloses this information on the ESD form and attaches the DTSC notice, if there is one.

If the owner knowingly and willfully fails to provide written notice to the buyer, the owner is liable for a civil penalty not to exceed $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 ESD form. [CC §1102.17].

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 **military 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 ESD form. [CC §1102.15].

Condominium/Planned Development Disclosure

If the property is a condominium, townhouse, or other property in a common interest subdivision, the seller must provide the buyer with copies of the governing documents, the most recent financial statements distributed, and other documents required by law or contract of the homeowners' association. This information should be affirmed on the **Homeowner Association Information Request** form.

Disclosure of Insurance Claims

Because the seller is required to disclose any known insurance claims on the property within the last 5 years, it is a good idea for sellers to order a **CLUE report**. CLUE is short for **Comprehensive Loss Underwriting Exchange**. This report shows any insurance claims that were made on the property within the past 5 years. The report includes the date of the claim, the name of the insurance company involved, policy number, claim number, address, cause of loss, amounts paid, status of the claim, and the name of the insured and the claimant.

Disclosure of Title Matters and Material Facts

The seller must disclose all known **title matters** to the buyer, even those not recorded. A seller (transferor) or real estate agent involved in the transaction must disclose any known material facts that affect the value or desirability of the property. Whether or not something is deemed material is determined by case law.

Natural Hazard Disclosure Statement

The Natural Hazard Disclosure Law of 1998, requires sellers to give buyers the **Natural Hazard Disclosure Statement** (NHD). The NHD warns prospective buyers that certain "hazards may limit their ability to develop the real property, to obtain insurance, or to receive assistance after a disaster." 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 six statutorily specified areas:

All sellers and their listing agents 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 3 days if the disclosures are hand-delivered or 5 days if the disclosures are mailed.

If the NHD report is prepared by a third-party expert on behalf of a seller or listing agent, additional notices, such as "Notice of Airport in Vicinity", "Notice of Right of Farm", and "Notice of Mining Operation" must be included in the report. [CA CC §1103.4(c)(1)(3)].

Special Flood Hazard Area (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 Disaster Insurance** as a condition of obtaining financing on most structures located in a special flood hazard area. Since the cost and extent of Flood Disaster Insurance coverage may vary, the buyer should contact an insurance carrier or the intended lender for additional information.

Areas of Potential Flooding

An **area of potential flooding in the event of a dam failure**, is an area designated on an **inundation map** prepared by the state Office of Emergency Services. 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.

CALIFORNIA ASSOCIATION OF REALTORS®

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 ____

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Buyer's Initials (_____) (_____)
Seller's Initials (_____) (_____)
Reviewed by _____ Date _____

EQUAL HOUSING OPPORTUNITY

Agent:	Phone:	Fax:	Prepared using WINForms® software
Broker:			

Property Address: _____ Date: _____

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 _____

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525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by _____ Date _____

EQUAL HOUSING OPPORTUNITY

Very High Fire Hazard Zone

The seller must disclose if the property is located in a **Very High Fire Hazard Severity Zone** designated by the California Department of Forestry and Fire Protection. Properties in this zone are subject to property maintenance requirements, such as clearing brush and maintaining firebreaks. Generally, the CDF requires a 30-foot clearance area around dwellings per the Public Resources Code. This disclosure is made on the NHD.

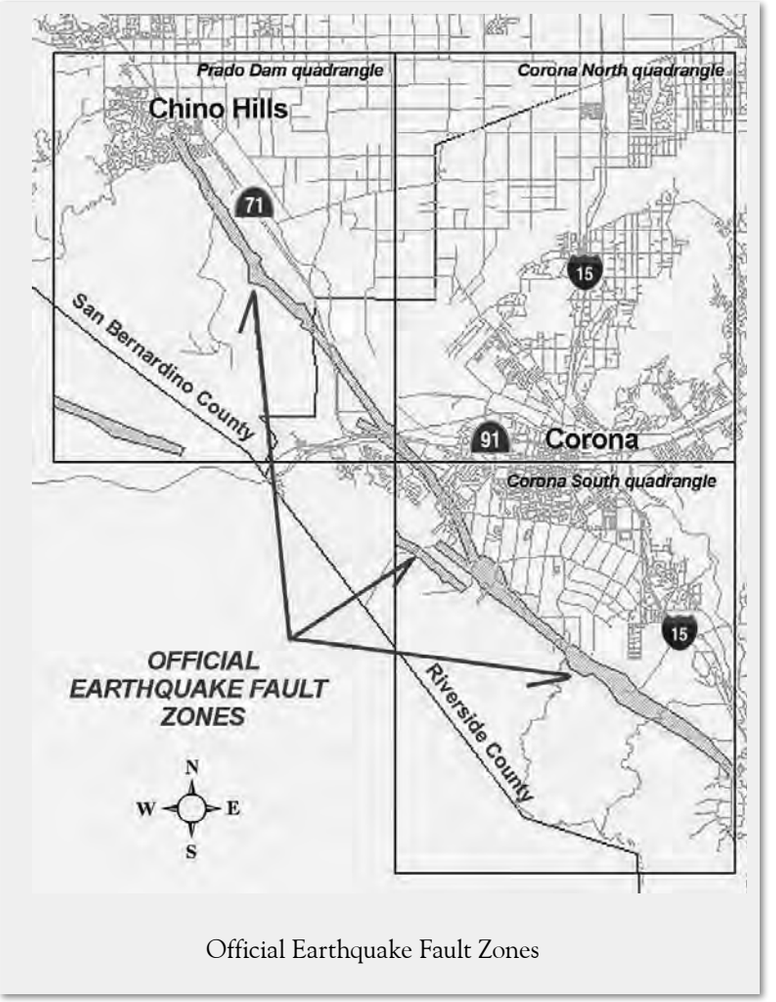
Wild Land Fire Area

A property located in a Wildland Area may be subject to forest fires and other hazards. 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. Unless there is a cooperative agreement between the Department of Forestry and Fire Protection and a local county, city, or district, the Forestry Department is NOT obligated to provide fire protection services for any building or structure in the wild land area.

For areas that are the responsibility of the Department of Forestry and Fire Protection, the department 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.

Earthquake Fault and Seismic Hazard Zones

Prompted by damaging earthquakes in northern and southern California, the State Legislature passed two laws to protect public safety from the effects of surface fault rupture and seismic hazards caused by earthquakes—the Alquist-Priolo Earthquake Fault Zoning Act (1972) and the Seismic Hazards Mapping Act (1990). The **Alquist-Priolo Earthquake Fault Zoning Act** prevents the construction of buildings for human occupancy on the surface trace of active faults. This Act addresses only the potential hazard of surface fault rupture and is not directed toward other hazards associated with earthquakes. The **Seismic Hazards Mapping Act** addresses non-surface fault rupture earthquake hazards, including liquefaction, lateral spreading, and seismically induced landslides.



Official Earthquake Fault Zones

These laws require the State Geologist to delineate various earthquake fault zones and seismic hazard zones. An **earthquake fault zone** is an area delineated by state officials to have an active fault within it and have the potential for surface rupture.

> Example: The 7.3 Landers earthquake (1992) created a 76 mile surface crack in the desert floor with as much as 18 feet of horizontal displacement and as much as 6 feet of vertical displacement. The surface fault rupture passed directly beneath/through a house in Landers, splitting it apart.

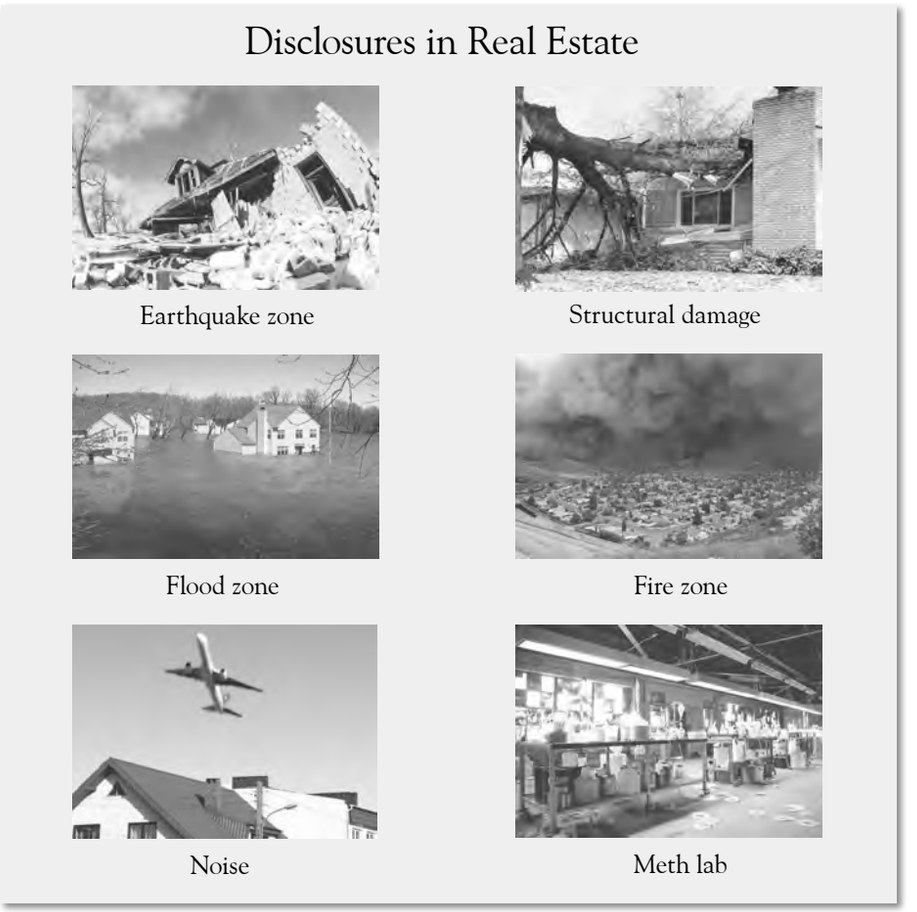
Seismic hazard zones are regulatory zones that the State has determined that a potential for liquefaction or earthquake-induced landslides may affect the property.

Example: Serious soil liquefaction occurred in the Marina District of San Francisco during the 7.1 Loma Prieta earthquake (1989). The displacement of the ground underlying the Marina District caused the vertical settlement and lateral displacement of buildings as well as the buckling of sidewalks, the cracking of asphalt pavement, and the rupture of underground pipes.

These potential hazards must be disclosed upon sale of the property and must be evaluated prior to obtaining a building or grading permit. The State Geologist prepares and issues appropriate maps that are distributed to all affected cities, counties, and state agencies for their use in planning decisions.

Disclosing Earthquake Hazards on the NHD

The fact that a property is located in an Earthquake Fault Zone or Seismic Hazard Zone must be disclosed to a potential buyer before the sales process is complete. This disclosure must be made on either the Natural Hazard Disclosure Statement (NHD) or the Local Option Real Estate Transfer Disclosure Statement (LORETDS).



Provide Informational Booklets



Depending on the age and type of construction of the property, sellers can receive limited legal protection by providing buyers with booklets titled *Residential Environmental Hazards*, *Protect Your Family from Lead in Your Home*, *Home Energy Rating System*, and the *Homeowner's Guide to Earthquake Safety*. Some booklets are mandatory and some are voluntary. They may be provided to the buyers as four separate booklets or real estate licensees who are members of the California Association of REALTORS® can provide the *Combined Hazards Book* to their sellers to give to prospective buyers. The ***Combined Hazards Book*** includes all four booklets. By giving buyers this *Combined Hazards Book*, the disclosure requirement is met. Remember, even though the listing or selling agent gives the buyers the disclosure booklets, the sellers are still responsible to complete all disclosure forms honestly and accurately.

Residential Environmental Hazards Booklet

When completing the Transfer Disclosure Statement, sellers must disclose any substances or materials that may be an environmental hazard such as asbestos, formaldehyde, radon gas, lead-based paint, mold, fuel or chemical storage tanks, and contaminated soil or water that may be present on the property.

In addition, the seller may give the buyer the ***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 their risks, discusses mitigation techniques, and provides lists of publications and sources from which consumers can obtain more detailed information.

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.

The booklet is not required, but by giving the booklet to the buyer, the seller and real estate broker are not required to provide any additional information concerning common environmental hazards. 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.

Protect Your Family from Lead in Your Home Booklet

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** (*Protect Your Family from Lead in Your Home*) and disclosure form (C.A.R. form FLD) must be provided to a buyer or lessee by a seller or landlord prior to becoming obligated under the contract. Also, the presence of any known lead-based paint must be disclosed.



Sellers or landlords must give buyers/tenants a copy of *Protect Your Family From Lead in Your Home* pamphlet.

This disclosure pertains to residential housing built before 1978, called **target housing**, because the Act banned lead based paint for residential use in that year. Target housing does not include housing for the elderly or persons with disabilities, zero-bedroom dwellings such as studio apartments, short-term vacation housing, and foreclosures.

The seller, landlord, and real estate agent involved in the sale or rental of pre-1978 housing each have certain obligations under the law.

CALIFORNIA ASSOCIATION OF REALTORS®

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: _____ _____, dated _____, on property known as: _____ ("Property") in which _____ is referred to as Buyer or Tenant and _____ 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 intelligent 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 possible 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

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Buyer's Initials (_____) (_____)

Reviewed by _____ Date _____

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Agent:	Phone:	Fax:	Prepared using zipForm® software
Broker:			

Property Address: _____ Date _____

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.

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

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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 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.

_____ _____
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.

_____ By _____
Agent (Broker obtaining the Offer) Associate-Licensee or Broker Signature Date

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Reviewed by _____ Date _____

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.

Home Energy Rating System Booklet

Sellers and/or real estate agents may give the optional ***Home Energy Rating System*** informational booklet (**HERS booklet**) concerning the statewide home energy-rating program to buyers. The delivery of this booklet is not mandatory; however, the information in the booklet is deemed adequate to inform the buyer about the existence of a statewide home energy-rating program. If the HERS booklet is delivered to the buyer, then the seller or listing agent do not have to provide any additional information regarding energy rating.



Homeowner's Guide to Earthquake Safety Booklet

Listing agents give their sellers copies of the ***Homeowner's Guide to Earthquake Safety*** booklet because known earthquake hazards must be disclosed by the seller whether the delivery of the *Homeowner's Guide to Earthquake Safety* booklet is mandatory or voluntary. [B&P Code §10149].

Mandatory Delivery – Pre 1960 Construction

A seller must deliver a copy of the ***Homeowner's Guide to Earthquake Safety*** booklet (developed by the Seismic Safety Commission) to the buyer if the home was built before 1960 or if the home is a masonry building with wood-frame floors or roofs built before January 1, 1975. Additionally, the seller must complete the Residential Earthquake Hazards Report (found at the back of the booklet) prior to giving the booklet to the buyer. Real estate licensees are required to provide sellers with copies of the *Homeowner's Guide to Earthquake Safety* booklet.

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.

Voluntary Delivery – Sale of Any Real Property

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.

COMPLY WITH OTHER CONTRACT TERMS

Sellers are responsible for to make disclosures regarding certain tax issues, compliance with statewide and local retrofit ordinances, and requirements specified by the buyer's lender.

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.



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 to 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 insure 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-references 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:

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 assessment 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.

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 a Notice of Special Tax 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. If the Notice of Special Tax is delivered to the buyer after a purchase agreement has been signed, the buyer has the right to terminate the agreement within three days of delivery in person, or five days after delivery by mail. The buyer must provide written notice of termination of the agreement to the seller or the seller's agent.

Prospective 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. [CC 1102.6b (e)].

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. CC §1102.6c].

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NOTICE OF YOUR "SUPPLEMENTAL" PROPERTY TAX BILL

(C.A.R. Form SPT, 10/05)

Name of Buyer(s) _____

Property Address _____

_____

Pursuant to Civil Code §1102.6c, Seller or his or her agent is providing this "Notice of Your 'Supplemental' Property Tax Bill":

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

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

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

Buyer acknowledges Buyer has read, understands and has received a copy of this "Notice of Your 'Supplemental' Property Tax Bill".

Buyer _____ Date _____

Buyer _____ Date _____

SAMPLE

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Foreign Investment in Real Property

Both federal and state tax laws deal with foreign investment in U.S. real property. Buyers, their real estate agents, and the settlement agent are required to withhold a percentage of proceeds from the sale of property held by a foreign person. The buyer must find out if the seller is a foreigner, because if the seller is a foreigner, and the buyer fails to withhold the tax, the buyer, the real estate agent, and escrow officer may be held liable to pay the tax.

It is the buyer's responsibility for making sure the proper disclosures have been made and/or the proper funds have been set to comply with federal (FIRPTA) and California withholding laws. However, due to the potential liability, the escrow agent and real estate agent make sure this is done. All documents must be kept by the broker and the buyer for five years.

FIRPTA

The **Foreign Investment in Real Property Tax Act** of 1980 (FIRPTA) requires BUYERS of real property to withhold and send to the Internal Revenue Service (IRS) a percentage of the gross sales price if the seller of the real property is a foreign person. Currently, the tax is 15% on all real property. The IRS allows two exceptions from this 15% tax.

Exceptions Effective February 16, 2016

- If the sales price is $300,000 or less, AND the property will be used by the buyer as a residence, there is no tax and no money is withheld.
- If the sales price is between $300,001 and $1,000,000, AND the property will be used by the buyer as a residence, then a reduced rate of 10% of the sales price is withheld and remitted to the IRS.

However, withholding funds generally is not required when the seller provides a proper certificate of non-foreign status at closing called the **Seller's Affidavit of Non-foreign Status** including a U.S. taxpayer identification number.

Additionally, the withholding obligation may be reduced or eliminated when a "**withholding certificate**" is 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.

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SELLER'S AFFIDAVIT OF NONFOREIGN STATUS AND/OR CALIFORNIA WITHHOLDING EXEMPTION

FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA) AND CALIFORNIA WITHHOLDING LAW
(Use a separate form for each Transferor)
(C.A.R. Form AS, Revised 1/16)

Internal Revenue Code ("IRC") Section 1445 provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a "foreign person." California Revenue and Taxation Code Section 18662 provides that a transferee of a California real property interest must withhold 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 _____ ("Transferor")
   Telephone Number _____
   Address _____
   (Use HOME address for individual transferors. Use OFFICE address for an "Entity" i.e.: corporations, partnerships, limited liability companies, trusts and estates.)
   Social Security No., or Federal Employer Identification No. _____
   For a corporation qualified to do business in California, California Corporation No. _____
   Note: In order to avoid withholding, IRC Section 1445 (b) requires that the Seller (a) provides this affidavit to the Buyer with the Seller's taxpayer identification number ("TIN"), or (b) provides this affidavit, including Seller's TIN, to a "qualified substitute" who furnishes a statement to the Buyer under penalty of perjury that the qualified substitute has such affidavit in their possession. A qualified substitute may be (i) an attorney, title company, or escrow company (but not the Seller's agent) responsible for closing the transaction, or (ii) the Buyer's agent.
3. **AUTHORITY TO SIGN:** If this document is signed on behalf of an Entity Transferor, THE UNDERSIGNED INDIVIDUAL DECLARES THAT HE/SHE HAS AUTHORITY TO SIGN THIS DOCUMENT ON BEHALF OF THE TRANSFEROR.
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 Transferors) I am not a nonresident alien for purposes of U.S. income taxation.
   - ☐ (For corporation, partnership, limited liability company, trust and estate Transferors) 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 as such for 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-E.)
   - ☐ 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 non-recognition of gain for California income tax purposes under IRC Section 1033.
   - ☐ Transferor is a corporation (or an LLC 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 is in the name of the partnership or LLC. If so, 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.

   Certifications which may partially or fully exempt the sale from withholding:
   - ☐ The Property is being, or will be, exchanged for property of like kind within the meaning of IRC Section 1031.
   - ☐ Payments for the Property are being made in installments, the transferor is a non-resident seller and withholding will be applied to each principal payment.
   - ☐ 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 the 3 1/3% 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 _____ Date _____
(Transferor's Signature) (Indicate if you are signing as the grantor of a revocable/grantor trust.)

_____ _____
Typed or printed name Title (If signed on behalf of Entity Transferor)

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

Buyer _____ Date _____
(Buyer acknowledges receipt of a Copy of this Seller's Affidavit)
Buyer _____ Date _____
(Buyer acknowledges receipt of a Copy of this Seller's Affidavit)

IMPORTANT NOTICE: An Affidavit should be signed by each individual or entity Transferor to whom or to which it applies. Before you sign, any questions relating to the legal sufficiency of this form, or to whether it applies to you or to a particular transaction, or about the definition of any of the terms used, should be referred to an attorney, certified public accountant, or other professional tax advisor, the Internal Revenue Service, or the California Franchise Tax Board.

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Cal-FIRPTA

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. A buyer's failure to withhold and deliver the required sum may result in penalties.

Although the law requires buyers to withhold, they can request the escrow holder to handle the withholding to meet the Cal-FIRPTA requirements.

The escrow officer gives the Franchise Tax Board Form 593-C to the sellers to complete. If the sellers are exempt, no withholding is collected. However, if the sellers are not exempt the escrow holder collects the appropriate tax and sends it to the Franchise Tax Board.

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.

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 Non-foreign Status and the Buyer's Affidavit of Residency for California.

Remember, both the buyer and escrow officer are responsible for making sure this law is observed. The paperwork is usually completed through escrow. For further information, contact the Franchise Tax Board at their website, www.ftb.ca.gov.

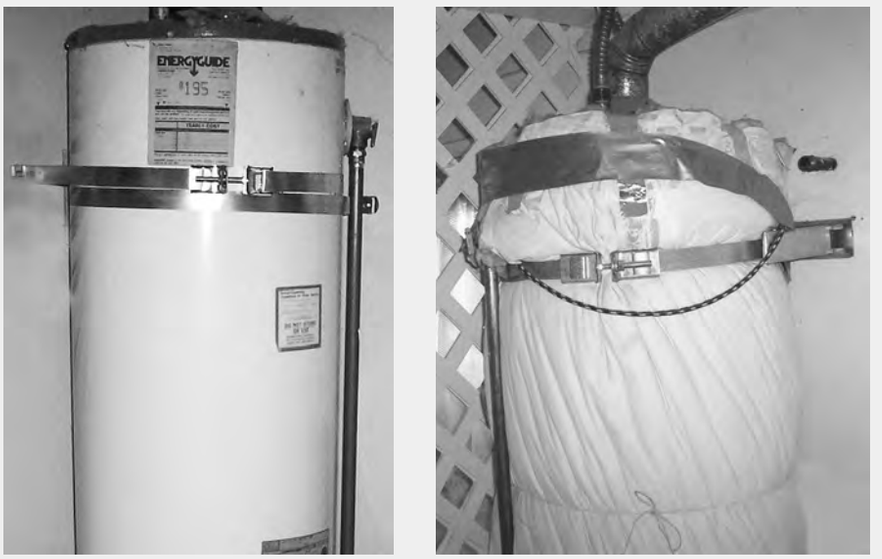
Retrofit Standards

Unless the property is exempt, the seller must comply with statewide **retrofit standards** including, but not limited to, installing operable smoke detectors, bracing water heaters, and notifying buyers whether carbon monoxide detectors are installed.

Water Heater Bracing Compliance

By the close of escrow, the sellers must conform to state and local laws regarding **water heater bracing** compliance. All residential water heaters must be braced, anchored, or strapped to resist falling due to earthquake motion.

The sellers must provide written certification to prospective buyers that the sellers have complied with the law. The seller may disclose this compliance on the Transfer Disclosure Statement or use the **Water Heater Statement of Compliance** form (WHSD). The buyers must acknowledge receipt of the form with their signatures and date.



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.

Operable Smoke Detector Compliance

By the close of escrow, the seller must also comply with state and local laws regarding **operable smoke detectors**. The seller must have a certification of having operable smoke detector(s) approved and listed by the State Fire Marshal installed in accordance with the State Fire Marshal's regulations and in accordance with applicable local ordinance(s) by signing and dating this form.

The Transfer Disclosure Statement includes a statement of compliance. However, when no TDS is used in the transaction, sellers may use the **Smoke Detector Statement of Compliance** form (WHSD). The buyers must acknowledge receipt of the form with their signatures and date.

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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 statue requiring a statement of compliance does not appear to apply to a properly installed and bolted tankless water heater for the following reasons: There is no tank that can overturn; 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 bracing, anchoring or strapping 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 _____ **Date** _____
(Signature) (Print Name)

Seller _____ **Date** _____
(Signature) (Print Name)

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

Buyer _____ **Date** _____
(Signature) (Print Name)

Buyer _____ **Date** _____
(Signature) (Print Name)

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 mobilehomes 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 transferor of any real property containing a single-family dwelling, whether the transfer is made by sale, exchange, or real property sales contract (installment 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 §18029.6) located in each sleeping room for used manufactured or mobilehomes as required by HCD and **(iii)** in accordance with applicable local ordinance(s).

Seller _____ **Date** _____
(Signature) (Print Name)

Seller _____ **Date** _____
(Signature) (Print Name)

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

Buyer _____ **Date** _____
(Signature) (Print Name)

Buyer _____ **Date** _____
(Signature) (Print Name)

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CARBON MONOXIDE DETECTOR NOTICE

(C.A.R. Form CMD, 4/12)

Property Address: _____

1. **INSTALLATION OF CARBON MONOXIDE DETECTORS:**
   A. **Requirements:** California law (Health and Safety Code sections 13260 to 13263 and 17296 to 17296.2) requires that as of July 1, 2011, all existing single-family dwellings have carbon monoxide detectors installed and that all other types of dwelling units intended for human occupancy have carbon monoxide detectors installed on or before January 1, 2013. The January 1, 2013 requirement applies to a duplex, lodging house, dormitory, hotel, condominium, time-share and apartment, among others.
   B. **Exceptions:** The law does not apply to a dwelling unit which does not have any of the following: a fossil fuel burning heater or appliance, a fireplace, or an attached garage. The law does not apply to dwelling units owned or leased by the State of California, the Regents of the University of California or local government agencies. Aside from these three owner types, there are **no other owner exemptions** from the installation requirement; it applies to all owners of dwellings, be they individual banks, corporations, or other entities. There is no exemption for REO properties.

2. **DISCLOSURE OF CARBON MONOXIDE DETECTORS:** The Health and Safety Code does not require a disclosure regarding the existence of carbon monoxide detectors in a dwelling. However, a seller of residential 1-4 property who is required to complete a Real Estate Transfer Disclosure Statement, (C.A.R. Form TDS) or a Manufactured Home and Mobile home Transfer Disclosure Statement (C.A.R. Form MHTDS) must use section II A of that form to disclose whether or not the dwelling unit has a carbon monoxide detector.

3. **COMPLIANCE WITH INSTALLATION REQUIREMENT:** State building code requires at a minimum, placement of carbon monoxide detectors in applicable properties outside of each sleeping area, and on each floor in a multi-level dwelling but additional or different requirements may apply depending on local building standards and manufacturer instructions. An owner who fails to install a carbon monoxide detector when required by law and continues to fail to install the detector after being given notice by a governmental agency could be liable for a fine of up to $200 for each violation. A transfer of a property where a seller, as an owner, has not installed carbon monoxide detectors, when required to do so by law, will not be invalidated, but the seller/owner could be subject to damages of up to $100, plus court costs and attorney fees. Buyer and Seller are each advised to consult with their own home inspector, contractor or building department to determine the exact location for installation of carbon monoxide detectors. Buyer is advised to consult with a professional of Buyer's choosing to determine whether the property has carbon monoxide detector(s) installed as required by law, and if not to discuss with their counsel the potential consequences.

4. **LOCAL REQUIREMENTS:** Some localities maintain their own retrofit or point of sale requirements which may include the requirement that a carbon monoxide detector be installed prior to a transfer of property. Therefore, it is important to check the local city or county building and safety departments regarding point of sale or retrofit requirements when transferring property.

The undersigned hereby acknowledge(s) receipt of a copy of this Carbon Monoxide Detector Notice.

Seller/Landlord _____ **Date** _____
(Signature) (Print Name)

Seller/Landlord _____ **Date** _____
(Signature) (Print Name)

Buyer/Tenant _____ **Date** _____
(Signature) (Print Name)

Buyer/Tenant _____ **Date** _____
(Signature) (Print Name)

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Carbon Monoxide Detector Compliance

The California Carbon Monoxide Poisoning Prevention Act of 2010 requires carbon monoxide detectors to be installed in every "dwelling unit intended for human occupancy" that contain a fossil fuel burning heater, appliance, or fireplace; or that have an attached garage. **Carbon monoxide** is an odorless gas produced whenever any fuel is burned. A **carbon monoxide detector** (CO detector) is a device similar to a smoke detector that signals detection of carbon monoxide in the air.

The Consumer Product Safety Commission recommends installing a CO detector in the hallway near every separate sleeping area of the home. Sellers notify buyers on the TDS whether the property has carbon monoxide devices installed. No separate compliance certification is required. If the property does not have carbon monoxide devices, the buyer may negotiate with the seller for their installation as a condition of sale.

Water-Conserving Plumbing Fixtures Disclosure

A law passed in 2010 (SB 407) requires residential and commercial properties built prior to January 1, 1994 to be retrofitted with water-conserving plumbing fixtures. **Water-conserving plumbing fixtures** include low-flow toilets, urinals, showerheads, and interior faucets.

Since 2014, any remodeling or building alterations requires the replacement of noncompliant plumbing fixtures. Effective 2017, sellers of single-family residences (2019 for sellers of multi-family residences) need to disclose whether the plumbing fixtures in their residences are water-conserving plumbing fixtures or noncompliant fixtures. [CA CC §1101].

Local Retrofit Ordinances

Many local governments impose energy retrofitting and disclosures 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.

Typical ordinances include conservation measures on new and/or existing homes including, but not limited to, installing low-flow toilets and showerheads, gas shut-off valves, tempered glass, constructing barriers around swimming pools and spas, and disclosing the **R-value** (resistance to heat loss) of the insulation that has been or will be installed in a remodel.

Real estate agents must know of these **local retrofit ordinances** in order to advise their clients of any additional conditions that must be met prior to the sale.

Pest Control Inspection and Certification Reports

The law does not require that a structural **pest control inspection** be performed prior to transfer of a real property. However, if required by the Purchase Agreement or by the lender, the seller or the seller's agent(s) must deliver to the buyer a copy of the report and written certification, prepared by a registered structural pest control company, regarding the presence or absence of wood-destroying organisms. The inspection report and written certification must be prepared and issued by a registered structural pest control company.

Typically the report is divided into two categories: part one identifies the portions of the property where existing damage, infection, or infestation are noted; and part two indicates the 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 seller usually pays for the cost of correction. Since part two of the inspection report does not show actual infestation—just a potential, the seller is not obligated to correct it.

The **Structural Pest Control Inspection & Report Clearance** must be delivered before transfer of title and be reviewed/approved by the buyer. If more than one real estate broker is acting as the seller's agent, the broker who obtained the offer is responsible for delivery of the report in person or by mail, unless the seller directs otherwise in writing. The real estate broker responsible for delivery must retain a record for 3 years. [CA B&P §8519; CA CC §1099; Commissioner's Regulation 2905)]. Anyone can get a copy of the pest control report by requesting it from the Structural Pest Control Board and paying a fee.

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 Bureau of Real Estate and for members, the California Association of REALTORS® (www.car.org).

Disclosures Agents Make to Their Clients

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** covers several important issues of concern to home buyers such as loan and appraisal contingencies, determine the offering price, and the current

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MARKET CONDITIONS ADVISORY

(C.A.R. Form MCA, Revised 11/11)

1. MARKET CONDITIONS: Real estate markets are cyclical and can change over time. It is impossible to predict future market conditions with accuracy. In a competitive or "hot" real estate market, there are generally more Buyers than Sellers. This will often lead to multiple buyers competing for the same property. As a result, in order to make their offers more attractive, some Buyers may offer more than originally planned or eliminate certain contingencies in their offers. In a less competitive or "cool" market there are generally more Sellers than Buyers, often causing real estate prices to level off or drop, sometimes precipitously. The sales price of homes being sold as foreclosures and short sales is difficult to anticipate and can affect the value of other homes in the area. Brokers, appraisers, Sellers and Buyers take these "distressed" property sales and listings into consideration when valuing property. In light of the real estate market's cyclical nature it is important that Buyers understand the potential for little or no appreciation in value, or an actual loss in value, of the property they purchase. This Advisory discusses some of the potential risks inherent in changing market conditions.

2. BUYER CONSIDERATIONS:

A. OFFERING PRICE: AS A BUYER, YOU ARE RESPONSIBLE FOR DETERMINING THE PRICE YOU WANT TO OFFER FOR A PROPERTY. Although Brokers may provide you with comparable sales data, generally from information published in the local multiple listing service, you should know that the reporting of this data is often delayed and prices may change, up or down, faster than reported sales indicate. All buyers should be sure they are comfortable with the price they are offering or the price they are accepting in a counter offer. You should be aware of and think about the following: **(i)** If your offer is accepted, the property's value may not increase and may even decrease. **(ii)** If your offer is accepted, you may have "Buyer's remorse" that you paid too much. **(iii)** If your offer is rejected there can be no guarantee that you will find a similar property at the same price. **(iv)** If your offer is rejected, you may not be satisfied that the amount you offered was right for you. Only you can determine that your offer was reasonable and prudent in light of the property and your circumstances.

B. NON-CONTINGENT OFFERS: Most residential purchase agreements contain contingencies allowing a Buyer within a specified period of time to cancel a purchase if: **(i)** the Buyer cannot obtain a loan; **(ii)** is dissatisfied with the property's condition after an inspection; or **(iii)** if the property does not appraise at a certain value. To make their offers more attractive, Buyers will sometimes write offers with few or no contingencies or offer to remove contingencies within a short period of time. In a "hot" market, sellers will sometimes insist that Buyers write offers with no contingencies. Broker recommends that Buyers do not write non-contingent offers and if you do so, you are acting against Broker's advice. However, if you do write a non-contingent offer these are some of the contractual rights you may be giving up:

(1) LOAN CONTINGENCY: If you give up your loan contingency, and you cannot obtain a loan, whether through your fault or the fault of your lender, and as a result, you do not or cannot purchase the property, you may legally be in default under the contract and required to pay damages or forfeit your deposit to the seller.

(2) APPRAISAL CONTINGENCY: If your lender's (or your own) appraiser does not believe the property is worth what you have agreed to pay for it, your lender may not loan the full amount needed for the purchase or may not loan any amount to all because of a low appraisal. As a result, if you do not purchase the property, and you have removed your appraisal contingency, you may legally be in default under the contract and could be required to pay damages to, or forfeit your deposit to, the Seller. The Seller is not obligated to reduce the purchase price to match the appraised value.

Buyer's Initials (_____) (_____) Seller's Initials (_____) (_____)

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EQUAL HOUSING OPPORTUNITY

Agent:	Phone:	Fax:	Prepared using zipForm® software
Broker:			

condition of the marketplace (foreclosures, short sales, etc.). The Market Conditions Advisory form is used to document that a broker discussed market conditions with a buyer.

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.

Broker Must Disclosure the Sales Price

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.

Financing Disclosures

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

> For example, the U.S. Department of Housing (HUD) requires lenders to provide a home inspection notice entitled "**For Your Protection: Get a Home Inspection**" to prospective borrowers who apply for an FHA loan for any residential property of one-to-four units.

The financing disclosures are discussed later in the course.

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.

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 public 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 public report from the Commissioner. Preliminary public reports have a one-year term and may be renewed.

Final Public Report

Before a subdivider can actually sell each lot in the project, he or she must give a copy of the Commissioner's **final public report** to the prospective buyer. 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 3 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 5 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.

Interstate Land Sales Full Disclosure Act

The **Interstate Land Sales Full Disclosure Act** (ISLA) 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 **property report** must be given by the developer to each prospective buyer as a protection from less-than-truthful advertising in far-away places. Currently ISLA is regulated by the Bureau of Consumer Financial Protection (CFPB).

SUMMARY

Real estate agents are legally required to explain disclosures to their clients and customers. If real estate agents do not comply with California disclosure law, they become vulnerable to court action.

Real estate agents are 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.

Real estate agents also provide 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.

UNIT 7 REVIEW

Matching Exercise

Instructions: Write the letter of the matching term on the blank line before its definition. Answers immediately follow the Multiple Choice Questions.

Terms

A. 100-year flood
B. as is
C. asbestos
D. caveat emptor
E. *Easton v. Strassburger*
F. earthquake fault zone
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 is not responsible for repairing any defect.
2. _____ Materials whose disposal is regulated by the EPA.
3. _____ Housing not exempt from the lead based paint disclosure.
4. _____ Something that alerts a reasonably observant person of a problem.
5. _____ Boundary indicating areas of special flood zone areas.
6. _____ Fungus that reproduces by means of spores.
7. _____ State law that protects buyers when buying homes in new subdivisions.
8. _____ Colorless, odorless, carcinogenesis gas that is detectable by a spectrometer.
9. _____ Detailed statement from the seller describing 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. _____ Mineral fiber used in construction materials that causes cancer.

13. _____ An area delineated by state officials to have an active fault with the potential for surface rupture.

14. _____ Chemical organic, carcinogenesis compound found in building materials.

15. _____ Tax withholding requirement if the seller is a foreign person.

Multiple Choice Questions

Instructions: Circle your response and then check your response with the Answer Key that immediately follows the Multiple Choice Questions.

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. All listing brokers must conduct a reasonably competent and diligent visual inspection of the property. Which items must be visually inspected?
   a. Condominium common area
   b. Permits held in the name of the condominium association
   c. Condominium unit
   d. All of these items must be visually inspected by a listing broker.

4. 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

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

6. Regarding environmental hazards on residential property, which statement is correct?
    a. The seller should give a copy of the *Environmental Hazards* booklet to the buyer.
    b. The seller must disclose any known environmental hazards to the buyer.
    c. The seller must complete and give the Transfer Disclosure Statement to the buyer.
    d. All of the statements are correct.

7. 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.

8. Broker Logan took a listing on a home. When filling out the NHD, which of the following would Logan not include?
    a. Flood hazard
    b. Seismic hazard
    c. Mold hazard
    d. Fire hazard

9. 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

10. 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.

11. Which state law protects buyers from fraud, misrepresentation, or deceit in the marketing of subdivided lots, and undivided interests in new subdivisions?
    a. Megan's Law
    b. Interstate Land Sales Full Disclosure Act
    c. Subdivided Lands Law
    d. Mello-Roos Community Facilities Act

12. The Interstate Land Sales Full Disclosure Act regulates land sales of:
    a. 5 or more lots.
    b. 10 or more lots.
    c. 15 or more lots.
    d. 25 or more lots.

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 in a house offered for sale. But it did discover conditions that are likely to lead to infestation. 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. All homes with a fossil fuel burning fireplace or an attached garage must:
    a. install carbon monoxide detectors.
    b. have braced water heaters.
    c. install operable smoke detectors.
    d. have water heater insulation blankets.

UNIT 7 ANSWER KEY

Answers – Matching

1. B	4. P	7. R	10. I	13. F
2. J	5. A	8. O	11. L	14. H
3. S	6. M	9. T	12. C	15. G

Answers – Multiple Choice

1. **(b)** A seller must disclose all known material facts to the buyer; however, an "as is" clause gives notice of observable defects to the buyer and indicates that the seller will not be responsible for the cost of repairing any defect. [Seller's Statutory Disclosures]

2. **(c)** The seller of a 1-4 unit residential property must complete and give a Transfer Disclosure Statement to a prospective buyer. A seller can sell a home "as is" but must still disclose any defects. [Seller's Statutory Disclosures]

3. **(c)** 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. [Seller's Statutory Disclosures]

4. **(a)** The Transfer Disclosure Statement is required on a sale of 1-4 residential units Choice (b) is not correct, because it must be a lease with an option of purchase. [Seller's Statutory Disclosures]

5. **(b)** This is a material fact that should have been disclosed on page 1 of the TDS. If the offer had not been accepted, the buyer could revoke his offer. Once escrow closed, the buyer could rescind the sales contract based on fraud. [Seller's Statutory Disclosures]

6. **(d)** The seller or seller's agent should give a copy of the Environmental Hazards booklet to the buyer. Additionally, the seller must disclose any known environmental hazards on the TDS and give it to the buyer [Provide Informational Booklets]

7. **(d)** The home was built in 2002, so there is no disclosure requirement. This disclosure pertains to residential housing built before 1978. [Provide Informational Booklets]

8. **(c)** Choices (a), (b), and (d) are included on the statement; mold is discussed on the Transfer Disclosure Statement. [Provide Informational Booklets]

9. **(d)** The owner must furnish CC&Rs, bylaws, and the most recent financial statements. [Seller's Statutory Disclosures]

10. **(d)** Owners and the agents do NOT have to disclose that an occupant of a property was living with human immunodeficiency virus (HIV) or died from AIDS-related complications. [Civil Code §1710.2(1)(B)]. [Seller's Statutory Disclosures]

11. **(c)** 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. [Other Disclosures]

12. **(d)** The Interstate Land Sales Full Disclosure Act 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. [Other Disclosures]

13. **(d)** The report is given to the buyer. Sometimes the question will have transferee (buyer) as the choice. [Comply with Other Contract Terms]

14. **(d)** The seller usually pays to have problems discovered in Part One of the report corrected. Any potential problems discovered in Part Two are usually paid for by the buyer, if he or she wants to correct the condition. [Comply with Other Contract Terms]

15. **(a)** Carbon monoxide detectors (CO detectors) must be installed in all dwelling units that contain a fossil fuel burning heater, appliance, or fireplace; or that have an attached garage. [Comply with Other Contract Terms]