

State of California  
*Department of Real Estate*

# DISCLOSURES IN REAL PROPERTY TRANSACTIONS

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## **Preface**

Numerous statutes have a significant effect on real property transactions in the area of "disclosures."

The California Department of Real Estate has published this booklet in response to an apparent need for information concerning disclosures required in real property transactions. This booklet is limited to disclosures required by statute and does not include disclosures required by agreement between the principals (buyer and seller; borrower and lender; lessee and lessor, etc.).

Should you need assistance or further information, consult your attorney or a knowledgeable real estate professional. Also, this booklet has a list of government agencies which you may contact for further information.

The Department of Real Estate originally published this booklet pursuant to a research contract. This booklet presents a brief overview of current real estate disclosure requirements. Because the laws concerning disclosure obligations may change, you should use this booklet only as a general source of information. You should research any area of interest before proceeding and, should the situation warrant, discuss the matter with an attorney.

*Content revised by the Department of Real Estate, 1999*  
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### **Introduction**

This booklet is directed to principals and agents in real property transactions. It is designed to provide general information on a number of disclosures required by state and federal law and regulations, as cited in the text.

The first part of this booklet deals with disclosures required in residential property transactions, including disclosures specific to real estate financing. The second part covers general disclosure requirements for the transfer of a business opportunity.

Because the disclosure requirements discussed in this booklet may change, a principal or agent should review the referenced codes and regulations before proceeding with the disclosures.

The Department of Real Estate cannot offer legal advice. If the reader needs such advice, he/she should seek the services of a skilled professional.

It is hoped that principals and agents involved in real property transactions will find this booklet to be an informative guide to disclosure requirements.

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## **Part I**

### **Transfer and Financing of Real Property**

#### **Section I**

##### **Disclosures Required of a Seller and/or a Real Estate Agent**

*While these disclosures relate mainly to residential property resales, some may also be applicable to the initial sale of subdivided interests as discussed in Section IV. Remember that a seller and an agent must make all disclosures necessary to avoid fraud, misrepresentation or deceit in a transaction.*

## A. "Disclosures Upon Transfer of Residential Property"

In this portion, we discuss six disclosures required by statutes in an article in the California Civil Code. The article, which begins at Civil Code Section 1102, is titled "Disclosures Upon Transfer of Residential Property." Subject to the exemptions listed below, these requirements pertain when real property containing one-to-four dwelling units is transferred by sale, exchange, installment land sale contract, ground lease coupled with improvements, lease with an option to purchase, or any other option to purchase.

In this discussion, "seller" means the transferor and "buyer" the transferee in any of these transactions.

Effective January 1, 2000, these requirements will also pertain to the resale of a manufactured home (as defined in Section 18007 of the Health and Safety Code) or a mobilehome (as defined in Section 18008 of the Health and Safety Code) when either is classified as personal property and is intended for use as a residence.

The following transfers are exempt from these disclosure requirements:

- foreclosure sale;
- court ordered transfer;
- transfer by a fiduciary in the administration of a probate estate or a testamentary trust;
- transfer to a spouse or to a person or persons in the lineal line of consanguinity;
- transfer resulting from a judgment of dissolution of marriage or of legal separation or from a property settlement agreement incidental to such a judgment;
- transfer from one co-owner to another;
- transfer by the State Controller for unclaimed property;
- transfer resulting from failure to pay taxes;
- transfer to or from any governmental entity; and
- the sale of a residential property within a subdivision where a public report must be delivered to the purchaser or a public report is not required.

**Termination right.** If delivery of any of these disclosures, or an amended disclosure, occurs after execution of an offer, the buyer has three days after delivery of the disclosure in person or five days after delivery by deposit in the United States mail to terminate the offer by delivering a written notice of termination to the seller or the seller's agent.

### *1. Real Estate Transfer Disclosure Statement*

The Real Estate Transfer Disclosure Statement (TDS) details the condition of a property and must be given to a prospective buyer as soon as practicable before transfer of title (or execution of a lease option, real property sales contract, or ground lease coupled with improvements).

The seller and any broker(s) involved participate in the disclosures. If more than one broker is involved, the broker obtaining the offer delivers the disclosures to the prospective buyer unless the seller instructs otherwise.

Delivery to the prospective buyer of a report or opinion prepared by a licensed engineer, land surveyor, geologist, structural pest control operator, contractor, or other expert (dealing with matters within the scope of the professional's license or expertise) may limit the liability of the seller and the real estate broker(s) when making required disclosures. The overall intention is to provide meaningful disclosures about the condition of the property being transferred.

The following is the format of the TDS:

#### REAL ESTATE TRANSFER DISCLOSURE STATEMENT

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 \_\_\_\_\_, 19\_\_\_\_. 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 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:

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#### 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 (read across):

<input type="checkbox"/> Range	<input type="checkbox"/> Oven	<input type="checkbox"/> Microwave
<input type="checkbox"/> Dishwasher	<input type="checkbox"/> Trash Compactor	<input type="checkbox"/> Garbage Disposal
<input type="checkbox"/> Washer/Dryer Hookups		<input type="checkbox"/> Rain Gutters
<input type="checkbox"/> Burglar Alarms	<input type="checkbox"/> Smoke Detector(s)	<input type="checkbox"/> Fire Alarm
<input type="checkbox"/> TV Antenna	<input type="checkbox"/> Satellite Dish	<input type="checkbox"/> Intercom
<input type="checkbox"/> Central Heating	<input type="checkbox"/> Central Air Cndtng.	<input type="checkbox"/> Evaporative Cooler(s)
<input type="checkbox"/> Wall/Window AirCndtng.	<input type="checkbox"/> Sprinklers	<input type="checkbox"/> Public Sewer System
<input type="checkbox"/> Septic Tank	<input type="checkbox"/> Sump Pump	<input type="checkbox"/> Water Softener



\*This garage door opener or child resistant pool barrier may not be in compliance with the safety standards relating to automatic reversing devices as set forth in Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of, or with 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. The water heater may not be anchored, braced, or strapped in accordance with Section 19211 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.

C. Are you (Seller) aware of any of 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, 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 coowned 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, including any lawsuits alleging a defect or deficiency in this real property or "common areas" (facilities such as pools, tennis courts, walkways, or other areas coowned in undivided interest with others) .....  Yes  No

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

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 \_\_\_\_\_

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:

\_\_\_ 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:

\_\_\_ 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 \_\_\_\_\_

(Associate Licensee

or Broker-Signature)

Agent (Broker

obtaining the Offer) \_\_\_\_\_ By \_\_\_\_\_ Date \_\_\_\_\_

(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.

*(Civil Code Section 1102 et seq.)*

## **2. Local Option Real Estate Transfer Disclosure Statement**

A city or county may require that the seller provide specific information about the neighborhood or community, in the following form:

### LOCAL OPTION

#### REAL ESTATE TRANSFER DISCLOSURE STATEMENT

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 ORDINANCE NO. \_\_\_\_\_ OF THE \_\_\_\_\_ CITY OR COUNTY CODE AS OF \_\_\_\_\_, 19\_\_\_\_. 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

#### 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) AS REQUIRED BY THE CITY OR COUNTY OF \_\_\_\_\_ 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.

1. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

2. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(Example: Adjacent land is zoned for timber production which may be subject to harvest.)

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 \_\_\_\_\_

II

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 \_\_\_\_\_

(Associate Licensee

or Broker-Signature)

Agent (Broker

Obtaining the Offer) \_\_\_\_\_ By \_\_\_\_\_ Date \_\_\_\_\_

(Associate Licensee

or Broker-Signature)

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

*(Civil Code Section 1102.6a)*

### **3. Natural Hazards Disclosure**

The seller or the seller's agent, as specified below, must make appropriate disclosures if the property is in one or more of the following zones or areas:

**Zone A or Zone V (special flood hazard area)** as designated by the Federal Emergency Management Agency. The seller's agent, or the seller if acting without an agent, must make this disclosure if:

- the seller or the seller's agent has actual knowledge that the property is in a special flood hazard area; or
- the local jurisdiction has compiled a list of parcels that are in a special flood hazard area and has posted at the offices of the county recorder, county assessor, and county planning agency a notice regarding location of the list.

*(Government Code Section 8589.3)*

**An area of potential flooding** shown on a map as an area which will be inundated if a dam fails. The seller's agent, or the seller if acting without an agent, must make this disclosure if:

- the seller, or the seller's agent, has actual knowledge that the property is within a delineated inundation area; or
- the local jurisdiction has compiled a list of parcels that are in the inundation area and has posted at the offices of the county recorder, county assessor, and county planning agency a notice regarding location of the list.

*(Government Code Section 8589.4)*

**A designated very high fire hazard severity zone.** The seller must make this disclosure if:

- the seller, or the seller's agent, has actual knowledge that the property is in a designated very high fire hazard severity zone; or
- the local agency has received a map of such properties which includes the seller's property and has posted at the offices of the county recorder, county assessor, and county planning agency a notice regarding location of the map and any changes to it.\*

*(Government Code Section 51183.5)*

**A designated wildland area ("state responsibility area")** that may contain substantial forest fire risks and hazards. The seller must make this disclosure if:

- the seller, or the seller's agent, has actual knowledge that the property is in a designated wildland fire zone; or

- the city or county has received a map of such properties which includes the seller's property and has posted at the offices of the county recorder, county assessor, and county planning agency a notice regarding location of the map and any changes to it.\*

*(Public Resources Code Section 4136)*

**An earthquake fault zone.** These zones are over earthquake faults and are usually about one quarter mile in width. The seller's agent, or the seller if acting without an agent, must disclose that the property is in one of these zones if:

- the seller, or the seller's agent, has actual knowledge that the property is within a delineated earthquake fault zone; or
- the city or county has received a map of such properties which includes the seller's property and has posted at the offices of the county recorder, county assessor, and county planning agency a notice regarding location of the map and any changes to it.\*

*(Public Resources Code Section 2621.9)*

**A seismic hazard zone.** In an earthquake, properties in one of these zones may be subject to strong ground shaking, soil liquefaction, or landslide. The seller's agent, or the seller if acting without an agent, must disclose that the property is in one of these zones if:

- the seller, or the seller's agent, has actual knowledge that the property is within a delineated seismic hazard zone; or
- the city or county has received a map of such properties which includes the seller's property and has posted at the offices of the county recorder, county assessor, and county planning agency a notice regarding location of the map and any changes to it.\*

*(Public Resources Code Section 2694)*

\*If, when looking at the map, a reasonable person cannot tell with certainty whether or not the property is in the zone, the seller or seller's agent must mark "YES" on the disclosure form, unless there can be attached to the form an expert's report, prepared pursuant to Civil Code Section 1102.4(c), indicating that the property is not located in the zone.

These disclosures must be made on the Natural Hazard Disclosure Statement (NHDS) or on the Local Option Real Estate Transfer Disclosure Statement (LORETDS), provided the local jurisdiction has mandated use of a LORETDS for some disclosure purpose and the information and warnings are substantially the same as on the NHDS.

The following is the required format for the NHDS:

#### NATURAL HAZARD DISCLOSURE STATEMENT

This statement applies to the following property: \_\_\_\_\_

The seller and his or her agent(s) disclose 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 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 seller and his or her agent(s) based on their knowledge and maps drawn by the state. This information is a disclosure and is not intended to be part of any

contract between the buyer and the seller.

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 \_\_\_\_\_

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. BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING THOSE HAZARDS AND OTHER HAZARDS THAT MAY AFFECT THE PROPERTY.

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

Signature of Seller \_\_\_\_\_ Date \_\_\_\_\_

Agent represents that the information herein is true and correct to the best of the agent's knowledge as of the date signed by the agent.

Signature of Agent \_\_\_\_\_ Date \_\_\_\_\_

Signature of Agent \_\_\_\_\_ Date \_\_\_\_\_

Buyer represents that he or she has read and understands this document.

Signature of Buyer \_\_\_\_\_ Date \_\_\_\_\_

*(Civil Code Section 1102.6c)*

*Note: Although the form for the natural hazard disclosures is mandated only for properties subject to the Civil Code article titled "Disclosures Upon Transfer of Residential Property" (page 1), the appropriate disclosure must be made in some manner when any real property located in one of the zones is to be sold. Written disclosure, acknowledged by the prospective buyer, is recommended.)*

#### **4. Mello-Roos Bonds and Taxes**

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 to finance designated public facilities and services. Effective July 1, 1993, the seller of a property consisting of one-to-four dwelling units subject to the lien of a Mello-Roos community facilities district must make a good faith effort to obtain from the district a disclosure notice concerning the special tax and give the notice to a prospective buyer.

*(Civil Code Section 1102.6b)*

#### **5. Ordinance Location**

Federal and state agencies have identified certain areas once used for military training and which may contain live ammunition. A seller of residential property (again, one-to-four dwelling units) located within one mile of such a potential hazard must give the buyer written notice as soon as practicable before transfer of title. This obligation depends upon the seller having actual knowledge of the hazard.

*(Civil Code Section 1102.15)*

#### **6. Window Security Bars**

A seller must disclose on the TDS or, if mandated, the Local Option TDS, the existence of window security bars and any safety release mechanism on the bars.

*(Civil Code Section 1102.16)*

#### **B. Earthquake Guides**

The Seismic Safety Commission has developed a "*Homeowner's Guide to Earthquake Safety*." The guide includes information on geologic and seismic hazards, explanations of related

structural and nonstructural hazards, recommendations for mitigating earthquake damage, and a statement that safety cannot be guaranteed with respect to a major earthquake and that only precautions such as retrofitting can be undertaken to reduce the risk of various types of damage. The Seismic Safety Commission has also developed a *"Commercial Property Owner's Guide to Earthquake Safety."*

If a buyer receives a copy of the Homeowner's Guide (or, if applicable, the Commercial Property Owner's Guide), neither the seller nor the broker are required to provide additional information regarding geologic and seismic hazards, except that sellers and real estate brokers must disclose that a property is in an earthquake fault zone.

Delivery of a booklet is required in the following transactions:

- Transfer of any real property improved 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 (Homeowner's Guide); and,
- Transfer of any unreinforced masonry building with wood-frame floors or roofs built before January 1, 1975 (Commercial Property Owner's Guide).

In a transfer described in item 1 above, the following structural deficiencies and any corrective measures taken, which are within the seller's actual knowledge, are to be disclosed to prospective buyers:

- absence of foundation anchor bolts;
- unbraced or inappropriately braced perimeter cripple walls;
- unbraced or inappropriately braced first-story wall or walls;
- unreinforced masonry perimeter foundation;
- unreinforced masonry dwelling walls;
- habitable room or rooms above a garage;
- water heater not anchored, strapped, or braced.

**Exemptions.** Certain exemptions apply to the obligation to deliver the booklet when transferring either a dwelling of one-to-four units or a reinforced masonry building. These exemptions are essentially the same as those that apply to delivery of the Real Estate Transfer Disclosure Statement. See pages 1 and 2.

*(Public Resources Code Sections 2621 et seq. and 2690 et seq.; Business and Professions Code Sections 10147 and 10149; Civil Code Sections 2079.8 and 2079.9, and Government Code Sections 8875 et seq., 8893.2 and 8897 et seq.)*

### C. Smoke Detector Statement of Compliance

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

New construction, or any additions, alterations or repairs exceeding \$1,000 and for which a permit is required, must include a smoke detector installed in each bedroom and also at a point centrally located in a corridor or area outside of the bedroom(s). This standard applies for the addition of one or more bedrooms, no matter what the cost.

In new home construction, the smoke detector must be hard-wired, with a battery backup. In existing dwellings, the detector may be only battery operated.

*(Health and Safety Code Section 13113.8; California Building Code Section 1210; State Fire Marshall Regulation 92-04)*

#### **D. Disclosure Regarding Lead-Based Paint Hazards**

Many housing units in California still contain lead-based paint, which was banned for residential use in 1978. Lead-based paint can peel, chip, and deteriorate into contaminated dust, thus becoming a lead-based paint hazard. A child's ingestion of the lead-laced chips or dust may result in learning disabilities, delayed development or behavior disorders.

The federal Real Estate Disclosure and Notification Rule (the Rule) requires that owners of "residential dwellings" built before 1978 disclose to their agents and to prospective buyers or lessees/renters the presence of lead-based paint and/or lead-based paint hazards and any known information and reports about lead-based paint and lead-based paint hazards (location and condition of the painted surfaces, etc.). The Rule defines a residential dwelling as a single-family dwelling or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

Properties affected by the Rule are termed target housing. Target housing does not include pre-1978 housing which is:

- sold at a foreclosure sale (but a subsequent sale of such a property is covered);
- a "0-bedroom dwelling" (e.g., a loft, efficiency unit or studio);
- a dwelling unit leased for 100 or fewer days (e.g., a vacation home or short-term rental), provided the lease cannot be renewed or extended;
- housing designated for the elderly or handicapped, unless children reside there or are expected to reside there;
- leased housing for which the requirements of the Rule have been satisfied, no pertinent new information is available, and the lease is renewed or renegotiated;
- rental housing that has been inspected by a certified inspector and found to be free of lead-based paint. (The Rule allows use of state certified inspectors only until a federal certification program or a federally accredited state certification program is in place.)

Sellers (and lessors) of units in pre-1978 multifamily structures must provide a buyer (or lessee) with any available records or reports pertaining to lead-based paint and/or lead-based paint hazards in areas used by all the residents (stairwells, lobbies, recreation rooms, laundry rooms, etc.). If there has been an evaluation or reduction of lead-based paint and/or lead-based paint hazards in the entire structure, the disclosure requirement extends to any available records or reports regarding the other dwelling units.

The Rule requires that a seller of target housing offer a prospective buyer ten days to inspect for lead-based paint and lead-based paint hazards. This 10-day inspection period can be

increased, decreased, or waived by written agreement between buyer and seller. The Rule does not require a seller to pay for an inspection or to remove any lead-based paint/hazards, but merely gives a buyer the opportunity to have the property inspected. A list of State-certified lead inspectors and contractors is available by calling the California Department of Health Services at (800) 597-LEAD.

The federal Environmental Protection Agency (EPA) publishes a pamphlet titled *"Protect Your Family From Lead In Your Home."* This pamphlet describes ways to recognize and reduce lead hazards. The Rule requires that a seller (or lessor) of target housing deliver this pamphlet to a prospective buyer (or tenant) before a contract is formed. Provision of a California pamphlet now constitutes compliance with this requirement. See item E. below.

The Rule further requires that the seller's (or lessor's) lead-based paint/lead-based paint hazards disclosures, a Lead Warning Statement, and the buyer's (or lessee's) acknowledgment of receipt of that information, the offer of inspection period (or waiver of same) and the EPA pamphlet be included in an attachment to the contract. Seller (or lessor), buyer (or tenant) and agent must sign and date the attachment. The retention period, for sellers (or lessors) and agents, of this document is three years from completion of the sale (or from commencement of the lease/rental).

A real estate agent must ensure that:

- his or her principal (seller or lessor) is aware of the disclosure requirements;
- the transaction documentation includes the required notifications and disclosures;
- the buyer or lessee/renter receives the EPA pamphlet; and,
- in the case of a sale, the buyer is offered an opportunity to have the property inspected for lead-based paint and lead-based paint hazards. In the case of a sale, "agent" does not include one who represents only the buyer and receives compensation only from the buyer.

Violation of the Rule may result in civil and/or criminal penalties.

To obtain the essential compliance information, a person may call the EPA at 1-800-424-LEAD.

#### **E. California's Environmental Hazards Pamphlet**

As discussed above, in California a seller (with a few exceptions) of residential real property comprising one-to-four dwelling units must give the buyer a Real Estate Transfer Disclosure Statement. The statement must specify environmental hazards (e.g., asbestos, radon gas, lead-based paint, formaldehyde, fuel or chemical storage tanks, contaminated soil or water, etc.) of which the seller is aware. The seller or the seller's agent can give the buyer (of any real property) a pamphlet titled *"Environmental Hazards: A Guide for Homeowners, Buyers, Landlords, and Tenants."* If the buyer receives the pamphlet, neither the seller nor any agent in the transaction is required to furnish more information concerning such hazards unless the seller or agent has actual knowledge of the existence of an environmental hazard on or affecting the property.

In August of 1996, the federal EPA granted a one-year provisional approval of the California pamphlet for use in California for compliance with the federal Real Estate Disclosure and Notification Rule (i.e., in lieu of the federal pamphlet *"Protect Your Family From Lead In Your Home"*). At that time, it was anticipated that certain revisions could be made which would justify the federal EPA's unconditional approval of the California pamphlet for this purpose. This issue has been resolved by incorporation into the California pamphlet of the federal pamphlet's discussion of lead hazards.

#### **F. Delivery of Structural Pest Control Inspection and Certification Reports**

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

If more than one real estate broker is acting as the seller's agent, the broker who obtained the offer is responsible for delivery, in person or by mail, of the report unless the seller directs otherwise in writing. The real estate broker responsible for delivery must retain for three years a record of the actions taken to effect delivery.

*(Civil Code Section 1099; Business and Professions Code Sections 8519 et seq. and 10148; Commissioner's Regulation 2905)*

#### **G. Energy Conservation Retrofit and Thermal Insulation Disclosures**

State law prescribes minimum energy conservation standards for all new construction. Local governments also have ordinances that impose additional energy conservation measures on new and/or existing homes. Some local ordinances impose energy retrofitting as a condition of the sale of an existing home. The seller and or agent(s) should disclose to a prospective buyer the requirements of the various ordinances, as well as who is responsible for compliance.

Federal law requires that a "new home" seller (including a subdivider) disclose in every sales contract the type, thickness, and R-value of the insulation which has been or will be installed.

*(Federal Trade Regulation Section 460.16; Public Resources Code Section 25402 et seq.)*

#### **H. Foreign Investment in Real Property Tax Act**

Federal law requires that a buyer of real property must withhold and send to the Internal Revenue Service (IRS) 10% of the gross sales price if the seller of the real property is a "foreign person." The primary grounds for exemption from this requirement are: the seller's nonforeign affidavit and U.S. taxpayer I.D. number; a qualifying statement obtained through the IRS attesting to other arrangements resulting in collection of, or exemption from, the tax; or the sales price does not exceed \$300,000 and the buyer intends to reside in the property.

Because of the number of exemptions and other requirements relating to this law, principals and agents should consult the IRS or a qualified tax advisor for more information.

*(Title 26 U.S. Codes, Section 1445)*

#### **I. Notice and Disclosure to Buyer of State Tax Withholding on Disposition of California Real Property**

In certain California real estate sale transactions, the buyer must withhold 3 1/3% of the total sale price as state income tax and deliver the sum withheld to the State Franchise Tax Board. The escrow holder, in applicable transactions, is required by law to notify the buyer of this responsibility.

A buyer's failure to withhold and deliver the required sum may result in the buyer being subject to penalties. If the escrow holder fails to notify the buyer, penalties may be levied against the escrow holder.

Transactions to which the law applies are those in which:

- the seller shows an out of state address, or sale proceeds are to be disbursed to a financial intermediary of the seller;
- the sales price exceeds \$100,000.00; and,
- the seller does not certify that he/she is a resident of California or that the property being conveyed is his/her personal residence, as defined in Section 1034 of the Internal Revenue Code. *Note: If the seller is a corporation, the certification would be that the corporation has a permanent place of business in California.*

For further information, contact the Franchise Tax Board.

*(Revenue and Taxation Code Sections 18805, 18815, and 26131)*

#### **J. Furnishing Controlling Documents and a Financial Statement**

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

- a copy of the governing documents of the development;
- if there is an age restriction not consistent with Civil Code Section 51.3, a statement that the age restriction is only enforceable to the extent permitted by law and specifying the applicable provisions of law;
- a copy of the most recent financial statement of the homeowners' association;
- a written statement from the association specifying the amount of the current regular and special assessments as well as any unpaid assessment, late charges, interest, and costs of collection which are or may become a lien against the property;
- a preliminary list of construction defects if the association has commenced or plans to commence an action for damages against the developer;
- after resolution, by settlement agreement or otherwise, of a dispute between the association and the developer regarding construction defects, a general description of the defects that will be corrected; the association's estimate of when the corrections will be completed; the status of any claims for other defects; and,
- information regarding any approved change in the assessments or fees which is not yet due and payable as of the disclosure date.

*(Civil Code Sections 1368, 1375 and 1375.1)*

#### **K. Notice Regarding the Advisability of Title Insurance**

In an escrow for a sale (or exchange) of real property where no title insurance is to be issued, the buyer (or both parties to an exchange) must receive and sign/acknowledge 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 SINCE 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."

*Note: While the statute does not expressly assign the duty, it is reasonable to assume that delivery of the notice is an obligation of the escrow holder. A real estate broker conducting an escrow pursuant to the exemption set forth in Financial Code Section 17006(d) would, therefore, be responsible for delivery of the notice.*

*(Civil Code Section 1057.6)*

#### **L. Certification Regarding Water Heater's Security Against Earthquake**

The seller of any real property containing a water heater must certify in writing to a prospective buyer that the water heater has been braced, anchored or strapped to resist falling or horizontal movement due to earthquake motion. The minimum standard for this security is set forth in the California Plumbing Code. The certification can be included in a transaction document, including, but not limited to, the Homeowner's Guide to Earthquake Safety, the real estate purchase contract or receipt for deposit, or the Real Estate Transfer Disclosure Statement.

*(Health and Safety Code Section 19211)*

#### **M. Data Base - Locations of Registered Sex Offenders**

Commencing July 1, 1999, written leases or rental agreements for residential real property and contracts (including real property sales contracts as defined in Civil Code Section 2985) for the sale of residential real property with one-to-four dwelling units must contain, in not less than eight-point type, the following notice:

Notice: The California Department of Justice, sheriff's departments, police departments serving jurisdictions of 200,000 or more and many other local law enforcement authorities maintain for public access a data base of the locations of persons required to register pursuant to paragraph (1) of subdivision (a) of Section 290.4 of the Penal Code. The data base is updated on a quarterly basis and a source of information about the presence of these individuals in any neighborhood. The Department of Justice also maintains a Sex Offender Identification Line through which inquiries about individuals may be made. This is a "900" telephone service. Callers must have specific information about individuals they are checking. Information regarding neighborhoods is not available through the "900" telephone service.

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## **Section II**

### **Disclosures Required of Real Estate Agents in the Transfer of Residential Real Property**

*Although this section relates to an agent's responsibility for certain disclosures, the seller is responsible for disclosures concerning the condition of the property to the same or greater extent than the seller's agent(s). The seller may also be responsible for those disclosures required by law that his/her agent(s) for that purpose fails to make.*

#### **A. Visual Inspection**

In a sale of real property with one to four dwelling units (or a manufactured home as defined

in Health and Safety Code Section 18007), the listing and selling brokers must each conduct a reasonably competent and diligent visual inspection of the property and disclose to the prospective buyer all material facts affecting the value, desirability, and intended use of the property.

This inspection/disclosure requirement applies to residential property of 1-4 units but does not apply if the sale is made pursuant to a subdivision public report or the sale is exempt from the public report requirement pursuant to Business and Professions Code Section 11010.4 (sale of completed homes within city limits, with all improvements necessary for occupancy either completed or guaranteed by financial arrangements), provided the property has not been previously occupied.

The agents do not have to inspect:

- areas not reasonably accessible;
- areas off the site of the property;
- public records or permits concerning the title or use of the property; and
- the common area if the property is in a common interest development and the seller or broker complies with Civil Code Section 1368. (See item J. in Section I above.)

Nothing in the law relieves a buyer of the duty to exercise reasonable care to protect himself/herself by considering facts that are known to or within the reasonably diligent attention and observation of the buyer.

Each agent's inspection certification is contained in the Real Estate Transfer Disclosure Statement.

*(Civil Code Section 2079 et seq.)*

## **B. Agency Relationship Disclosure**

To clarify agency relationships and duties, the law requires that a real estate broker disclose in writing the duties which arise from certain agency relationships and then disclose the broker's status as agent of the seller, agent of the buyer, or agent of both the seller and buyer (dual agent). This requirement applies to the sale, exchange, or lease for more than a year of real property improved with one to four dwelling units, or the sale of a mobilehome.

The required agency disclosure form must include the following specific language:

### DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(As required by the Civil Code)

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship and representation you wish to have with the agent in the transaction.

#### SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller:

(a) A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller.

To the Buyer and the Seller:

(a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties set forth above.

#### BUYER'S AGENT

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer:

(a) A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

(a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties set forth above.

#### AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

(a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.

(b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect their own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction.

This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on the reverse hereof. Read it carefully.

_____	_____	_____
Agent (Signature)	Buyer/Seller (Signature)	(Date)
_____	_____	_____
Associate Licensee (Signature)	Buyer/Seller (Signature)	(Date)

In the contract to purchase or sell or in a separate writing signed by the agent(s) and principals to the transaction, the agent(s) must confirm as follows the agency relationship intended:

\_\_\_\_\_ is the agent of (check one):

(Name of Listing Agent)

the seller exclusively; or

both the buyer and seller.

\_\_\_\_\_ is the agent of (check one):

(Name of Selling Agent

if not the same as the Listing Agent)

the buyer exclusively; or

the seller exclusively; or

both the buyer and seller.

Basically, the disclosure form must be provided by the broker (agent) prior to the presentation and/or execution of transactional documents (e.g., the listing or seller's agent prior to the execution of the listing agreement; the selling agent prior to the presentation of the offer). In the absence of a direct contact between the selling agent and the seller, the disclosure form prepared by the selling agent may be delivered to the seller by the listing or seller's agent. Should the buyer or seller refuse to sign the required acknowledgement of receipt of the disclosure form, the agent must prepare, sign, and date a written declaration of the facts surrounding the refusal.

Neither the payment of compensation nor the obligation of the buyer or seller to compensate an agent will necessarily determine a particular agency relationship.

Note well that a dual agent is expressly prohibited from discussing price information (i.e., that the seller would take less or the buyer would pay more) without the prior written consent of the principal.

The parties to an agency relationship may agree in writing to change the agency relationship.

*(Civil Code Section 2079.13 et seq.)*

### **C. Disclosure of the Negotiability of Real Estate Commissions**

An agreement (such as a listing or sales agreement) which establishes or increases the amount or rate of a real estate agent's compensation for the sale of residential real property of not more than four units or a mobilehome must contain the following disclosure in not less than 10-point boldface type:

NOTICE: The amount or rate of real estate commissions is not fixed by law. They are set by each broker individually and may be negotiable between the seller and broker.

This notice must precede the agreement's provision for compensation of the agent and, of course, the amount or rate of compensation cannot be preprinted.

*(Business and Professions Code Section 10147.5)*

### **D. No Disclosure Required for Manner/Occurrence of Death; Affliction of Occupant with AIDS**

No cause of action arises against an owner or the owner's agent (or any cooperating agent) when selling, leasing, or renting real property and failing to disclose to the buyer, lessee, or renter the following:

- the manner or occurrence of an occupant's death upon the real property if the death occurred more than 3 years prior to the transferee's offer to purchase, lease, or rent the property; or
- that an occupant of the property was afflicted with, or died from, Acquired Immune Deficiency Syndrome (AIDS).

Note that the controlling statute does not change the law relating to disclosure of any other physical or mental condition or disease of an occupant or the physical condition of the property. Further, the statute will not protect the owner or agent(s) from misrepresentation if the buyer asks a direct question concerning deaths occurring on the real property.

*(Civil Code Section 1710.2)*

### **E. Disclosure of Sale Price Information**

Within one month after the close of escrow for the transfer of title to real property or the sale of a business opportunity through a real estate broker, the broker must inform the buyer and seller in writing of the selling price. In the case of an exchange of real property or a business opportunity, the information must include a description of the property and the amount of added money consideration, if any.

If the transaction is closed through an escrow, a closing statement from the escrow holder will constitute compliance on the part of the broker.

*(Business and Professions Code Section 10141)*

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### Section III

#### Disclosures Required when Financing Real Property

*This section deals primarily with disclosures a real estate licensee or a lender must make to a prospective borrower in certain real property secured (loan) transactions. Disclosures required in certain defined seller "carry-backs" are also included.*

##### A. Adjustable-Rate Loan Disclosure

A lender offering adjustable-rate residential mortgage loans must provide prospective borrowers with a copy of the most recent Federal Reserve Board publication which provides information on such loans. It is currently titled "Consumer Handbook on Adjustable-rate Mortgages." The publication must be given at the earlier of:

- the request of the prospective borrower; or,
- when the lender first provides information concerning adjustable-rate mortgages or credit sales, other than by direct mail advertising.

Federally regulated lenders, and lenders who have adopted or are subject to federal rules, may achieve compliance by providing the disclosures at the same time and under the same circumstances as when the lender makes the federally required disclosures pursuant to the Truth-in-Lending Act.

The following definitions apply:

- *Adjustable-rate residential mortgage loan* means any loan or credit sale which is primarily for personal, family, or household purposes; bears interest at a rate which is subject to change during the term of the loan (whether predetermined or otherwise); and which is secured by real property containing one-to-four dwelling units.
- *Lender* refers to any person, association, corporation, partnership, or other business entity that makes in any twelve month period more than 10 loans or credit sales secured by residential real property of one-to-four dwelling units.

Any lender who fails to provide the information required by this law may be enjoined and may be liable for actual damages, court cost and reasonable attorney's fees. Federal Truth-in-Lending disclosures made in connection with adjustable-rate loans should include the worst case and best case scenarios.

*(Title 12 Code of Federal Regulations Part 29 of Chap I and/or 563 of Chap V; Civil Code Section 1921)*

##### B. Seller Financing Disclosure Statement

Some sellers of residential properties participate in financing the sale of their homes by extending credit to the buyer in the form of a seller "carry-back." This is usually in the form of a promissory note secured by a deed of trust. To ensure adequate disclosure and to prevent

abuses involving some of these seller-assisted financing plans, the state legislature enacted a disclosure law which applies to real estate transactions involving residential dwellings of not more than four units if the seller extends credit to the buyer through a written agreement which provides for either a finance charge or more than four payments of principal and interest (or interest only), not including the down payment.

Written disclosures required by this law are the responsibility of the *arranger of credit*. An *arranger of credit* is defined as a person who is not a party to the transaction (except as noted below), but is involved in negotiation of the credit terms and completion of the credit documents, and who is compensated for arranging the credit or for facilitating the transaction. The duty to provide the disclosures also applies to an attorney or a real estate licensee who is a principal in the transaction.

Disclosures pursuant to this law are not required to be given to a buyer or seller who is entitled to receive (in connection with the credit being extended) a disclosure under any of the following:

- Federal Truth-in-Lending Act;
- Real Estate Settlement Procedures Act (RESPA);
- Business and Professions Code Section 10240 (a mortgage loan disclosure statement); Business and Professions Code Section 10232.4 (a lender/purchaser disclosure statement) or
- Section 25110 of the Corporations Code or exemption therefrom relating to the sale of qualified securities under permit or exempt securities or transaction.

The disclosure statement required by this law must be delivered as soon as possible before the execution of any note or security document. The statement must be signed by the arranger of credit and the buyer and seller, who are each to receive a copy. If there is more than one arranger of credit, the arranger obtaining the offer from the buyer is responsible for making the disclosure unless another person is designated in writing by the parties to the transaction.

The disclosure statement will include comprehensive information about the financing, cautions applicable to certain types of financing, and suggestions of procedures which will protect the parties during the term of the financing. The disclosures include:

- identification of the note, or credit, or security document and the property which is or will become the security;
- a copy of the note, or credit, or security document, or a description of the terms of these documents;
- the terms and conditions of each encumbrance recorded against the property which shall remain as a lien or is an anticipated lien which will be senior to the financing being arranged;
- a warning about the hazards and potential difficulty of refinancing and, if the existing financing or the financing being arranged involves a balloon payment, the amount and due date of the balloon payment and a warning that new financing may not be available;
- an explanation of the possible effects of an increase in the amount owed due to negative amortization as a result of any variable or adjustable-rate financing being arranged;
- if the financing involves an all-inclusive trust deed (AITD), a statement of the possible penalties, discounts, responsibilities, and rights of parties to the transaction with respect to acceleration and/or prepayment of a prior encumbrance as the result of the creation and/or

refinancing of the AITD;

- if the financing involves an AITD or a real property sales contract, a statement identifying the party to whom payments will be made and to whom such payments will be forwarded, and if the party receiving and forwarding the payments is not a neutral third party, a warning that the principals may wish to designate a neutral third party;
- a complete disclosure about the prospective buyer, including credit and employment information along with a statement that the disclosure is not a representation of the credit worthiness of the prospective buyer; or, a statement that no representation regarding the credit worthiness of the prospective buyer is being made;
- a warning regarding possible limitations on the seller's ability, in the event of foreclosure, to recover proceeds of the sale financed (*Code of Civil Procedure Section 580b*);
- a statement recommending loss payee clauses be added to the property insurance policy to protect the seller's interest (e.g., Board of Fire Underwriters' Endorsement No. B.F.U. 438) and advising of the existence or availability of services which will notify the seller if the property taxes are not paid;
- a statement suggesting or acknowledging that the seller should file or has filed a request for notice of delinquency (*Civil Code Section 2924e*) and a request for notice of default (*Civil Code Section 2924b*) in case the buyer fails to pay liens senior to the financing being arranged;
- a statement that a title insurance policy has been or will be obtained and furnished to the buyer and seller insuring their respective interests, or that the buyer and seller should each obtain title insurance coverage;
- a disclosure whether the security documents for the financing being arranged have been or will be recorded, and what might occur if the documents are not recorded; and,
- information as to whether the buyer is to receive any "cash back" from the sale, including the amount, source, and purpose of the cash refund.

The requirement of a seller financing disclosure statement also applies to transactions by real property sales contracts (as defined in Civil Code Section 2985) and to leases with option-to-purchase provisions where the facts demonstrate intent to transfer equitable title. If the extension of credit is subject to a balloon payment, a balloon payment notice is to be included on the face of the promissory note or other evidence of debt.

*(Civil Code Section 2956 et seq.)*

An arranger of credit must inform the seller that a buyer who intends to occupy the real property involved may have the right to homeownership counseling in the event of a default in the mortgage payments. The collector of the payments, whether the seller or a loan servicing agent, has the duty to inform the defaulting homeowner of the availability of such counseling. Loss of or the reduced ability to make payments on a residence may entitle the homeowner to the aforementioned counseling. The duty to inform a defaulting homeowner of the availability of counseling is operative regardless of the nature of the credit transaction or the presence of an arranger of credit.

*(The Housing and Community Development Act of 1987)*

### **C. Truth-in-Lending - Regulation Z**

The Truth-in-Lending Act (TILA) is a federal law enacted to promote the informed use of

consumer credit by requiring creditors/lenders to disclose various terms and conditions of credit. Regulation Z and the Official Staff Commentaries which interpret it are issued by the Board of Governors of the Federal Reserve System to implement the TILA. The Federal Trade Commission enforces the TILA and Regulation Z.

The TILA requires a creditor to be responsible for furnishing certain disclosures to the consumer before a contract for a loan is made. With respect to real estate loans, *creditor* includes a person or company who regularly (2 or more per year or 1 or more per year through a mortgage broker) extends credit for loans secured by a dwelling, including a mobilehome or trailer (if used as a residence), and the credit extended is subject to a finance charge or payable by written agreement in more than four installments, excluding the downpayment.

Exemptions from the TILA with respect to real estate loans include, among others:

- credit extended primarily for business, commercial, or agricultural purposes; or,
- credit extended to other than a natural person.

Regulation Z requires that creditors disclose the following items for real property secured loans. The first four disclosures must include simple descriptive phrases of explanation similar to those shown in italics:

- **Amount financed** - *The amount of credit (principal amount borrowed less prepaid finance charges includable) provided to you or on your behalf;*
- **Finance charge** - *The dollar amount the credit will cost you;*
- **Annual percentage rate** - *The cost of your credit as a yearly rate;*
- **Total of payments** - *The amount you will have paid when you have made all the scheduled payments;*
- **Payment schedule** - The number, amount, and timing of payments;
- **Identity** of the lender/creditor making the disclosure;
  - Written **itemization of the amount financed**, or a statement that the consumer has a right to receive a written itemization, and a space in the statement for the consumer to indicate whether the itemization is requested;
  - Variable interest rate and discounted variable rate disclosures, including limitations and effects of a rate increase and an example of payment terms resulting from the increase (may be accomplished by giving the consumer the "Consumer Handbook on Adjustable Rate Mortgages" or a suitable substitute);
  - Demand feature of the loan excluding borrower default or due-on-sale clauses, except as noted in Item 16 below;
  - Loan prepayment penalties and whether such penalties are charged by the lender/creditor or, if uncertainty exists, a statement to that effect and whether any prepaid finance charge is subject to rebate;
- Late payment charge stated either as a percentage or a dollar amount;
- Description of the security interest which will be retained by the lender/creditor as security

for the loan;

- Insurance and whether premiums for coverage are included in the finance charge;
  - Certain security interest charges or fees to be excluded from the finance charge, such as taxes or other fees paid to public officials, or the premium for insurance in lieu of perfecting the security interest (if subject to RESPA, the required RESPA statement is sufficient disclosure);
  - Specific reference to terms of the contract related to nonpayment, default, acceleration, or prepayment penalties;
  - In applicable transactions, a statement that a due-on-sale clause or other conditions about the loan assumption policy are contained in the loan documents and a statement whether the lender/creditor will allow subsequent buyers to assume the remaining obligation; and,
  - Whether there is a required deposit by the borrower as a condition of the loan and a statement that the annual percentage rate does or does not reflect the effect of any such required deposit.

*Note: If the deposit is any kind of fee or charge collected by the mortgage broker and not the lender, California law requires that the broker have an "advance fee" contract preapproved by the Real Estate Commissioner, except for advance payment of appraisal and credit report fees collected by the broker for payment to third parties.*

The right to rescind a real estate loan applies to most consumer credit transactions in which the lender/creditor will acquire or retain a security interest in the borrower's principal dwelling. The lender/creditor must provide each borrower who is entitled to rescind with a written notice of this right. The borrower has the right to rescind without penalty until midnight of the third business day (Sundays and federal holidays excluded) following the later of these events:

- consummation of the loan transaction;
- delivery of all material truth-in-lending disclosures; or,
- delivery of the notice of the right to cancel.

Certain real estate loan transactions are exempt from rescission under Regulation Z, including: a residential (purchase) mortgage; refinancing or consolidation by the same lender who currently holds the loan secured by the principal dwelling, provided no "new" money is advanced; any transaction in which a state agency is a creditor; loans for vacant lots or vacation and retirement homes (not the principal residence of the borrower); and a business-purpose line of credit even though secured by the borrower's dwelling.

The TILA was amended in 1994 with respect to certain loans, other than purchase money loans, secured by the borrower's principal dwelling. In these "high rate/high fee" loan transactions, also known as "Section 32" loans, the TILA now places some additional restrictions on creditors, requires more disclosures, and gives borrowers more cancellation rights. The amendment defines a creditor as someone who, in any 12-month period, originates more than one high rate/high fee loan. Also, any such loan arranged by a mortgage broker is subject to the new requirements. A high rate loan is one in which the annual percentage rate (APR) exceeds by 10 points or more the yield on Treasury Securities having a similar term. A high fee loan is one in which the total points and fees exceed the greater of 8% of the loan amount or, as of January 1, 1999, \$441.00 (adjusted annually on January 1 based on the change in the Consumer Price Index).

Federally related senior and junior loan transactions for the financing of the initial purchase, or construction/take-out, or refinancing of owner and non-owner occupied residential property of one-to-four units are subject to the Real Estate Settlement Procedures Act (RESPA). Borrowers of loans subject to RESPA are entitled to receive an advance truth-in-lending disclosure from the lender/creditor. The purpose of the advance disclosure is to give the borrower an opportunity to compare the loan terms being offered to the terms available from other lenders/creditors.

The TILA also includes detailed requirements for the advertising of consumer credit.

*(15 U.S. Code 1601 et seq.; 12 Code of Federal Regulations 226 et seq.)*

#### **D. Real Estate Settlement Procedures Act (RESPA)**

The Real Estate Settlement Procedures Act (RESPA) is a federal law which helps protect the buyer/borrower during the settlement or escrow phase of federally related mortgage loan transactions. These transactions include most loans secured by a first or subordinate lien on residential property, such as home purchase loans, refinance loans, improvement loans, lender-approved assumptions, and equity lines of credit. Regulations to implement RESPA are issued by the U.S. Department of Housing and Urban Development (HUD).

Settlement or escrow is a process whereby the ownership of real property transfers from the seller to the buyer and/or the property is encumbered by a secured loan with the assistance of a settlement agent or an escrow holder. RESPA provides detailed information on settlement and escrow and its itemized costs so that the buyer/borrower can shop around for settlement/escrow services and also make informed decisions during the loan/sale transaction and the settlement/escrow process. Major revisions to the RESPA law occurred in 1996.

RESPA sets forth special disclosure requirements for most lenders/creditors who provide such federally related loans secured by one-to-four dwelling units, manufactured housing, or a lot on which a residence will be built or on which a manufactured home will be placed. Lenders/creditors may also be subject to RESPA disclosures when a certain volume of residential mortgages are made, whether or not such mortgages are otherwise federally related. Certain temporary financing and land contracts of sale are not covered by RESPA.

Disclosure requirements are primarily the responsibility of the lender/creditor. RESPA regulates specified disclosures at the time of the loan application, and at or before the time of settlement or closing of escrow, and servicing disclosures after closing. Effective January 1, 1998, real estate brokers who act as mortgage brokers no longer have to deliver to the borrower a separate California-mandated mortgage loan disclosure statement in federally related loan transactions where the borrower receives a good faith estimate (GFE) of settlement costs as required under RESPA and all disclosures required by the Truth-in-Lending Act and Regulation Z. This is provided that the documents set forth the broker's real estate license number, contain a clear and conspicuous statement on the face of the documents stating that the "good faith estimate" does not constitute a loan commitment; and that a special balloon payment disclosure is included if the loan contains a balloon payment provision. *Note: If a broker does not provide the California mortgage loan disclosure statement, he/she must provide a separate disclosure of all the compensation he/she expects to receive for arranging the loan.*

In all nonfederally related brokered loans and in all "Article 7" loans under California law (with first trust deeds of less than \$30,000 and junior loans of less than \$20,000, whether they are federally related or not), mortgage brokers are still required to provide the California Mortgage Loan Disclosure Statement to the borrower.

Under RESPA, real estate brokers who act as mortgage brokers must deliver to the intended borrower(s) a broker's GFE within three days of receipt of the written loan application. The

GFE disclosure must include a statement that it "...is being provided by \_\_\_\_\_, a mortgage broker, and no lender has yet been obtained. A lender will provide you with an additional good faith estimate within three business days of receipt of your loan application." While the HUD Special Information Booklet (describing the settlement process and costs) may be provided to the borrower(s) by either the mortgage broker or the lender, the lender/creditor's GFE and other required federal disclosures and notices of rights must be delivered by the lender or the authorized exclusive agent of the lender.

Some RESPA requirements may affect the real estate agent(s) involved in the transaction with respect to any recommendations the agent(s) might make to a buyer/borrower about the use of a particular lender, title company, attorney, or other provider of settlement/escrow services. **When a transaction is subject to RESPA, the buyer/borrower has the right to select the providers of such services.**

Under the provisions of RESPA, the buyer/borrower is entitled to receive the following:

- a copy of an informational booklet from Housing and Urban Development (HUD) which explains RESPA, delivered at the time the prospective borrower makes written application for a loan, or not later than 3 business days after either the lender/creditor or mortgage broker receives the written loan application for senior financing;
- a broker's Good Faith Estimate of settlement/closing costs which the borrower is likely to incur at close of escrow, delivered not later than 3 business days after the mortgage broker who is not the authorized exclusive agent of the lender/creditor receives the written loan application;
- a lender's Good Faith Estimate of settlement/closing costs which the borrower is likely to incur at close of escrow, delivered not later than three business days after the lender/creditor or its authorized exclusive agent receives the written loan application;
- an Affiliated Business Arrangement disclosure where the lender/creditor follows the practice of designating specific settlement or escrow service providers (as a part of the good faith estimate), containing the name, address, and phone number of each designated provider; an estimate of settlement/closing costs; and whether each designated provider has a business relationship with the lender/creditor;
- an advance Truth-in-Lending disclosure statement, to be provided by the lender/creditor, setting forth the material loan disclosures as proposed and estimated by the lender/creditor in accordance with Section 226.19 of Regulation Z; and,
- the HUD Uniform Settlement Statement, which the lender/creditor must use in providing estimates and the final actual disbursements of settlement/closing costs. The borrower has the right to inspect the Uniform Settlement Statement one business day prior to the close of escrow.
- a Mortgage Servicing disclosure statement specifying whether the lender intends to service the loan (handle the receipt and disbursement of the monthly loan payments and related matters) or transfer it to another lender, and information about complaint resolution.
- after settlement or close of escrow, an Annual Escrow Statement from the loan servicer;
- a Servicing Transfer Statement if the loan servicer sells or assigns the servicing rights to a borrower's loan to another loan servicer, 15 days before the effective date of the loan transfer, indicating when and where the new loan servicer will begin accepting payments.

RESPA prohibits any "kickbacks" or the payment of unearned fees to any person (including a real estate broker) as compensation for referrals to any real estate settlement/escrow service.

This includes noncash inducement offers to brokers such as trips. RESPA does not prohibit a lender or settlement provider from offering an incentive to a borrower, provided that the incentive is not based on the borrower referring business to the lender or provider. Written agreements between real estate brokers to cooperate and share customary and reasonable commissions may be acceptable if limited to compensation for the sale transaction.

RESPA Regulations permit real estate brokers to be reasonably compensated for work performed on behalf of the borrower(s), including the use of Computerized Loan Originations (CLOs). There is no longer an exemption from RESPA for CLOs and a previously required separate CLO disclosure format has been eliminated.

Generally, when a real estate broker receives customary and reasonably earned commissions/fees for services rendered and/or reimbursements for costs and expenses actually incurred, it would not be in violation of RESPA as long as such commissions/fees, costs and expenses are fully disclosed. This includes anything the broker receives directly or indirectly from the lender as well as the borrower. The HUD-1 Settlement Statement must also show any direct or indirect payments by the lender to affiliated or independent settlement providers. If they are paid outside of escrow, they must be shown as "P.O.C." (paid outside of closing) on the HUD-1. HUD/FHA is charged with the responsibility to enforce RESPA and their General Counsel's Office or their Enforcement Section should be contacted for further information and clarification.

*(12 U. S. Code Sections 2601 - 2617; 24 CFR Part 3500 - Real Estate Settlement Procedures Act, Regulation X; The Housing and Community Development Act of 1992; Business and Professions Code Sections 10176(a) and (g))*

#### **E. Disclosure by Agent Receiving Compensation from a Lender**

A real estate licensee who acts as the agent for either party in the sale, lease or exchange of real property, a mobilehome, or a business opportunity must disclose to both parties the form, amount, and source of any compensation received or expected to be received from a lender involved in financing related to the transaction. This is required even if the broker does not handle the financing aspect of the transaction. The disclosure must be given to each party to the transaction before the transaction closes escrow. Real estate licensees must disclose to their principals all compensation, or expected compensation, regardless of the form, time, or source of payment.

*(Commissioner's Regulation 2904; Business and Professions Code Sections 10176(a) and (g))*

*Note: California Business and Professions Code Section 10177.4 prohibits certain referrals for compensation. A real estate licensee may not receive compensation for referring customers to any escrow agent, structural pest control firm, home protection company, title insurer, controlled escrow company, or underwritten title company. Further, receipt of such compensation from an employee of a title insurer, underwritten title company or controlled escrow company constitutes commercial bribery. See Penal Code Section 641.4.*

#### **F. Notice of Transfer of Loan Servicing**

If a loan is secured by California real property containing one-to-four residential units, California law requires notice to the borrower when the servicing/collection function is transferred, even though the transaction is not subject to RESPA. The notice must be delivered before the borrower is obligated to redirect the payments. Transfer of the servicing/collection function to a trustee exercising a power of sale under a deed of trust does not constitute a transfer of loan servicing under this law.

*(Civil Code Section 2937)*

*Note: Federal regulations have also been promulgated for notice of transfer of loan servicing and the notice is now a requirement of RESPA.*

### **G. Disclosures to Borrower for Real Property Loans**

A real estate broker who solicits or negotiates loans on behalf of borrowers or lenders to be secured directly or collaterally by liens on real property in nonfederally related loan transactions must deliver a written disclosure statement to the borrower within three business days of receipt of the borrower's written loan application, or before the borrower becomes obligated to complete the loan, whichever is earlier.

The required statement, known as the Mortgage Loan Disclosure Statement (MLDS), must be in a form approved by the Real Estate Commissioner and shall contain:

1. expected maximum costs and expenses of making the loan which are to be paid by the borrower, including, but not limited to, fees for appraisal, settlement/escrow, credit report, title insurance, recording, and notary services.
2. total amount of real estate commissions/fees to be received by the broker from anyone, regardless of the form, time, and source of payment, for services performed in arranging the loan including, but not limited to: points, loan origination fees, bonuses, rebates, premiums, discounts as well as other charges received by the real estate broker in lieu of interest in transactions where the broker acts as the lender. The disclosure must distinguish between commissions/fees, bonuses, rebates and premiums paid to the broker and loan origination fees, bonuses, and discounts paid to the lender.
3. liens against the real property disclosed by the borrower and whether each lien will remain senior or will be subordinate to the lien that will secure the subject loan.
4. liens, including the lien securing the subject loan, which are anticipated to be secured by the real property and the order of priority of such liens.
5. estimated amounts to be paid by the borrower for:
  - fire insurance;
  - balances due on prior liens, including interest, prepayment penalties, fees for reconveyance, or other removal from record of prior liens;
  - amounts due other creditors; and
  - assumption, transfer, forwarding and beneficiary statement fees.
6. estimated balance of the loan to be paid to the borrower after deducting all loan fees, penalties, and costs to secure the loan.
7. principal amount of the loan.
8. rate of interest (whether fixed or variable).
9. term of the loan; number and amount of each installment; the approximate loan balance at maturity; and the following notice in 10-point bold typeface:

**NOTICE TO BORROWER: IF YOU DO NOT HAVE THE FUNDS TO PAY THE BALLOON PAYMENT WHEN IT COMES DUE, YOU MAY HAVE TO OBTAIN A NEW LOAN AGAINST YOUR PROPERTY TO**

**MAKE THE BALLOON PAYMENT. IN THAT CASE, YOU MAY AGAIN HAVE TO PAY COMMISSIONS, FEES, AND EXPENSES FOR THE ARRANGING OF THE NEW LOAN. IN ADDITION, IF YOU ARE UNABLE TO MAKE THE MONTHLY PAYMENTS OR THE BALLOON PAYMENT, YOU MAY LOSE THE PROPERTY AND ALL OF YOUR EQUITY THROUGH FORECLOSURE. KEEP THIS IN MIND IN DECIDING UPON THE AMOUNT AND TERMS OF THIS LOAN.**

10. a statement containing the name, real estate license number and business address of the real estate broker negotiating the loan.

11. if the broker anticipates the loan will be made from funds owned or controlled by the broker, the broker's relative, or an entity in which the broker alone or together with a relative (s) has a 10% or greater interest, the broker's statement to that effect.

12. terms of prepayment, including the amount of penalty, if any.

13. a statement that the purchase of credit life or disability insurance is not required as a condition of the loan.

14. if the loan is secured by a first trust deed of less than \$30,000 or a junior lien of less than \$20,000, a statement that the loan is being made in compliance with Article 7 of Chapter 3 of the Real Estate Law.

The Real Estate Commissioner's Regulations contain an approved form for the Mortgage Loan Disclosure Statement that includes a notice to the borrower of the importance of stating accurately the amount, type, and priority of existing and anticipated liens. The Regulations also include an approved form that combines the Mortgage Loan Disclosure Statement with a Good Faith Estimate disclosure.

The MLDS must be signed by the borrower and the agent negotiating the loan. The broker negotiating the loan must keep a signed copy of the statement on file for three years. A broker who initially holds himself out as an agent arranging a loan will be subject to this requirement even though he/she ultimately makes the loan with his/her own money. In that case, the amount of compensation disclosed will include any loan origination fee, discount, bonuses, or other compensation which the broker collects as the lender.

In federally related loan transactions which are controlled by RESPA, real estate brokers who act as mortgage brokers no longer have to deliver to the borrower the above separate California-mandated mortgage loan disclosure statement, so long as the borrower receives a good faith estimate of settlement costs as required under RESPA and all disclosures required by the Truth-in-Lending Act (Regulation Z), and provided that other disclosures are given as discussed in the section above on RESPA.

*(Business and Professions Code Sections 10240, 10241 and 10245; Commissioner's Regulation 2840)*

#### **H. Notice of Borrower's Right to Copy of Appraisal**

A lender on a loan to be secured by residential real property must give the applicant (borrower) notice of the applicant's right, upon request, to receive a copy of the appraisal report, provided the applicant has paid for the appraisal.

The lender must give this notice with the "good faith estimate" of loan charges required by the Real Estate Settlement Procedures Act (RESPA). If the loan does not fall under the RESPA requirement, the lender must give the appraisal notice at the time of application or not later than 15 days after receipt of the application. The notice must be a separate document printed

in 10-point type.

For nonresidential property (i.e., other than one-to-four residential units), the notice is only required if the loan involves purchase money financing or a refinancing of purchase money debt.

If a real estate broker makes or arranges a loan in an amount less than \$30,000 secured by a first trust deed, or a loan of less than \$20,000 secured by a junior trust deed, the broker must deliver a copy of the appraisal to both the borrower and the lender at or before the closing of the loan transaction. This requirement only depends on the borrower having been charged a fee for the appraisal.

*(Business and Professions Code Sections 10241.3 and 11423; Equal Credit Opportunity Act)*

#### **I. Broker's Disclosures to Lender or Promissory Note Purchaser**

A real estate broker may arrange:

- a loan secured by real property;
- the sale of a loan secured by real property;
- a loan secured by a loan (the collateralized loan) which is secured by real property; or
- the sale of a loan secured by a collateralized loan.

A loan or sale of a promissory note (other than when collateralized) may have multiple lenders or purchasers, and be governed by special multi-lender laws as discussed below.

In a single-lender or purchaser loan transaction, the broker must give the lender or purchaser a Lender/Purchaser Disclosure Statement, unless exempt by statute. Because of the statute's many institutional and defined licensed lender exemptions, this disclosure obligation is owed primarily to private parties and most Employees' Retirement Income Security Act (ERISA) regulated and non-regulated pension plans.

Basically, the disclosures contained in the Lender/Purchaser Disclosure Statement must include:

1. material terms of the loan;
2. status of all existing loans/liens against the securing property;

*Note: A broker shall also provide to the prospective lender the option to apply to purchase a title insurance policy or an endorsement to an existing title insurance policy covering the securing property, and a copy of a written loan application, and a credit report.*

3. information about the securing property:

- address, assessor's parcel number, and, if available, the legal description;
- age, size, and type of construction of any improvements;
- an estimate of fair market value as determined by an appraisal, a copy of which shall be provided to the lender;

*Note: A lender may waive the requirement of an independent appraisal in writing, on a case-by-case basis, in which case the real estate broker shall provide the broker's written estimated fair market value of the securing property, which shall include the objective data upon which the broker's estimate is based.*

- existing and expected or anticipated encumbrances and the investor's protective equity (the difference between the market value of the property and the total senior indebtedness plus the subject loan);
4. pertinent data about the borrower, including identity, occupation, employment, income and credit, as represented to the broker by the borrower; or, in the sale of a loan, similar information about the ability of the trustor to meet the contractual obligations under the note or contract, including payment history;
  5. loan servicing arrangements or lack thereof;
  6. the broker's capacity in the transaction as an agent or principal (a broker may initially hold himself/herself out as arranging a loan but ultimately declare that he/she is the borrower); and,
  7. if the broker will directly or indirectly obtain the use or benefit of some or all of the funds other than for commissions, fees, costs, and expenses for services as an agent, a detailed statement of the intended use and disposition of the funds, including an explanation of the nature of the benefit to the broker.

The lender/purchaser must receive the statement before becoming obligated to complete the transaction. The broker must also deliver the statement to the Department of Real Estate (DRE) in advance of accepting loan funds if the broker will directly or indirectly obtain the use or benefit of the funds.

### ***Multi-Lender Transactions***

Effective January 1, 1998, certain multi-lender transactions are exempt from securities qualifications through the Department of Corporations (DOC) if arranged by a real estate broker who complies with all the provisions of Business and Professions Code Section 10229, including specified notice, advertising, trust account, reporting (to DRE), disclosure and other related requirements, and the interest of each lender/purchaser is recorded. These transactions, which may not include more than ten lenders with qualified net worth or investment income as defined, are commonly known as "fractionalized" loans.

"Self-dealing" is not permitted in multi-lender transactions except in very limited circumstances and must be fully disclosed in the Lender/Purchaser Disclosure Statement (*see Business and Professions Code Section 10229(d)(1)(A) & (B)*). Further, a multi-lender transaction must include a servicing agreement. Otherwise, the broker shall disclose the same information as listed above for single-lender/purchaser transactions, and the following additional disclosures:

- notice of the right to obtain a copy of the appraisal;
- a broker determination statement if the broker determines to exceed the maximum statutory ratios of the value of the loan to the market value of the property (in no event to exceed 80 percent of the current fair market value of improved real property plus an insurance factor);
- default and foreclosure procedures for governing the actions of all holders of interests in the loan by the vote of holders of more than 50 percent of the beneficial interests;

- the identity of the escrow holder for the transaction; and
- the right, upon demand, to obtain the names and addresses of the other lenders or note holders on the loan.

### ***Loan Servicing***

Real estate brokers who service loans are required to provide certain disclosures to the lenders or note holders as well. Any such servicing on behalf of a borrower, lender or note holder must be done pursuant to a written authorization or servicing agreement. California law does not allow the advancing of funds by a broker for payments that should have been paid or tendered by the borrower without a special securities permit from DOC. In the event that a borrower does not make a scheduled payment and the broker causes other funds to be applied toward a payment to protect the security of the note or contract being serviced, including debt service on a senior lien, the broker must give written detailed notice to the lender or note holder not later than 10 days after making such payment. Any such payment by the broker from funds other than the borrower's, or any promise by the broker to pay, or to guarantee the payments, the investment, or the rate of return may only be done under a disclosed DOC permit.

*(Business and Professions Code Sections 10229, 10231.2, 10232.4, 10232.5, 10232.6; and 10233.1; Corporations Code Section 25707; Commissioner's Regulation 2846)*

### **J. Equal Credit Opportunity Act - Notice of Adverse Action - Regulation B**

The Equal Credit Opportunity Act makes it unlawful for any creditor to discriminate against any credit applicant with respect to any aspect of a credit transaction on the basis of race, color, religion, national origin or ancestry, sex, marital status, or age (provided the applicant has the capacity to contract). The law prohibits discrimination against applicants who receive income from a public assistance program or against an applicant who has exercised, in good faith, any right under the Consumer Credit Protection Act. In all cases, credit guidelines must be applied in a uniform manner.

A lender/creditor who denies an application for credit must provide the applicant with a statement of reasons or a written notification of the applicant's right to obtain a statement of reasons. The statement and notice of adverse action must generally be provided within 30 days after receiving the completed loan application. (In certain credit transactions, the notice period may be longer.) The notification and statement from the lender/creditor may be verbal if in the preceding calendar year the lender/creditor acted on less than 150 loan applications.

*Adverse action* includes a denial, revocation, or change in the terms of an existing credit arrangement and does not include a refusal to extend credit under an existing credit arrangement where the applicant is delinquent or otherwise in default. Nor does it include additional credit which would cause an extension of credit to exceed an established limit.

In addition to the foregoing federal law, state law regulates the issuance of consumer credit reports, access by the consumer to such reports, and the obligations of credit reporting agencies. Also, users of consumer credit reports are subject to the requirements of state law and must provide notice to the consumer when credit is denied.

*(Title 15 U. S. Code 1691 et seq.; Regulation B (12 CFR Part 202 et seq.); California Civil Code Section 1785.1 et seq.)*

### **K. Disclosure Required by the Housing Financial Discrimination Act of 1977 (Holden Act)**

Federal policy is to ensure fair housing by prohibiting discrimination based on race, color, religion, sex, national origin, marital status, age, or physical disabilities in connection with the

sale, rental, construction, or financing of housing. To supplement federal legislation, state laws have been enacted to forbid the discriminatory practice known as "red-lining," which results in blanket refusals by some lenders to make loans in neighborhoods of declining property values.

The Holden Act prohibits the consideration of race, color, religion, sex, marital status, national origin, or ancestry in lending for the purchase, construction, improvement, or rehabilitation of housing. Further, lenders cannot deny loan applications because of ethnic composition, conditions, characteristics, or expected trends in the neighborhood or geographic area surrounding the property. The Act encourages increased lending in neighborhoods where, in the past, financing has been unavailable. The major goal of the Act is to ensure and increase the supply of safe and decent housing for credit-worthy borrowers and to prevent neighborhood decay.

To ensure that prospective borrowers are aware of their rights under this law, lenders must notify all applicants of the provisions of the Holden Act at the time of loan application. The notice must include the address where complaints may be filed and where information may be obtained. The notice must be in at least 10-point type and must also be posted in a conspicuous location in the lender's place of business.

Any applicant seeking a real estate loan in connection with financing a personal residence (containing not more than four dwelling units) who believes he/she has been subjected to discrimination may file a complaint with the Secretary of the Business, Transportation and Housing Agency or his or her designee. The Secretary's decision will be final unless the applicant or lender requests a hearing.

*(Health & Safety Code Section 35800 et seq.)*

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## Section IV

### Disclosures Relative to Subdivisions

*Under the Subdivided Lands Law, a subdivision exists when improved or unimproved land is divided for the purpose of sale, lease or financing (whether immediate or future) into five or more parcels. The law applies to residential single-lot subdivisions, common interest developments, time-shares (of 12 or more interests), and mandatory leases of five or more years in a mobilehome park. Among other exemptions, this law does not apply to: parcels of 160 acres or more in size described by government survey and appearing as such on current assessment rolls; certain undivided interests; expressly zoned industrial and commercial subdivisions limited in use to commercial or industrial purposes; and subdivisions located entirely outside California (except a time-share subdivision with one or more component sites located within the United States).*

#### **A. Public Report: Disclosure of Material Facts About a Subdivision**

Unless the project is exempt by operation of law, a person intending to offer subdivided lands for sale (or lease, if that is the marketing plan) must apply for and obtain a public report from the Department of Real Estate. The public report is a detailed statement which discloses to prospective buyers pertinent facts about a subdivision. The report includes information about utilities and water, roads, soil and geologic conditions, title, zoning and use, hazards, and any financial arrangements for completion of the subdivision. In the case of a common interest subdivision, information is also provided about the homeowners' association, the assessments, budget, and governing documents.

A subdivider or his agent must post a copy of the public report in a conspicuous place in any office where sales of subdivision interests are conducted, and must give a copy to any

member of the public who asks for one and to each prospective buyer prior to entering into a contract to purchase. The subdivider, owner, or the agent of the subdivider or owner must have each prospective buyer sign a receipt that he or she has received and has had an opportunity to read the public report before entering into an agreement to purchase. The subdivider is required to keep the receipt for three years.

If the subdivision interest being offered is in a common interest development (a planned development, stock cooperative, condominium, or community apartment project), the subdivider or his agent must give the buyer a detailed statement called "Common Interest Development General Information." This statement, contained in the public report, explains what ownership in a common interest development means with regard to: mandatory membership in the association; rights and remedies under the governing documents; payment of assessments; ownership and use of the recreational facilities; the responsibilities and powers of the governing body; and voting rights.

*(Business and Professions Code Section 11000 et seq.)*

## **B. Disclosure of the Right to Rescind**

Purchasers in two types of subdivisions have an unqualified right of rescission. The types of subdivisions are undivided interest and timeshare. For both, the time limit for rescission is midnight of the third calendar day following the day the purchaser executed the offer to purchase.

*(Business and Professions Code Sections 11000.2 and 11024)*

The owner, subdivider, or agent of the owner or subdivider must conspicuously disclose to all prospective buyers the right of rescission and give each buyer a rescission form for the possible exercise of this right. Regulations specify the exact language, type, and size of print to be used. By following the instructions on the rescission form, a person who has made an offer to purchase may cancel without giving any reason or incurring any penalty.

*(Commissioner's Regulations 2792.30, 2792.31, 2813.12 and 2813.13)*

## **C. Disclosure and Notice of Blanket Encumbrance**

A *blanket encumbrance* is a deed of trust, mortgage, or other lien or encumbrance (excepting taxes or assessments levied by public authority) which affects more than one lot or unit in a subdivision. Section 11013.2 of the Business and Professions Code mandates protection of a buyer's funds unless the lot or unit can be unconditionally released from the blanket encumbrance. If there is a blanket encumbrance and the project is not subject to Section 11013.2, a prospective buyer (or lessee for a period of more than five years) must receive and sign the following notice prior to the sale (or lease):

BUYER/LESSEE IS AWARE OF THE FACT THAT THE LOT, PARCEL, OR UNIT WHICH HE OR SHE IS PROPOSING TO PURCHASE OR LEASE IS SUBJECT TO A DEED OF TRUST, MORTGAGE, OR OTHER LIEN KNOWN AS A "BLANKET ENCUMBRANCE".

IF BUYER/LESSEE PURCHASES OR LEASES THIS LOT, PARCEL, OR UNIT, HE OR SHE COULD LOSE THAT INTEREST THROUGH FORECLOSURE OF THE BLANKET ENCUMBRANCE OR OTHER LEGAL PROCESS EVEN THOUGH BUYER/LESSEE IS NOT DELINQUENT IN HIS OR HER PAYMENTS OR OTHER OBLIGATIONS UNDER THE MORTGAGE, DEED OF TRUST, OR LEASE.

Date                                      Signature of Buyer or Lessee

(An example of an encumbered project which is not subject to Business and Professions Code Section 11013.2 is a subdivision zoned for, and limited in use to, industrial or commercial purposes.)

When the prospective buyer or lessee receives and executes the foregoing notice, the buyer or lessee acknowledges awareness of the blanket encumbrance and the possible consequences thereof.

*(Civil Code Section 1133)*

#### **D. Delivery of Governing Documents and Disclosures to Prospective Purchaser in a Common Interest Development**

Any person offering to sell or lease lots or units in a common interest development (a community apartment project, condominium project, planned development, or stock cooperative) which requires a public report prior to the offering must make available the following documents to the prospective buyer or lessee before the execution of an offer to purchase or lease:

- the declaration of covenants, conditions, and restrictions;
- the articles of incorporation and bylaws for the association;
- any other instrument which establishes or defines the common, mutual, and reciprocal rights and responsibilities of the owners or lessees of interests in the development;
- the current budget and related financial statements of the association; and,
- a statement prepared by the governing body of the association regarding any outstanding delinquent assessments and related charges levied by the association against the subdivision interest the prospective purchaser (or lessee) is considering buying (or leasing).

In addition, the subdivider (or agent) must deliver to the purchaser or lessee copies of the foregoing documents prior to close of escrow.

*(Business and Professions Code Section 11018.6)*

#### **E. Association Disclosures to Common Interest Owners**

Unless more stringent standards are imposed in the master documents, annual financial statements are to be prepared by the association governing a common interest development. The financial statement of the association is to be reviewed in accordance with general accounting principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income to the association exceeds \$75,000.00. The association must distribute to the individual owners a copy of that review within 120 days after the close of the fiscal year.

Copies of the pro forma budget are to be distributed by the association not less than 45 days nor more than 60 days prior to the beginning of the association's fiscal year. The operating budget shall include the following:

- the estimated revenue and expenses on an accrual basis;
- a detailed summary and evaluation of the reserve fund based on an estimate of the current replacement costs of, and the estimated remaining useful life of, and the methods of funding

used to defray the future repair, replacement, or additions to those major components which the association is obligated to maintain;

- a statement regarding any anticipated special assessment to repair, replace, or restore any major component or provide adequate reserves for such repair, etc.; and,
- a general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain.

In lieu of distributing the pro forma budget, the board of directors may elect to distribute copies of a summary of the pro forma budget together with a written notice that the budget is available at the business office of the association or at another suitable location within the boundaries of the development. The notice must indicate that the association will, at its expense, give a copy of the pro forma budget to any member upon request.

During the 60-day period immediately preceding the beginning of the association's fiscal year, the association must deliver to each owner a statement describing the association's policies and practices in enforcing lien rights or other legal remedies for a member's failure to pay assessments.

Within 30 days of the meeting, the association must make available the minutes of any meeting of the board of directors, other than an executive session. Upon request, the association must give a member a copy of those minutes. The member must reimburse the association for the cost of that distribution.

The association must provide each owner with notice, by first class mail, of any increase in regular or special assessments. The association must give this notice not less than 30 nor more than 60 days before the increased assessment becomes due.

If applicable, the association must adopt and deliver to each member a schedule of the monetary penalties that may be assessed for a member's violation, or violation by a member's guest, of the governing documents or rules of the association.

During the 60-day period immediately preceding the beginning of the association's fiscal year, the association must provide a summary of its property, general liability, earthquake and flood insurance policies, along with a statement that:

- the summary should not be relied upon for a complete understanding of the policies;
- the actual policies will be made available for review and, for a fee, duplication;
- the policies may not cover an owner's personal property or all of an owner's real property;
- the insurance may not cover personal injuries or other losses which occur within or around an owner's dwelling;
- even if a loss is covered, the owner may have to pay all or a portion of a deductible; and
- an owner ought to consult with his/her insurance broker or agent regarding appropriate additional coverage.

The association shall, as soon as reasonably practical, notify the members of any significant change in the association's insurance coverage.

Each year, the association must give the members a summary of the provisions of Civil Code

Section 1354 relating to alternative dispute resolution (ADR) proceedings (e.g., mediation or arbitration) as a means of enforcing the governing documents. The summary must include a notice that a member who does not attempt to employ ADR may lose his/her rights to sue the association or another member regarding enforcement of the governing documents.

If a claim for alleged common area construction defects is resolved prior to correction of all the alleged defects, the association must, as soon as reasonably practical, give the members a summary of the defects the association believes will be corrected, a schedule for the corrections, and the status of alleged defects that are not scheduled for correction.

*(Civil Code Sections 1354, 1363, 1365, 1366 and 1375.1)*

#### **F. Statement of Defects Disclosure for a Common Interest Development Conversion**

As soon as practicable before the transfer of title for the first sale of a unit in a common interest development which has been converted from an existing dwelling, the owner, subdivider, or the agent for the owner or subdivider must deliver to a prospective buyer a written statement of defects. This statement must disclose all substantial defects and malfunctions in the major systems in the individual unit and the common area, as known to the owner after a reasonable inspection. *Major systems* include, but are not limited to, the roof, walls, floors, heating, air conditioning, plumbing and electrical systems, and recreational facilities.

After making the inspection, if the owner finds no defects or malfunctions, the owner must provide a written statement to the buyer disclaiming knowledge of any defects or malfunctions.

If the required disclosure is delivered to the buyer after the buyer has executed an offer to purchase, the buyer has three days after personal delivery of the disclosure statement or five days after delivery by deposit in the mail to terminate the offer. The termination must be by written notice to the owner, subdivider, or the agent of the owner or subdivider. Any disclosure delivered after the buyer has signed an offer to purchase must contain a statement describing the buyer's right, methods, and time to rescind. Any person who willfully fails to carry out the requirements of this law will be liable for any actual damages suffered by the buyer.

*(Civil Code Section 1134)*

#### **G. Notices to Tenants to Disclose Intent to Convert an Apartment to Individual Ownership**

The owner of an existing apartment building may decide to convert the units to condominiums (or other form of common interest development) and offer the units for sale. Among the requirements for approval of such a subdivision are certain notices to current and prospective tenants. These notices must include information relative to public hearings regarding the proposed conversion and the right of a current tenant to purchase his/her unit.

A developer and a city or county may, as a condition of condominium map approval, enter into an agreement that newly-constructed units will be rented for ten years (or more) and then may be sold as condominiums. As part of this agreement, the developer must provide current and prospective tenants with certain notices relative to the eventual sale. Again, a tenant must receive notice of his/her right to purchase the unit.

*(Government Code Sections 66427.1, 66452.8, 66452.9, 66452.50 and 66452.51)*

#### **H. Disclosures by Prospective Managing Agent of a Common Interest Development**

The prospective managing agent of a common interest development must provide a written

statement to the association's governing body setting forth the following:

- the names and business addresses of the owners or general partners or, if a corporation, the names and business addresses of the directors and officers and shareholders holding more than ten (10) percent of the shares;
- whether or not such persons hold any relevant licenses (e.g., architectural design, real estate, construction, engineering, or accounting) issued by this state; identification of the license held; status of that license; the name appearing on the license; and,
- whether or not such persons hold any professional certifications or designations; identification of the specific certification or designation and the entity that issued it; and the status of the certification or designation.

For the purpose of the foregoing, a managing agent does not include a full-time employee of the association or a regulated financial institution performing under the authority of its license or charter.

*(Civil Code Section 1363.1)*

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## **Part II**

### **Transfer of a Business Opportunity**

*The real estate and business opportunity licenses were merged by statute effective January 2, 1966. Since then, a real estate license is the sole requirement to engage in the listing, sale, or lease of business opportunities (except for a recent change in the law authorizing securities dealers to engage in certain mergers and acquisitions of business opportunities).*

*The listing, sale, and lease of business opportunities is a very complex and highly specialized field. This part of the booklet provides only a brief overview of some general requirements and disclosures required of the seller and the seller's agent in the transfer of a business opportunity. A buyer's agent may also be required to make certain disclosures.*

#### **A. Definition of Business Opportunity**

*Business Opportunity* is defined in real estate law as the sale or lease of the business and goodwill of an existing business enterprise or opportunity. The sale or lease of a business usually involves the transfer of business personal property, although sometimes real property is involved. The sale or lease of a business opportunity usually includes the sale or transfer of the stock-in-trade, fixtures, and goodwill. Typical business opportunities include grocery stores, drug stores, gasoline service stations, beverage shops, bars, and bakeries.

*(Business and Professions Code Section 10030)*

#### **B. Bulk Transfer Law**

The bulk transfer law is designed to prevent a merchant from defrauding his or her creditors by selling the assets of a business and neglecting to pay any amounts owed the creditors. The law requires notice so that creditors may take whatever legal steps are necessary to protect their interests. For a description of the required notices to creditors and the manner of giving them, consult Sections 6104 - 6107 of the Uniform Commercial Code.

Businesses subject to this law are those whose principal activity is the sale of merchandise,

including those that manufacture what they sell. Expressly included are the businesses of a baker, restaurant owner, garage owner, or cleaner and dyer. Unless otherwise limited by law, all bulk transfers of goods within California are subject to this law.

*(Uniform Commercial Code Section 6101 et seq.)*

### **C. Sales Tax Clearance**

Under the sales and use tax law, the State Board of Equalization must be notified before the sale of all or part of a business or the stock of goods of an enterprise engaged in selling tangible business personal property. The purpose of the notification is to obtain a certificate of tax clearance and a seller's permit.

Any unpaid sales tax could become the liability of the buyer, whose identity must be made known to the State Board of Equalization. An escrow holder will generally not close a bulk sale escrow without notice to, and clearance from, the State Board of Equalization.

*(Revenue and Taxation Code Section 6811)*

### **D. Transfer of Liquor License**

Before completing the transfer of a business involved in the sale of alcoholic beverages, the Department of Alcoholic Beverage Control (ABC) must be contacted. The ABC will require that certain notices be given and that the applicant (the buyer) submit certain information before the liquor license will be transferred.

*(Business and Professions Code Section 24073)*

### **E. Franchise Investment Law**

The Franchise Investment Law requires that a prospective buyer receive detailed information about a franchise opportunity. Unless specifically exempt, every franchisor who offers a franchise for sale in California must register the sale with the Department of Corporations (DOC), and a permit from the DOC may be required in advance of such offering.

A person authorized to sell certain defined non-exempt franchises is a person:

- identified in an application registered with the Corporations Commissioner for an offering of a franchise in California;
- licensed as a real estate broker or as a salesperson supervised by a broker; or,
- licensed by the Corporations Commissioner as a broker-dealer or agent under the Corporate Securities Law of 1968.

*(Corporations Code Section 31210)*

### **F. Fictitious Business Name (DBA)**

Every individual or entity that regularly transacts business for profit in California under a fictitious business name must file a fictitious business name statement not later than 40 days after commencing business.

The statement, in a form prescribed by law, must be filed with the county clerk of the county of the principal place of business in the state, or if there is no place in the state, then in Sacramento.

The statement must be published in a newspaper of general circulation in the county where publication of the notice is intended and an affidavit of publication is to be filed with the appropriate county clerk within 30 days after publication.

A fictitious name is:

- a name that does not include the surname of the individual owner, or a name that suggests there are any additional owners;
- a partnership name that does not include the surnames of all general partners, or a name that suggests additional owners;
- a corporate name other than that stated in the Articles of Incorporation for the corporation.

*(Business and Professions Code Section 17900 et seq.)*

### **G. Notice of Other Government Agencies**

The buyer should be informed of other government agencies which should be contacted for permits and clearances. These include, but are not limited to:

- Internal Revenue Service for employer identification number for federal withholding taxes;
- State Department of Benefit Payments regarding state payroll tax withholding;
- State Department of Industrial Relations regarding worker's compensation insurance; and
- other county and municipal agencies for local licenses, permits, and information about various local requirements for operating a business.

#### ***Government Agencies***

##### **Federal Agencies**

Federal Trade Commission  
Consumer Specialists  
901 Market Street, # 570  
San Francisco, CA 94103  
(415) 356-5270

Housing and Urban Development, Department of  
Office of Single Family Housing  
and Mortgage Activities  
451 7th Street S.W., Room 9282  
Washington, D.C. 20410  
(202) 708-3175

Internal Revenue Service  
1111 Constitution Avenue N.W.  
Washington, D.C. 20224  
(800) 829-1040

##### **State Agencies**

Alcoholic Beverage Control  
3810 Rosin Court, Suite 150

Sacramento, CA 95834  
(916) 263-6900

Corporations, Department of  
980 9th Street, Suite 500  
Sacramento, CA 95814-2725  
(916) 445-7205

Energy Resources, Conservation and Development Commission  
1516 9th Street  
Sacramento, CA 95814  
(800) 772-3300

Equalization, Board of  
450 N Street  
Sacramento, CA 95814  
(800) 400-7115

Financial Institutions, Department of  
111 Pine Street, Suite 1100  
San Francisco, CA 94111-5613  
(800) 622-0620

Franchise Tax Board  
9645 Butterfield Way  
Sacramento, CA 95827  
(800) 852-5711

Geologist, State  
Division of Mines and Geology  
801 K Street  
Sacramento, CA 95814  
(916) 445-1825

Insurance, Department of  
Consumer Service Information  
300 Capitol Mall, 15th Floor  
Sacramento, CA 95814  
(800) 927-4357

Real Estate Appraisers, Office of  
1755 Creekside Oaks Drive, Suite 190  
Sacramento, CA 95833-3637  
(916) 263-0722

Structural Pest Control Board  
1422 Howe Avenue, Suite 3  
Sacramento, CA 95825-3280  
(800) 737-8188

Toxic Substances Control, Department of  
400 P Street  
Sacramento, CA 95812-0806  
(916) 324-1826

Water Resources, Department of  
1416 9th Street

Sacramento, CA 95814  
(916) 653-5791

### **Department of Real Estate Offices**

Sacramento Principal Office  
2201 Broadway  
Sacramento, CA 95818-2500  
(916) 227-0864

Fresno District Office  
2550 Mariposa Mall, Suite 3070  
Fresno, CA 93721-2273  
(559) 445-5009

Los Angeles District Office  
320 W. 4th Street, Suite 350  
Los Angeles, CA 90013-1105  
(213) 620-2072

Oakland District Office  
1515 Clay Street, Suite 702  
Oakland, CA 94612-1462  
(510) 622-2552

San Diego District Office  
1350 Front Street, Suite 3064  
San Diego, CA 92101  
(619) 525-4192

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