

Sales Disclosure Chart for REALTORS®

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REALTORS® know very well the importance, and the complexity, of the various state and federal disclosure laws governing real estate transactions in California. *Sales Disclosure Chart for REALTORS®* is designed to provide REALTORS® and their clients with an easy-to-use reference guide for determining the applicability of these laws to the sales transactions most commonly handled by real estate licensees.

Sales Disclosure Chart for REALTORS® addresses the general applicability of common disclosure requirements in particular types of transactions, but does not cover all disclosures required by law such as additional local requirements. In addition, some of the disclosures addressed in this chart, though generally applicable to a particular type of transaction, may be subject to exceptions which, unless otherwise noted, are not addressed in this publication. Certain transactions, including new home, subdivision, and common interest development sales, may be subject to separate disclosure requirements.

Disclosure	Residential Real Property 1-4 Units			Res. 5+ Units	Vacant Land / Comm'l & Industrial	Personal Property Mobile-homes	C.A.R. Form/ Publication	Law Citation
		Probate / Trust	Foreclosure / REO					
Advisability of Title Insurance (When No Insurance Issued)	Yes	Yes	Yes	Yes	Yes	No		Cal. Civ. Code §1057.6.
Agency Relationship Disclosure Form and Agency Confirmation	Yes	Yes	Yes	No	No	Yes	Disclosure Form: AD Confirmation: "Agency" section of C.A.R. purchase agreements, or AC-6	Cal. Civ. Code §§ 2079.13 <i>et seq.</i>
Area of Potential Flooding¹	Yes	Yes	No (Probably) ² /Yes	Yes	Yes	Yes	NHD (if required)	Cal. Gov't. Code §§ 8589.4, 8589.5; Cal. Civ. Code §§ 1103 <i>et seq.</i>
Broker's Statutory Duty to Inspect Property	Yes	Yes	Yes	No	No	Yes	TDS (for real property) MHTDS (for personal property mobilehomes) AID (if TDS and MHTDS not required)	Cal. Civ. Code §§ 2079 <i>et seq.</i>
Commercial Property Owner's Guide to Earthquake Safety (Booklet)	Yes ²	No	No	Yes	No/Yes	No	<i>The Commercial Property Owner's Guide to Earthquake Safety</i>	Cal. Bus. & Prof. Code §10147; Cal. Gov't Code §§ 8875.6, 8875.9, 8893.2, 8893.3; Cal. Civ. Code § 2079.9
Death (in last 3 years) and/or AIDS	Yes	Yes	Yes	Yes	Yes	No*	TDS (if required) SSD (if TDS not required)	Cal. Civ. Code 1710.2 (* statute applies only to real estate but may be required under "material fact" analysis)
"Drug Lab" Clean-Up Order (Release of Illegal Controlled Substance Remediation Order)	Yes	Yes	Yes	Yes	Yes	Yes*	TDS (if required) (question II.C.1) SSD (if TDS not required)	Cal. Health & Safety Code § 25400.28 (disclosure); §§ 25400.36(q) and (r) (definitions). (*exempt if located in a mobilehome park or manufactured home park).
Earthquake Fault Zone¹	Yes	Yes	Yes	Yes	Yes	Yes	NHD (if required)	Cal. Pub. Res. Code §§ 2621 <i>et seq.</i> ; Cal. Civ. Code §§ 1103 <i>et seq.</i>

Energy Ratings Booklet(Optional Disclosure ⁴ Not Yet Available)	No	No	No	No	No	No		Cal. Civ. Code § 2079.10; Cal. Pub. Res. Code §§ 25402.9, 25942
FHA/HUD Inspection Notice	Yes	Yes	Yes	No	No	No	HID	HUD Mortgagee Letters 99-18, 99-32
FIRPTA (Federal Tax Withholding) and California Tax Withholding	Yes	Yes	Yes	Yes	Yes	No	AS (applies to both FIRPTA and California Tax Withholding) AB (applies only to FIRPTA)	Cal. Rev. & Tax Code §§ 18662, 18668; 26 U.S.C.S. §1445
Flood Disaster Insurance Requirements	Yes	Yes	Yes	Yes	Yes ⁵	Yes		42 U.S.C.S. § 5154a
Homeowner's Guide to Earthquake Safety (Booklet)	Yes	No	No	No	No	No ⁶	<i>The Homeowner's Guide to Earthquake Safety</i>	Cal. Bus. & Prof. Code § 10149; Cal. Gov't Code §§ 8897.1, 8897.5; Cal. Civ. Code § 2079.8
Industrial Use Zone Location	Yes	No/No ³	No	No	No	No	SSD	Cal. Civ. Code § 1102.17; Cal. Code of Civ. Proc. § 731a
Lead-Based Paint Pamphlet and Form	Yes	Yes	No/Yes	Yes	No	Yes (Probably) ⁷	Pamphlet: <i>Protect Your Family From Lead In Your Home</i> (incorporated in <i>Residential Environmental Hazards: A Guide for Homeowners, Buyers, Landlords and Tenants</i>) Form: FLD	42 U.S.C.S. § 4852d; 40 CFR Part 745
Material Facts ⁸	Yes	Yes	Yes	Yes	Yes	Yes	TDS or MHTDS (if required) SSD	Case law; Cal. Civ. Code §§ 2079 <i>et seq.</i>
Megan's Law Disclosure (Registered Sex Offender Database)	Yes	Yes	Yes	No	No	No	"Database Disclosure" section of C.A.R. purchase agreements, or DBD	Cal. Civ. Code § 2079.10a
Mello-Roos and 1915 Bond Act Assessments ⁹	Yes	No/No ³	No	No	No	No		Cal. Civ. Code § 1102.6b; Cal. Gov't Code §§ 53340.2, 53754
Military Ordnance Location	Yes	No/No ³	No	No	No	No	SSD	Cal. Civ. Code § 1102.15
Mold (Disclosure of Excessive Mold or Health Threat) ¹¹	No	No	No	No	No/Yes*	No		Cal. Health & Safety Code §§ 26140, 26141, 26147 (*Appli-cable when CDHS establishes limits)
Natural Hazard Disclosure Statement	Yes	No	No	No	No	Yes	NHD	Cal. Civ. Code §§ 1103 <i>et seq.</i>
Residential Environmental Hazards Booklet (Optional Disclosure ¹¹)	No	No	No	No	No	No	<i>Residential Environmental Hazards: A Guide for Homeowners, Buyers, Landlords and Tenants</i>	Cal. Civ. Code § 2079.7
Seismic Hazard Zone ¹	Yes	Yes	Yes	Yes	Yes	Yes	NHD (if required)	Cal. Pub. Res. Code § 2694; Cal. Civ. Code §§ 1103 <i>et seq.</i>
Smoke Detectors Must Be In Compliance	Yes	Yes*	Yes*/Yes	Yes	No/No**	Yes		Cal. Health & Safety Code §§ 13113.7, 13113.8,

								18029.6 (*Single-family homes and factory-built housing are exempt) (**Yes, if there is a "dwelling unit" on the commercial or industrial property)
Smoke Detector Written Statement of Compliance	Yes*	No	No/Yes*	No	No	No	SDS	Cal. Health & Safety Code § 13113.8 (*Required for single-family homes and factory-built housing only)
Special Flood Hazard Area¹	Yes	Yes	Yes	Yes	Yes	Yes	NHD (if required)	Cal. Gov't Code § 8589.3; Cal. Civ. Code §§ 1103 <i>et seq.</i>
State Responsibility Area (Fire Hazard Area)¹	Yes	Yes	Yes	Yes	Yes	Yes	NHD (if required)	Cal. Pub. Res. Code §§ 4125, 4136; Cal. Civ. Code §§ 1103 <i>et seq.</i>
Supplemental Property Tax Notice	Yes	No/No³	No	No	No	No	SPT	Cal. Civ. Code § 1102.6c
Transfer Disclosure Statement	Yes	No/No³	No	No	No	Yes*	TDS (for real property) MHTDS (for personal property mobile-homes)	Cal. Civ. Code §§ 1102 <i>et seq.</i> (* Probate and Trusts exempt)
Very High Fire Hazard Severity Zone¹	Yes	Yes	Yes	Yes	Yes	Yes	NHD (if required)	Cal. Gov't. Code § 51183.5; Cal. Civ. Code §§ 1103 <i>et seq.</i>
Water Heater Bracing Requirement	Yes	Yes	Yes	Yes	No/ Maybe¹²	Yes (Probably)¹³		Cal. Health & Safety Code § 19211
Water Heater Bracing Statement of Compliance	Yes	Yes	Yes	Yes	No/ Maybe¹²	No	WHS	Cal. Health & Safety Code § 19211

ENDNOTES

1. This information is typically included in disclosure reports obtainable from third-party disclosure reporting companies. In transactions requiring a Natural Hazard Disclosure Statement (NHD), this information must be disclosed on the NHD form (which also may be prepared by a third-party company on behalf of a seller or real estate agent).
2. This disclosure requirement applies to transfers of precast concrete or reinforced/unreinforced masonry buildings with wood-frame floors or roofs. Though this requirement is most relevant to commercial properties, the law does not specifically exempt masonry buildings used for residential purposes.
3. Transfers by fiduciaries (e.g., trustees) administering trusts generally are exempt from this disclosure requirement. However, if the trustee is a natural person who is the sole trustee of a revocable trust and he or she is a former owner of the property or an occupant in possession of the property within the preceding year, then compliance is required.
4. The delivery of this booklet is not mandatory (unless required by contract), but provides important legal protections to a seller or real estate agent who elects to provide the booklet. (This booklet is not yet available.)
5. This disclosure requirement applies to transferors of "personal, commercial, or residential property" for which flood-related disaster assistance has been provided. Vacant land is not specifically addressed by this law. As a practical matter, however, a seller generally can determine, at the time federal disaster assistance is received, whether flood insurance is required by federal agencies for the property in question.
6. California law requires delivery of *The Homeowner's Guide to Earthquake Safety* in connection with transfers of real property. However, it may be prudent to provide this booklet to purchasers of personal property mobilehomes.
7. Federal law does not specifically require these disclosures in sales of personal property mobilehomes. However, federal regulators have taken the position that mobilehomes built before 1978 are covered by this law.
8. A seller or real estate agent involved in the transfer of real property or a mobilehome may be liable for failing to disclose material facts affecting the value or desirability of the property. Whether or not a particular fact is "material" depends on a variety of factors. A seller or real estate agent who is unsure as to the materiality of a particular fact should consult an attorney. Alternatively, many sellers and real estate agents resolve such doubts in favor of disclosure to minimize exposure to liability. While the disclosure of certain material facts sometimes must be made in a particular format (e.g., the Transfer Disclosure Statement, or the Manufactured Home or Mobilehome Transfer Disclosure Statement), the law generally does not regulate how material facts must be disclosed (though *written* disclosure is almost always recommended).
9. This information, as it pertains to Mello-Roos Community Facilities Districts, generally applies to resale transactions. Subdividers and their agents may have to comply with separate Mello-Roos district disclosure obligations under California Government Code § 53341.5.

10. California's Toxic Mold Protection Act requires that in residential and commercial/industrial lease transactions, and in commercial/industrial sales transactions, landlords/sellers disclose to tenants/buyers mold that either exceeds permissible limits set by California's Department of Health Services (CDHS) or poses a health threat. This disclosure need not be made until the CDHS establishes permissible mold exposure limits. The CDHS has not yet taken this action, and the Act does not specifically require any alternative disclosure in the interim.

11. The delivery of this booklet is not mandatory (unless required by contract), but provides important legal protections to a seller or real estate agent who elects to provide the booklet. This booklet is often combined with *The Homeowner's Guide to Earthquake Safety* and the lead hazard disclosure pamphlet *Protect Your Family From Lead In Your Home* (which are mandatory in certain transactions).

12. California law requires the seller of any real property to certify that new and replacement water heaters have been braced, anchored, or strapped to resist movement during an earthquake. Though these statutory requirements are most relevant to water heaters located in residential properties, they do not specifically exempt commercial or industrial properties.

13. California law requires all new and replacement water heaters, and all existing residential water heaters, to be braced, anchored, or strapped to resist movement during an earthquake. While the law does not specifically address water heaters located in mobilehomes, sellers may choose to confirm the proper installation of water heaters prior to transferring title.

Readers who require specific advice should consult an attorney.

The information contained herein is believed accurate as of January 1, 2007. It is intended to provide general answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney.