

Chapter 3



Required Disclosures & Fiduciary Duties

Chapter 3 Goals:

- Agency disclosures
- Real estate transfer disclosure
- Fiduciary disclosure
- Natural hazards disclosure
- Recognize actions which may be deemed as sexual harassment of a client or fellow agent
- Agents inspection disclosure
- Nonagency disclosure
- Environmental hazards disclosure
- Common interest development disclosure
- Subdivision disclosure
- Financing disclosure
- Disclosure of death or aids on premises disclosure
- Megan's law disclosure
- Elder abuse disclosure

Chapter 3: Required Disclosures & Fiduciary Duties

Key Terms

accounting	good faith estimate (GFE)	Real Estate Settlement Procedures Act (RESPA)
adjustable rate mortgage disclosure	hazardous waste disclosure	red flags
advance fee	Holden Act	Residential Earthquake Hazards Report
advisability of title insurance agency	Homeowner's Guide to Earthquake Safety	right of rescission
brownfields	integrity and honesty	seller's agent
buyer's agent	landslide inventory report	seller financing
caveat emptor	lead-based paint	Seller Financing Disclosure Statement
confidential	loyalty	Sick building syndrome (SBS)
controlled business arrangement	material deterioration	structural disclosures
designated agent	material facts	Transfer Disclosure Statement (TDS)
dual agent	Megan's Law	Truth in Lending Act (TILA)
due care	methamphetamine order	Truth in Lending Disclosure Statement
Elder Abuse Disclosure Law	military ordinance disclosure	water damage
environmental hazards disclosure	Mortgage Loan Disclosure Statement	water heater bracing
fiduciary duty	Natural Hazards Disclosure Statement	wildland area
full and accurate disclosure	obedience	
	public report	

Chapter Overview

In this chapter, readers will be introduced to one of the more complex aspects of a real estate agent's profession: disclosures.

Agents are required to disclose certain information to their principals and other agents during a real estate transaction. Some disclosures may adversely affect an agent's ability to convince his or her principal to buy, sell, or lease a property. However, a failure to make the required disclosures may result in legal consequences.

In this chapter, you will learn about various types of disclosures, including:

- Agency disclosures
- Structural disclosures
- Health & environmental disclosures
- Natural hazard disclosures
- Location-based disclosures
- Financing disclosures
- Disclosures to the opposing party

Note: This chapter applies primarily to real property of one to four units.

Fiduciary Duty

Fiduciary Duty Basics

Fiduciary duty refers to the set of standards that an agent is expected to uphold in the service of a buyer or a seller. These standards are rooted in trust and loyalty.

Among a real estate agent's fiduciary duties are:

- Due Care
- Loyalty
- Confidentiality
- Accounting
- Obedience
- Integrity and Honesty
- Full and Accurate Disclosure

An intentional breach of fiduciary duty on the part of the agent may result in the loss of his or her commission, or even his or her real estate license. An exception to breaking fiduciary duty arises if the interests of a principal violate the agency agreement or the law.

Due Care

An agent is the representative of a significant financial transaction in a principal's life. As such, the agent is expected to perform agency-related activities for the principal with **due care**. This means that an agent must conduct him- or herself with competence, responsibility, and sufficient knowledge.

Loyalty

A strong agent/principal relationship begins with **loyalty**. The agent must be loyal to the interests of the principal throughout the duration of the agreement and even after an agreement has been terminated.

Confidentiality

An agent has a duty to protect the vital information of his or her principal, including

the principal's goals, financial situation, and bargaining power. All conversations, documentation, or occurrences related to a real estate transaction must be kept strictly **confidential**.

An agent cannot reveal a principal's position or any information that could reduce the principal's negotiating power to the other principal or opposing agent unless authorized to do so.

For example, a seller's agent cannot incentivize a buyer to purchase a seller's home by disclosing that the seller is experiencing financial hardship. This gives a buyer unfair bargaining power over the seller and may influence him or her to offer a lower price.

Accounting

Accounting refers to all financial information involved in a real estate agency agreement, including commissions, fees, and advertising costs. Agents have a duty to manage and disclose financial-related information to principals. An agent protects a principal's money, vital documentation, and other important documents that are relevant to the transaction.

Obedience

An agent is expected to prioritize a principal's interests over his or her own, regardless of the type of agency relationship or how it was established. This is known as being **obedient**.

For example, if an agent discovers that there are lead-based hazards on a subject property that the buyer wishes to purchase, the agent must disclose this to the buyer. Even if the discovery is made days before the transaction closes, an agent is still required to disclose it as it may affect the buyer's decision to close.

An agent is required to follow the directions of the principal even if they run counter to the agent's goals and/or beliefs. An agent may inform a principal if he or she believes the principal is making a mistake, but as long as the principal's directives do not break the law, the agent must comply with them.

Integrity and Honesty

Integrity and honesty are the cornerstones of an agent's fiduciary duty to his or her principal. An agent should be transparent in all of his or her actions and place the interests of the principal above his or her own financial interests.

Full and Accurate Disclosure

The remainder of this chapter will focus on disclosures.

Disclosures provide all parties involved in a transaction with the necessary information to make an informed decision.

Any information that may perceptibly affect a buyer's decision to purchase a property should be disclosed. This means there should be **full and accurate disclosure** of everything related to the transaction. When in doubt about whether information needs to be disclosed, an agent should err on the side of disclosure to avoid potential liability.

All disclosures must be made in writing. This avoids discrepancies or claims that one party was unaware of the existence of a disclosure.

The California Association of Realtors provides accurate, up-to-date disclosure forms that are the recommended industry standard.

Material Facts

Material facts refer to all pertinent and significant information about a property that could affect a principal's decision to execute a transaction. A fact is determined to be "material" if its concealment would reasonably result in a different decision by a principal.

A **public report** provides details regarding the material facts of a subject property. A transaction cannot be executed until a prospective buyer has received this report.

Inspections

In the past, the principle of **caveat emptor** reigned supreme. It held that the buyer alone was responsible for verifying the condition and quality of a property. However, this led many buyers and sellers to engage in real estate transactions without proper knowledge, resulting in errors, disputes, and lawsuits.

Consequently, California has institutionalized severe penalties for both principals and agents who fail to disclose vital information about a property.

California law requires an agent to conduct a reasonably competent visual inspection of a subject property. An agent is expected to uncover all material facts, including any potential problems (**red flags**) or components that negatively impact the property's value.

An agent must disclose his or her findings to his or her principal, even if doing so might jeopardize the transaction. Furthermore, agents must verify that their principals understand the disclosures.

However, an agent is not responsible for inspecting the following:

- Property areas that are offsite or not readily accessible
- Public reports or permits concerning the property's title or use
- Property common areas, if the property is in a common interest development

Therefore, an agent's visual inspection does not exempt a principal from employing due diligence or conducting his or her own inspections to confirm the condition of the property.



DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(Listing Firm to Seller)
(As required by the Civil Code)
(C.A.R. Form AD, Revised 12/14)

(If checked) This form is being provided in connection with a transaction for a leasehold interest exceeding one year as per Civil Code section 2079.13(k) and (l).

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 or 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 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 that 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 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 that 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 his or her 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 page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).**

Buyer Seller Landlord Tenant _____ Date _____

Buyer Seller Landlord Tenant _____ Date _____

Agent _____ BRE Lic. # _____ Date _____

By _____ BRE Lic. # _____ Date _____

(Salesperson or Broker-Associate)

Agency Disclosure Compliance (Civil Code §2079.14):

- When the listing brokerage company also represents Buyer/Tenant: The Listing Agent shall have one AD form signed by Seller/Landlord and a different AD form signed by Buyer/Tenant.
- When Seller/Landlord and Buyer/Tenant are represented by different brokerage companies: (i) the Listing Agent shall have one AD form signed by Seller/Landlord and (ii) the Buyer's/Tenant's Agent shall have one AD form signed by Buyer/Tenant and either that same or a different AD form presented to Seller/Landlord for signature prior to presentation of the offer. If the same form is used, Seller may sign here:

(SELLER/LANDLORD: DO NOT SIGN HERE)

(SELLER/LANDLORD: DO NOT SIGN HERE)

Seller/Landlord _____ Date _____ Seller/Landlord _____ Date _____

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AD REVISED 12/14 (PAGE 1 OF 2)

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 1 OF 2)

Phone: _____ Fax: _____

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CIVIL CODE SECTIONS 2079.24 (2079.16 APPEARS ON THE FRONT)

2079.13 As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings: (a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. (b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. (c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee. (d) "Commercial real property" means all real property in the state, except single-family residential real property, dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, mobilehomes, as defined in Section 798.3, or recreational vehicles, as defined in Section 799.29. (e) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. (f) "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer. (g) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. (h) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent. (i) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (j) "Offer to purchase" means a written contract executed by a buyer acting through a selling agent that becomes the contract for the sale of the real property upon acceptance by the seller. (k) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property that constitutes or is improved with one to four dwelling units, any commercial real property, any leasehold in these types of property exceeding one year's duration, and mobilehomes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (l) "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase. (m) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (n) "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor. (o) "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. (p) "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

2079.14 Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgement of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows: (a) The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a). (c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgement of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgement of receipt is required. (d) The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

2079.15 In any circumstance in which the seller or buyer refuses to sign an acknowledgement of receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17 (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller.

(c) The confirmation required by subdivisions (a) and (b) shall be in the following form.

(DO NOT COMPLETE. SAMPLE ONLY) _____ is the agent of (check one): _____ the seller exclusively; or _____ both the buyer and seller.
(Name of Listing Agent)

(DO NOT COMPLETE. SAMPLE ONLY) _____ is the agent of (check one): _____ the buyer exclusively; or _____ the seller exclusively; or
(Name of Selling Agent if not the same as the Listing Agent) _____ both the buyer and seller.

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

2079.18 No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer. This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

2079.23 A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.



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AD REVISED 12/14 (PAGE 2 OF 2)

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 2 OF 2)

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Transfer Disclosure Statement

A **Transfer Disclosure Statement (TDS)** is a legal statement that describes a property's current condition and discloses known material facts. Buyers of one to four unit residential properties are entitled to a TDS before a property title is transferred.

A TDS includes the following:

- Significant property details and their conditions
- Major renovations and repairs
- Property defects
- Homeowner's association specifics, if applicable

A standard Real Estate Transfer Disclosure Statement will contain language similar to the following:

"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 _____, 20 _____. 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."



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

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

DESCRIBED AS

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

I. COORDINATION WITH OTHER DISCLOSURE FORMS

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

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

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

II. SELLER'S INFORMATION

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

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

Seller is _____ is not occupying the Home.

A. The subject property has the items checked below: *

- Range
- Oven
- Microwave
- Dishwasher
- Trash Compactor
- Garbage Disposal
- Washer/Dryer Hookups
- Rain Gutters
- Burglar Alarms
- Carbon Monoxide Device(s)
- Smoke Detector(s)
- Fire Alarm
- TV Antenna
- Satellite Dish
- Intercom
- Central Heating
- Central Air Conditioning
- Evaporator Cooler(s)
- Exhaust Fan(s) in
- Gas Starter
- Other:

- Wall/Window Air Conditioning
- Sprinklers
- Public Sewer System
- Septic Tank
- Sump Pump
- Water Softener
- Patio/Decking
- Built-in Barbecue
- Gazebo
- Security Gate(s)
- Garage:
 - Attached
 - Not Attached
- Carport
- Automatic Garage Door Opener(s)
- Number Remote Controls
- Sauna
- Hot Tub/Spa:
 - Locking Safety Cover
- 220 Volt Wiring in
- Roof(s): Type:

- Pool:
 - Child Resistant Barrier
- Pool/Spa Heater:
 - Gas
 - Solar
 - Electric
- Water Heater:
 - Gas
 - Solar
 - Electric
- Water Supply:
 - City
 - Well
 - Private Utility or
 - Other
- Gas Supply:
 - Utility
 - Bottled (Tank)
- Window Screens
- Window Security Bars
- Quick Release Mechanism on Bedroom Windows
- Water-Saving Plumbing Fixtures

Fireplace(s) in _____
Age: _____ (approx.)

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

(*see note on page 2)

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

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TDS REVISED 4/14 (PAGE 1 OF 3)

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

Phone: _____ Fax: _____
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Property Address:

Date:

- B. Are you (Seller) aware of any significant defects/malfunctions in any of the following? Yes No. If yes, check appropriate space(s) below.

Interior Walls Ceilings Floors Exterior Walls Insulation Roof(s) Windows Doors Foundation Slab(s)
 Driveways Sidewalks Walls/Fences Electrical Systems Plumbing/Sewers/Septics Other Structural Components
 (Describe: _____)

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

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

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

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

- D. 1. The Seller certifies that the property, as of the close of escrow, will be in compliance with Section 13113.8 of the Health and Safety Code by having operable smoke detector(s) which are approved, listed, and installed in accordance with the State Fire Marshal's regulations and applicable local standards.
 2. The Seller certifies that the property, as of the close of escrow, will be in compliance with Section 19211 of the Health and Safety Code by having the water heater tank(s) braced, anchored, or strapped in place in accordance with applicable law.

Buyer's Initials () ()

Seller's Initials () ()

TDS REVISED 4/14 (PAGE 2 OF 3)

Reviewed by _____ Date _____

REAL ESTATE TRANSFER DISCLOSURE STATEMENT (TDS PAGE 2 OF 3)

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Property Address:

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.

Date:

Seller

Date

Seller

Date

III. AGENT'S INSPECTION DISCLOSURE

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

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

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

Agent (Broker Representing Seller)

(Please Print)

By

(Associate Licensee or Broker Signature)

Date

IV. AGENT'S INSPECTION DISCLOSURE

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

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

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

Agent (Broker Obtaining the Offer)

(Please Print)

By

(Associate Licensee or Broker Signature)

Date

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)

(Please Print)

By

(Associate Licensee or Broker Signature)

Date

Agent (Broker Obtaining the Offer)

(Please Print)

By

(Associate Licensee or Broker Signature)

Date

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

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

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REAL ESTATE TRANSFER DISCLOSURE STATEMENT (TDS PAGE 3 OF 3)Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

Types of Disclosures

Agency Disclosure

An **agency** is a business relationship whereby an agent represents a principal's interests in a real estate transaction. Agents are required by law to provide principals with a written disclosure regarding any applicable agency relationships.

A **seller's agent** represents the interests of a seller.

A **buyer's agent** represents the interests of a buyer.

A **designated agent** is an agent who is designated for a specific purpose. For example, an agent may be designated to act as the exclusive agent for a buyer while another agent at the same brokerage is designated to act as the exclusive agent for the seller in the same transaction.

An agent who represents the interests of both the buyer and the seller is known as a **dual agent**.

Dual agency can pose certain risks and conflicts of interest. For example, a dual agent may inadvertently or purposefully provide preferential treatment to one principal to the detriment of the other.

A dual agent's partiality towards one principal can be grounds for a lawsuit and/or the revocation of the agent's license. Therefore, agents are advised to avoid dual agency representations unless they are fully committed to impartiality between principals.

Dual agency must be disclosed and approved by both the buyer and the seller.

Negotiable Commission Structure

As stated in Chapter 1, there is no such thing as a standard real estate agent commission. An agent's commission is flexible and based on negotiations between an agent and a principal.

An agent must inform a principal of his or her ability to negotiate. An agency agreement must state the following: *"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."*

Advance Fees

Specific real estate projects may require an agent to perform additional activities that go beyond the standard scope of an agent. When these exceptional obligations require additional time and money, an agent may charge an **advance fee**.

The Real Estate Commissioner must approve any advance fees. An exception is if an advance fees is being used for appraisal or credit reports.

Any advance fees must be disclosed by an agent.

Controlled Business Arrangement

A **controlled business arrangement** refers to when a real estate broker offers multiple services – such as financial products, hazard insurance, or title insurance – under the umbrella of his or her real estate company. A broker that recommends multiple services should disclose this to his or her principal.

Title Disclosures

Advisability of Title Insurance

In the purchase or exchange of real estate, it is advisable that the buyer purchase title insurance. This protects the interest of the new property owner in the event that another party claims an interest in the property.

It is an agent's duty to deliver an **advisability of title insurance** to a buyer. This document verifies that the buyer understands the risk of buying real estate without title insurance.

Structural Disclosures

Real estate agents are not professional contractors or engineers. They cannot be held liable for failing to discover components of a property that would have required a professional inspector. Therefore, **structural disclosures** are not required unless they are obvious, or the agent is aware of them.

However, agents are responsible for verifying a subject property's obvious structural damages. A reasonably competent agent must verify the conditions of the following:

- Broken or damaged structural walls, columns, or foundational issues
- Uneven, sloping, or bulging floors

- Broken or damaged roof
- Unstable material
- General material defects

Material Deterioration

Material deterioration of a property may result from poor construction materials, wrongful installation of materials, or a combination of the two.

An agent should check for the following:

- Rotting materials
- Materials with cracks, rust, or other damages
- Decay of materials

Water Damage

Water damage can cause substantial damage to a property and substantially reduce its value. Examples of water damage include:

- Mold and/or mildew growth
- Wood-consuming insects
- Roof defects
- Rotting wood
- Moist flooring

An agent should check a property for the origins of water damage, including old or improper plumbing, improper drainage, leaks, and a general lack of ventilation.

Window Security Bars

According to the California Civil Code: “A seller must disclose... the existence of window security bars and any safety release mechanism on the bars.”

Health and Environmental Disclosures

Environmental Hazards Disclosure

California law requires a seller to provide an **environmental hazards disclosure** report to prospective buyers to inform them of all known environmental hazards on a subject property.

Sellers must disclose the presence of the following toxic conditions:

- Asbestos
- Chemical gases (i.e. radon)
- Formaldehyde
- Fuel or chemical storage tanks
- Contaminated soil and water
- Lead-based paint

To Whom it May Concern:

I have received a copy of the "Environmental Hazards: A Guide for Homeowners and Buyers" from the seller and their broker/s in this transaction.

Date _____ Signature _____

Lead-Based Paint

Prior to 1978, a significant percentage of properties in California were painted with lead-based paint.

In the 1970s, however, **lead-based paint** was discovered to be potentially hazardous. The paint could easily peel and deteriorate into the air, causing residents to breathe in the dangerous material. Among the health problems found to be associated with the paint were the potential loss of cognitive function, learning disabilities, the onset of behavioral issues, and other developmental issues.

Therefore, California banned lead-based paint for residential housing in 1978.

Sellers of residential properties that contain lead-based paint are required to indicate where such paint is located on the property and whether paint has been previously reduced on the property.

They must also provide prospective buyers with an EPA booklet called “Protect Your Family from Lead in Your Home”. The purpose of the booklet is to inform a buyer of the inherent risks of living in a house with lead-based paint.

A buyer also has ten days to perform his or her own inspection of a property for lead-based paint. If lead-based paint is found, however, a seller is not responsible for removing it.

All parties are required to sign and date a disclosure indicating that all parties are aware of the presence of lead-based paint.

An agent is required to verify that:

- His or her principal is aware of the disclosure requirements regarding lead-based paint on the property
- The buyer has been provided a copy of the EPA booklet
- The buyer is aware of his or her legal right to inspect a property for lead-based paint for up to ten days

Mold

Mold is a potentially hazardous material that can produce adverse health conditions. Although the exact cause of mold varies, it is typically a result of damp air conditions due to limited ventilation. Mold must be removed by getting rid of the walls on which growth is present.

A seller is required to disclose the presence of mold to a prospective buyer. An agent is also advised to inform a buyer to perform a mold inspection by hiring a professional party.

Presence of Insects

Although insects are an integral part of the California landscape, they must be kept to a minimum in order to prevent property deterioration.

For example, some insects – such as termites and certain species of ants – live within wood. While there are typically very few outward signs of their presence, they can drastically erode wooden structures from the inside out.

An agent must disclose the presence of such insects to a potential buyer. An agent is also advised to do the following in order to avoid liability:

- Have the buyer or seller pay for a home inspection
- Have the seller purchase a home inspection protection plan

- Have the seller provide the buyer with a home inspection report

Hazardous Waste

A seller is required to disclose the presence of any hazardous waste on the property in a **hazardous waste disclosure** (Health and Safety Code, Section 25359). This includes if he or she has personally released hazardous substances on or near the property, such as air pollutants or contaminants.

Brownfields are former industrial or commercial sites where environmental contamination affects present or future use.

The Environmental Protection Agency (EPA) has a specific division to assist in the removal of hazardous waste or contamination.

Water Contamination

Water that comes from a well supply is vulnerable to exposure to hazardous material from industrial activities, mining, farming, and military training exercises.

Contamination may include toxic fumes or chemicals that have leached into the water supply through the soil.

A seller must disclose if any known water contamination exists on a property.

Methamphetamine Contamination

As of 2006, any property that is suspected of methamphetamine contamination is subject to local health inspections. The state will issue a **methamphetamine order** to inspect the property. If methamphetamines are discovered, the state will issue a judgment that prevents the property from being used.

A seller is required to disclose if methamphetamines were ever discovered on the property.

Ventilation

Ventilation is crucial for the air quality of a house.

Poor ventilation may result from the presence of chemical agents, a moist environment, and a lack of windows. This can dramatically affect the health of those living on the property.

Sick building syndrome (SBS) refers to a situation in which individuals experience acute health and comfort effects linked to time spent in a building with ventilation issues. Its side effects include headaches, dizziness, itchy skin, allergies, and other adverse effects.

A seller must inform a prospective buyer if a property has had no proper ventilation for a significant period of time.

Natural Hazard Disclosures

Landslide Inventory Map

The California Geographical Survey (CGS) has a landslide inventory map that tracks seismic hazardous information, including the location of landslide zones. If a property is located in a landslide zone, the seller/seller's agent must provide a prospective buyer with a **landslide inventory report**.

Natural Hazard Disclosure Statement

A **Natural Hazards Disclosure Statement** informs a buyer of a property's condition and risk in relation to natural hazards. It includes information regarding the following:

- *State Fire / Fire Hazard Zones.* A seller/seller's agent must disclose if a property is located in an area with a high risk for fire. The government will also include information about steps required to protect the property from hazardous fire.
- *Earthquake Fault Zone.* A seller/seller's agent is required to disclose if a property is situated on an earthquake fault zone.
- *Seismic Hazard Zone.* A seller/seller's agent is required to disclose if a property is situated in a location with a high probability for shaking, landslides, and other potentially hazardous, naturally-occurring earth movements. If a property is located *near* the zone and the seller is unsure whether it is located *in* the zone, the seller/seller's agent should visit the County Recorder's Office to clarify the property's status.
- *Wildland Area.* A **wildland area** is uncultivated territory that is fairly removed from modern civilization. A property in such a location has an increased risk of wild animals, insects, and other potentially dangerous conditions. Furthermore, local services – including fire and police departments – are typically

unavailable. For this reason, a seller/seller's agent must disclose if a property is located in a wildland area.

- *Flood Hazard Zones.* Flood hazard zones are areas that have a high probability of flooding. Being located in such a zone presents unique challenges and dangers to property owners. Therefore, this information must be disclosed. A seller/seller's agent must also disclose if a property is located in a special flood hazard zone established by the Federal Emergency Management Agency (FEMA).



NATURAL HAZARD DISCLOSURE STATEMENT
(C.A.R. Form NHD, Revised 10/04)

This statement applies to the following property:

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

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

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

A SPECIAL FLOOD HAZARD AREA (Any type Zone "A" or "V") designated by the Federal Emergency Management Agency.

Yes _____ No _____ Do not know and information not available from local jurisdiction

AN AREA OF POTENTIAL FLOODING shown on a dam failure inundation map pursuant to Section 8589.5 of the Government Code.

Yes _____ No _____ Do not know and information not available from local jurisdiction

A VERY HIGH FIRE HAZARD SEVERITY ZONE pursuant to Section 51178 or 51179 of the Government Code. The owner of this property is subject to the maintenance requirements of Section 51182 of the Government Code.

Yes _____ No _____

A WILDLAND AREA THAT MAY CONTAIN SUBSTANTIAL FOREST FIRE RISKS AND HAZARDS pursuant to Section 4125 of the Public Resources Code. The owner of this property is subject to the maintenance requirements of Section 4291 of the Public Resources Code. Additionally, it is not the state's responsibility to provide fire protection services to any building or structure located within the wildlands unless the Department of Forestry and Fire Protection has entered into a cooperative agreement with a local agency for those purposes pursuant to Section 4142 of the Public Resources Code.

Yes _____ No _____

AN EARTHQUAKE FAULT ZONE pursuant to Section 2622 of the Public Resources Code.

Yes _____ No _____

A SEISMIC HAZARD ZONE pursuant to Section 2696 of the Public Resources Code.

Yes (Landslide Zone) _____ Yes (Liquefaction Zone) _____

No _____ Map not yet released by state _____

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

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NHD REVISED 10/04 (PAGE 1 OF 2)

Reviewed by _____ Date _____

NATURAL HAZARD DISCLOSURE STATEMENT (NHD PAGE 1 OF 2)

Phone: _____ Fax: _____
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Property Address:

Date:

THESE HAZARDS MAY LIMIT YOUR ABILITY TO DEVELOP THE REAL PROPERTY, TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER A DISASTER.

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

Signature of Transferor(s)

Date

Signature of Transferor(s)

Date

Agent(s)

Date

Agent(s)

Date

Check only one of the following:

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

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

Third-Party Disclosure Provider(s)

Date

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

Signature of Transferee(s)

Date

Signature of Transferee(s)

Date

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NATURAL HAZARD DISCLOSURE STATEMENT (NHD PAGE 2 OF 2)

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Reviewed by

Date



Earthquake Hazards

Sellers of residential one to four unit properties built prior to 1960 must supply potential buyers with a **Residential Earthquake Hazards Report**. This discloses the condition of a property and its strength or weakness relative to earthquakes.

Buyers are also entitled to receive a **Homeowner's Guide to Earthquake Safety** booklet. This booklet provides information regarding the presence of earthquakes in California and the potential affect it may have on real property. It is necessary for the buyer to acknowledge that they have received a copy of this booklet.

In regards to commercial property, an agent is responsible for providing a buyer with a commercial property owner's guide to earthquake safety manual. This manual must only be distributed to properties that are built on concrete or wood frames.

In the event of an earthquake, falling water heaters can pose serious dangers (i.e. fire, explosion, electrocution). Therefore, California has made it a requirement for all new water heaters and replacements to be strapped, anchored, or strapped to resist falling during an earthquake. This is called **water heater bracing**.

Residential Earthquake Hazards Report

NAME	ASSESSOR'S PARCEL NO.
STREET ADDRESS	YEAR BUILT
CITY AND COUNTY	ZIP CODE

Answer these questions to the best of your knowledge. If you do not have actual knowledge as to whether the weakness exists, answer "Don't Know." If your house does not have the feature, answer "Doesn't Apply." The page numbers in the right-hand column indicate where in this guide you can find information on each of these features.

	Yes	No	Doesn't Apply	Don't Know
1. Is the water heater braced, strapped, or anchored to resist falling during an earthquake?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Is the house anchored or bolted to the foundation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. If the house has cripple walls:				
• Are the exterior cripple walls braced?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• If the exterior foundation consists of unconnected concrete piers and posts, have they been strengthened?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. If the exterior foundation, or part of it, is made of unreinforced masonry, has it been strengthened?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. If the house is built on a hillside:				
• Are the exterior tall foundation walls braced?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Were the tall posts or columns either built to resist earthquakes or have they been strengthened?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. If the exterior walls of the house, or part of them, are made of unreinforced masonry, have they been strengthened?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. If the house has a living area over the garage, was the wall around the garage door opening either built to resist earthquakes or has it been strengthened?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Is the house outside an Alquist-Priolo Earthquake Fault Zone (zones immediately surrounding known earthquake faults)?				
9. Is the house outside a Seismic Hazard Zone (zone identified as susceptible to liquefaction or landsliding)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*To be reported on the
Natural Hazards Disclosure
Report*

If any of the questions are answered "No," the house is likely to have an earthquake weakness. Questions answered "Don't Know" may indicate a need for further evaluation. If you corrected one or more of these weaknesses, describe the work on a separate page.

As seller of the property described herein, I have answered the questions above to the best of my knowledge in an effort to disclose fully any potential earthquake weaknesses it may have.

EXECUTED BY

(Seller) _____ (Seller) _____ Date _____

I acknowledge receipt of this form, completed and signed by the seller. I understand that if the seller has answered "No" to one or more questions, or if seller has indicated a lack of knowledge, there may be one or more earthquake weaknesses in this house.

(Buyer) _____ (Buyer) _____ Date _____

This earthquake disclosure is made in addition to the standard real estate transfer disclosure statement also required by law.

The Homeowner's Guide to Earthquake Safety

Keep your copy of this form for future reference

Location Disclosures

Military Ordinance Disclosures

A **military ordinance disclosure** is required when a subject property is a former military or military training base. An agent/seller must also disclose if a property is located within one mile of a current or previous military location.

This is required because the military's use of explosives, bullets, and other potentially dangerous equipment could affect a prospective buyer's safety on the property.

Industrial Disclosure

A seller must disclose whether a property is affected by, or zoned to allow, an industrial use of property. This includes manufacturing, commercial, or airport use.

Financing Disclosures

The majority of real estate transactions require a buyer to obtain financing in order to purchase the property.

Seller Financing

Seller financing refers to when a buyer borrows money directly from a seller instead of from a lender in the form of a mortgage. Seller financing is one of the best ways to incentivize reluctant buyers – or those who do not qualify for a standard loan – to purchase a property.

A buyer and a seller agree on an interest rate, a repayment schedule, and the consequences of default. The buyer then pays the seller back directly until the property's purchase price plus interest is paid off.

The seller does not transfer ownership of the property to the buyer at the closing. Rather, the buyer only holds equitable title (or interest) to the property for the duration of the loan. Only upon the final payment to the seller will the buyer gain full and exclusive title and become the legal owner of the property.

Both parties must sign a **Seller Financing Disclosure Statement** in the event that seller financing is used (California Civil Code, Section 2956).

The statement must include the following disclosures:

- The terms and conditions of the seller financing, including interest rate, loan term, and lien information
- The buyer's history, including his or her credit history, employment history, and financial status
- Warning about the potential difficulty of refinancing into a conventional loan
- Warning of the risk of losing the property due to a balloon payment
- Warning that the seller may or may not extend new financing terms after the loan expires
- Warning about the seller's limitations to foreclose and recover money from the proceeds of a foreclosure
- Warning of the potential for an increased debt amount if the buyer pays a negative amortization payment
- Potential penalties and discounts between parties in the transaction
- Statement indicating that both parties have the right to hire a neutral third party to manage the financing of the property
- Statement indicating that the seller has the right to receive property tax information in order to verify that the buyer is current with property tax payments
- Statement indicating that a title insurance policy will be obtained and given to both parties to ensure both of their interests
- Statement indicating whether the loan has been recorded
- Statement indicating whether the property will receive cash back from the sale



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**SELLER FINANCING ADDENDUM AND DISCLOSURE
(SEE IMPORTANT DISCLOSURE ON PAGE 4)**

(California Civil Code §§2956-2967)
(C.A.R. Form SFA, Revised 11/13)

This is an addendum to the Residential Purchase Agreement, Counter Offer, or Other

("Agreement"), dated

On property known as
between _____ and _____

("Property"),
("Buyer"),
("Seller").

Seller agrees to extend credit to Buyer as follows:

1. **PRINCIPAL; INTEREST; PAYMENT; MATURITY TERMS:** Principal amount \$ _____ payable at approximately \$ _____ per month, year, or other balance due in _____ years.
2. **LOAN APPLICATION; CREDIT REPORT:** Within 5 (or _____) Days After Acceptance: (a) Buyer shall provide Seller a completed loan application on a form acceptable to Seller (such as a FNMA/FHLMC Uniform Residential Loan Application for residential one to four unit properties); and (b) Buyer authorizes Seller and/or Agent to obtain, at Buyer's expense, a copy of Buyer's credit report. Buyer shall provide any supporting documentation reasonably requested by Seller. Seller, after first giving Buyer a Notice to Buyer to Perform, may cancel this Agreement in writing and authorize return of Buyer's deposit if Buyer fails to provide such documents within that time, or if Seller disapproves any above item within 6 (or _____) Days After receipt of each item.
3. **CREDIT DOCUMENTS:** This extension of credit by Seller will be evidenced by: Note and deed of trust; All-inclusive note and deed of trust; Installment land sale contract; Lease/option (when parties intend transfer of equitable title); OR Other (specify) _____

THE FOLLOWING TERMS APPLY ONLY IF CHECKED. SELLER IS ADVISED TO READ ALL TERMS, EVEN THOSE NOT CHECKED, TO UNDERSTAND WHAT IS OR IS NOT INCLUDED, AND, IF NOT INCLUDED, THE CONSEQUENCES THEREOF.

4. **LATE CHARGE:** If any payment is not made within _____ Days After it is due, a late charge of either \$ _____ or % of the installment due, may be charged to Buyer. **NOTE:** On single family residences that Buyer intends to occupy, California Civil Code §2954.4(a) limits the late charge to no more than 6% of the total installment payment due and requires a grace period of no less than 10 days.
5. **BALLOON PAYMENT:** The extension of credit will provide for a balloon payment, in the amount of \$ _____, plus any accrued interest, which is due on _____ (date).
6. **PREPAYMENT:** If all or part of this extension of credit is paid early, Seller may charge a prepayment penalty as follows (if applicable): _____ Caution: California Civil Code §2954.9 contains limitations on prepayment penalties for residential one-to-four unit properties.
7. **DUE ON SALE:** If any interest in the Property is sold or otherwise transferred, Seller has the option to require immediate payment of the entire unpaid principal balance, plus any accrued interest.
8. **REQUEST FOR COPY OF NOTICE OF DEFAULT:** A request for a copy of Notice of Default as defined in California Civil Code §2924b will be recorded. **If not**, Seller is advised to consider recording a Request for Notice of Default.
9. **REQUEST FOR NOTICE OF DELINQUENCY:** A request for Notice of Delinquency, as defined in California Civil Code §2924e, to be signed and paid for by Buyer, will be made to senior leinholders. **If not**, Seller is advised to consider making a Request for Notice of Delinquency. Seller is advised to check with senior leinholders to verify whether they will honor this request.
10. **TAX SERVICE:**
 - A. If property taxes on the Property become delinquent, tax service will be arranged to report to Seller. **If not**, Seller is advised to consider retaining a tax service, or to otherwise determine that property taxes are paid.
 - B. Buyer, Seller, shall be responsible for the initial and continued retention of, and payment for, such tax service.
11. **TITLE INSURANCE:** Title insurance coverage will be provided to **both** Seller and Buyer, insuring their respective interests in the Property. **If not**, Buyer and Seller are advised to consider securing such title insurance coverage.
12. **HAZARD INSURANCE:**
 - A. The parties' escrow holder or insurance carrier will be directed to include a loss payee endorsement, adding Seller to the Property insurance policy. **If not**, Seller is advised to secure such an endorsement, or acquire a separate insurance policy.
 - B. Property insurance **does not** include earthquake or flood insurance coverage, unless checked: Earthquake insurance will be obtained; Flood insurance will be obtained.
13. **PROCEEDS TO BUYER:** Buyer will receive cash proceeds at the close of the sale transaction. The amount received will be approximately \$ _____, from _____ (indicate source of proceeds). Buyer represents that the purpose of such disbursement is as follows:
14. **NEGATIVE AMORTIZATION; DEFERRED INTEREST:** Negative amortization results when Buyer's periodic payments are less than the amount of interest earned on the obligation. Deferred interest also results when the obligation does not require periodic payments for a period of time. In either case, interest is not payable as it accrues. This accrued interest will have to be paid by Buyer at a later time, and may result in Buyer owing more on the obligation than at its origination. The credit being extended to Buyer by Seller will provide for negative amortization or deferred interest as indicated below. (Check A, B, or C. CHECK ONE ONLY.)
 - A. All negative amortization or deferred interest shall be added to the principal and thereafter shall bear interest at the rate specified in the credit documents (compound interest); (e.g., annually, monthly, etc.)
 - B. All deferred interest shall be due and payable, along with principal, at maturity;
 - C. Other

***For Paragraphs 8-10** In order to receive timely and continued notification, Seller is advised to record appropriate notices and/or to notify appropriate parties of any change in Seller's address.

Buyer's Initials () ()

Seller's Initials () ()

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SELLER FINANCING ADDENDUM AND DISCLOSURE (SFA PAGE 1 OF 4)

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Property Address:

Date:

15. **ALL-INCLUSIVE DEED OF TRUST; INSTALLMENT LAND SALE CONTRACT:** This transaction involves the use of an all-inclusive (or wraparound) deed of trust or an installment land sale contract. That deed of trust or contract shall provide as follows:
- In the event of an acceleration of any senior encumbrance, the party responsible for payment, or for legal defense is: Buyer Seller ; OR Is not specified in the credit or security documents.
 - In the event of the prepayment of a senior encumbrance, the responsibilities and rights of Buyer and Seller regarding refinancing, prepayment penalties, and any prepayment discounts are: ; OR Are not specified in the documents evidencing credit.
 - Buyer will make periodic payments to (Seller, collection agent, or any neutral third party), who will be responsible for disbursing payments to the payee(s) on the senior encumbrance(s) and to Seller.
- NOTE:** The Parties are advised to designate a neutral third party for these purposes.
16. **TAX IDENTIFICATION NUMBERS:** Buyer and Seller shall each provide to each other their Social Security Numbers or Taxpayer Identification Numbers.
17. **OTHER CREDIT TERMS:**
18. **RECORDING:** The documents evidencing credit (paragraph 3) will be recorded with the county recorder where the Property is located. If not, Buyer and Seller are advised that their respective interests in the Property may be jeopardized by intervening liens, judgments, encumbrances, or subsequent transfers.
19. **JUNIOR FINANCING:** There will be additional financing, secured by the Property, junior to this Seller financing. Explain:
20. **SENIOR LOANS AND ENCUMBRANCES:** The following information is provided on loans and/or encumbrances that will be senior to Seller financing. **NOTE:** The following are estimates, unless otherwise marked with an asterisk (*). If checked: A separate sheet with information on additional senior loans/encumbrances is attached.
- | | 1st | 2nd |
|---|-----|-----|
| A. Original Balance | \$ | \$ |
| B. Current Balance | \$ | \$ |
| C. Periodic Payment (e.g. \$100/month): | \$ | \$ |
| Including Impounds of: | \$ | \$ |
| D. Interest Rate (per annum) | % | % |
| E. Fixed or Variable Rate: | | |
| If Variable Rate: Lifetime Cap (Ceiling) | | |
| Indicator (Underlying Index) | | |
| Margins | | |
| F. Maturity Date | | |
| G. Amount of Balloon Payment | \$ | \$ |
| H. Date Balloon Payment Due | | |
| I. Potential for Negative Amortization? (Yes, No, or Unknown) | | |
| J. Due on Sale? (Yes, No, or Unknown) | | |
| K. Pre-payment penalty? (Yes, No, or Unknown) | | |
| L. Are payments current? (Yes, No, or Unknown) | | |

21. **BUYER'S CREDITWORTHINESS:** (CHECK EITHER A OR B. Do not check both.) In addition to the loan application, credit report and other information requested under paragraph 2:
- A. No other disclosure concerning Buyer's creditworthiness has been made to Seller.

OR B. The following representations concerning Buyer's creditworthiness are made by Buyer(s) to Seller:

Borrower

1. Occupation
2. Employer
3. Length of Employment
4. Monthly Gross Income
5. Other

Co-Borrower

1. Occupation
2. Employer
3. Length of Employment
4. Monthly Gross Income
5. Other

22. **ADDED, DELETED OR SUBSTITUTED BUYERS:** The addition, deletion or substitution of any person or entity under this Agreement or to title prior to close of escrow shall require Seller's written consent. Seller may grant or withhold consent in Seller's sole discretion. Any additional or substituted person or entity shall, if requested by Seller, submit to Seller the same documentation as required for the original named Buyer. Seller and/or Brokers may obtain a credit report, at Buyer's expense, on any such person or entity.

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

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Property Address:

Date:

23. CAUTION:

- A. If the Seller financing requires a balloon payment, Seller shall give Buyer written notice, according to the terms of Civil Code §2966, at least 90 and not more than 150 days before the balloon payment is due if the transaction is for the purchase of a dwelling for not more than four families.
- B. If any obligation secured by the Property calls for a balloon payment, Seller and Buyer are aware that refinancing of the balloon payment at maturity may be difficult or impossible, depending on conditions in the conventional mortgage marketplace at that time. There are no assurances that new financing or a loan extension will be available when the balloon prepayment, or any prepayment, is due.
- C. If any of the existing or proposed loans or extensions of credit would require refinancing as a result of a lack of full amortization, such refinancing might be difficult or impossible in the conventional mortgage marketplace.
- D. In the event of default by Buyer: (1) Seller may have to reinstate and/or make monthly payments on any and all senior encumbrances (including real property taxes) in order to protect Seller's secured interest; (2) Seller's rights are generally limited to foreclosure on the Property, pursuant to California Code of Civil Procedure §580b; and (3) the Property may lack sufficient equity to protect Seller's interests if the Property decreases in value.

If this three-page Addendum and Disclosure is used in a transaction for the purchase of a dwelling for not more than four families, it shall be prepared by an Arranger of Credit as defined in California Civil Code §2957(a). (The Arranger of Credit is usually the agent who obtained the offer.)

Arranger of Credit - (Print Firm Name)

By

Date

Address

City

State

Zip

Phone

Fax

BUYER AND SELLER ACKNOWLEDGE AND AGREE THAT BROKERS: (A) WILL NOT PROVIDE LEGAL OR TAX ADVICE; (B) WILL NOT PROVIDE OTHER ADVICE OR INFORMATION THAT EXCEEDS THE KNOWLEDGE, EDUCATION AND EXPERIENCE REQUIRED TO OBTAIN A REAL ESTATE LICENSE; OR (C) HAVE NOT AND WILL NOT VERIFY ANY INFORMATION PROVIDED BY EITHER BUYER OR SELLER. BUYER AND SELLER AGREE THAT THEY WILL SEEK LEGAL, TAX AND OTHER DESIRED ASSISTANCE FROM APPROPRIATE PROFESSIONALS. BUYER AND SELLER ACKNOWLEDGE THAT THE INFORMATION EACH HAS PROVIDED TO THE ARRANGER OF CREDIT FOR INCLUSION IN THIS DISCLOSURE FORM IS ACCURATE. BUYER AND SELLER FURTHER ACKNOWLEDGE THAT EACH HAS RECEIVED A COMPLETED COPY OF THIS DISCLOSURE FORM.

Buyer

(signature)

Date

Address

City

State

Zip

Phone

Fax

E-mail

Buyer

(signature)

Date

Address

City

State

Zip

Phone

Fax

E-mail

Seller

(signature)

Date

Address

City

State

Zip

Phone

Fax

E-mail

Seller

(signature)

Date

Address

City

State

Zip

Phone

Fax

E-mail

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Property Address:

Date:

IMPORTANT SELLER FINANCING DISCLOSURE - PLEASE READ CAREFULLY

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) has made significant and important changes affecting seller financing on residential properties. Effective January 10, 2014, sellers who finance the purchase of residential property containing 1-4 units may be considered "loan originators" required to comply with certain Truth In Lending Act ("TILA") requirements. Even under Dodd-Frank however, the following two exemptions exist:

1. The seller finances only **ONE** property in any 12 month period and:
 - a. The seller is a natural person, a trust or an estate, and
 - b. The seller did not construct the property, and
 - c. The financing has a fixed rate or does not adjust for the first 5 years, and
 - d. The financing does not result in negative amortization.

OR

2. The seller finances no more than **THREE** properties in any 12 month period and:
 - a. The seller is a natural person or organization (corporation, LLC, partnership, trust, estate, association, etc.), and
 - b. The seller did not construct the property, and
 - c. The loan is fully amortized, i.e., no balloon payment, and
 - d. The financing has a fixed rate or does not adjust for the first 5 years, and
 - e. The borrower has the reasonable ability to repay the loan.

Sellers who finance the purchase of residential property containing 1-4 units meeting either of the two exemptions are not subject to the TILA requirements above may continue to, and are required by California Law to, use the Seller Financing Addendum.

Sellers who finance the purchase of residential property containing 1-4 units who do not meet either of the two tests above should still complete the Seller Finance Addendum and speak to a lawyer about other TILA disclosures that may be required.

Sellers who finance the purchase of residential property containing 5 or more units, vacant land, or commercial properties are not subject to the TILA disclosures nor are they required to use the Seller Financing Addendum.

A seller who originates a single extension of credit through a mortgage broker and additionally meets the definition of a "high-cost" mortgage under Dodd-Frank may be subject to the Truth in Lending Act's requirement to verify the borrower's ability to repay.

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Seller's Initials () ()

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Referral Fees

An agent is required to disclose to all parties in the transaction if he or she is being paid any referral fees by a third party lender.

Real Estate Settlement Procedures Act (RESPA)

The **Real Estate Settlement Procedures Act (RESPA)** is a federal consumer protection law that helps borrowers be better informed while shopping for mortgage and loan services.

The Act requires lenders to disclose all pertinent loan information and mortgage costs during the loan process. It also restricts the types of fees that lenders may impose on borrowers.

Under RESPA, lenders must provide prospective borrowers with a **good faith estimate (GFE)** of all costs a borrower will pay at the closing. A GFE allows borrowers to easily compare various lenders' mortgage loan costs and terms in order to select the best one.

In addition to RESPA's requirements, California requires lenders to provide borrowers with a **Mortgage Loan Disclosure Statement**. This disclosure indicates all of a mortgage's terms, including:

- Principal loan amount
- Interest rate
- Mortgage terms and conditions
- Costs associated with providing or arranging the loan (i.e. appraisal fees, settlement/escrow fees, credit report and title insurance costs, notary and recording fees)
- Any liens on the property and the lien position of each lender
- Commissions and/or fees entitled to an agent at the close of the loan
- Prepayment penalty information
- Estimated payments
- Statement indicating that the loan's funding is in compliance of real estate law

A lender must get the potential borrower's signature on the disclosure statement in order to proceed with the loan.

If an agent retains a non-federally backed loan on behalf of a borrower, the agent is responsible for providing this statement to the borrower. It must be produced within three business days after receiving the loan application.

RESPA also outlaws lenders from receiving kickbacks or referral fees from other service providers. A **kickback** is a secret payment, typically outside of escrow. This

ensures that consumers receive unbiased information and prevents lenders from simply recommending services for money.

CFPB Consumer Laws and Regulations

RESPA

Regulation X Real Estate Settlement Procedures Act

The Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. 2601 *et seq.*) (the Act) became effective on June 20, 1975. The Act requires lenders, mortgage brokers, or servicers of home loans to provide borrowers with pertinent and timely disclosures regarding the nature and costs of the real estate settlement process. The Act also prohibits specific practices, such as kickbacks, and places limitations upon the use of escrow accounts. The Department of Housing and Urban Development (HUD) originally promulgated Regulation X which implements RESPA.

Congress has amended RESPA significantly since its enactment. The National Affordable Housing Act of 1990 amended RESPA to require detailed disclosures concerning the transfer, sale, or assignment of mortgage servicing. It also requires disclosures for mortgage escrow accounts at closing and annually thereafter, itemizing the charges to be paid by the borrower and what is paid out of the account by the servicer.

In October 1992, Congress amended RESPA to cover subordinate lien loans.

Congress, when it enacted the Economic Growth and Regulatory Paperwork Reduction Act of 1996,¹ further amended RESPA to clarify certain definitions including “controlled business arrangement,” which was changed to “affiliated business arrangement.” The changes also reduced the disclosures under the mortgage servicing provisions of RESPA.

In 2008, HUD issued a RESPA Reform Rule (73 Fed. Reg. 68204, November 17, 2008) that included substantive and technical changes to the existing RESPA regulations and different implementation dates for various provisions. Substantive changes included a standard Good Faith Estimate form and a revised HUD-1 Settlement Statement that were required as of January 1, 2010. Technical changes, including streamlined mortgage servicing disclosure language, elimination of outdated escrow account provisions, and a provision permitting an “average charge” to be listed on the Good Faith Estimate and HUD-1 Settlement Statement, took effect on January 16, 2009. In addition, HUD clarified that all disclosures required by RESPA are permitted to be provided electronically, in accordance with the Electronic Signatures in Global and National Commerce Act (E-Sign).²

The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203 (July 10, 2010) (Dodd-Frank Act) granted rule-making authority under RESPA to the Consumer Financial Protection Bureau (CFPB) and, with respect to entities under its jurisdiction, generally granted authority to the CFPB to supervise for and enforce compliance with RESPA and its

¹ Pub. L. 104-208, Div. A., Title II § 2103 (c), September 30, 1996.

² 15 U.S.C. 7001 *et seq.*

CFPB Consumer Laws and Regulations

RESPA

implementing regulations.³ In December 2011, the CFPB restated HUD's implementing regulation at 12 CFR Part 1024 (76 Fed. Reg. 78978) (December 20, 2011).

On January 17, 2013, the CFPB issued a final rule to amend Regulation X (78 Fed. Reg. 10695) (February 14, 2013). The final rule implemented certain provisions of Title XIV of the Dodd-Frank Act and included substantive and technical changes to the existing regulations. Substantive changes included modifying the servicing transfer notice requirements and implementing new procedures and notice requirements related to borrowers' error resolution requests and information requests. The amendments also included new provisions related to escrow payments, force-placed insurance, general servicing policies, procedures, and requirements, early intervention, continuity of contact, and loss mitigation. The amendments are effective as of January 10, 2014.

On July 10, 2013, September 13, 2013, and October 22, 2014, the CFPB issued final rules to further amend Regulation X (78 Fed. Reg. 44685) (July 24, 2013), (78 Fed. Reg. 60381) (October 1, 2013), and (79 Fed. Reg. 65299) (November 3, 2014). The final rules included substantive and technical changes to the existing regulations, including revisions to provisions on the relation to State law of Regulation X's servicing provisions, to the loss mitigation procedure requirements, and to the requirements relating to notices of error and information requests. On October 15, 2013, the CFPB issued an interim final rule to further amend Regulation X (78 Fed. Reg. 62993) (October 23, 2013) to exempt servicers from the early intervention requirements in certain circumstances. The Regulation X amendments are effective as of January 10, 2014.

The amendments issued on January 17, 2013; July 10, 2013; September 13, 2013; October 15, 2013; and October 22, 2014 are collectively referred to in this document as the "2013-2014 Amendments."

On December 31, 2013, the CFPB published final rules implementing Sections 1098(2) and 1100A(5) of the Dodd-Frank Act, which direct the CFPB to publish a single, integrated disclosure for mortgage transactions, which includes mortgage disclosure requirements under the Truth in Lending Act (TILA) and sections 4 and 5 of RESPA. These amendments are referred to in this document as the "TILA-RESPA Integrated Disclosure Rule" or "TRID," and are applicable to covered closed-end mortgage loans for which a creditor or mortgage broker receives an application on or after August 1, 2015. As a result, Regulation Z now houses the integrated forms, timing, and related disclosure requirements for most closed-end consumer mortgage loans.

The new integrated disclosures are not used to disclose information about reverse mortgages, home equity lines of credit (HELOCs), chattel-dwelling loans such as loans secured by a mobile home or by a dwelling that is not attached to real property (i.e., land), or other transactions not covered by the TILA-RESPA Integrated Disclosure rule. The final rule also does not apply to loans made by a creditor who makes five or fewer mortgages in a year. Creditors originating

³ Dodd-Frank Act Secs. 1002(12)(M), 1024(b)-(c), and 1025(b)-(c); 1053; 12 U.S.C. 5481(12)(M), 5514(b)-(c), and 5515 (b)-(c).

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these types of mortgages must continue to use, as applicable, the Good Faith Estimate, HUD-1 Settlement Statement, and Truth in Lending disclosures.

Subpart A – General Provisions

Coverage – 12 CFR 1024.5(a)

RESPA is applicable to all “federally related mortgage loans,” except as provided under 12 CFR 1024.5(b) and 1024.5(d), discussed below. “Federally related mortgage loans” are defined as:

Loans (other than temporary loans), including refinancings, that satisfy the following two criteria:

- *First*, the loan is secured by a first or subordinate lien on residential real property, located within a State, upon which either:
 - A one-to-four family structure is located or is to be constructed using proceeds of the loan (including individual units of condominiums and cooperatives); or
 - A manufactured home is located or is to be constructed using proceeds of the loan.
- *Second*, the loan falls within one of the following categories:
 - Loans made by a lender,⁴ creditor,⁵ dealer;⁶
 - Loans made or insured by an agency of the federal government;
 - Loans made in connection with a housing or urban development program administered by an agency of the federal government;
 - Loans made and intended to be sold by the originating lender or creditor to FNMA, GNMA, or FHLMC (or its successor);⁷ or
 - Loans that are the subject of a home equity conversion mortgage or reverse mortgage issued by a lender or creditor subject to the regulation.

⁴ A lender includes financial institutions either regulated by, or whose deposits or accounts are insured by any agency of the federal government.

⁵ A creditor is defined in Sec. 103(g) of the Consumer Credit Protection Act (15 U.S.C. 1602(g)). RESPA covers any creditor that makes or invests in residential real estate loans aggregating more than \$1,000,000 per year.

⁶ Dealer is defined in Regulation X to mean a seller, contractor, or supplier of goods or services. Dealer loans are covered by RESPA if the obligations are to be assigned before the first payment is due to any lender or creditor otherwise subject to the regulation.

⁷ FNMA – Federal National Mortgage Association; GNMA - Government National Mortgage Association; FHLMC - Federal Home Loan Mortgage Corporation.

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“Federally related mortgage loans” are also defined to include installment sales contracts, land contracts, or contracts for deeds on otherwise qualifying residential property if the contract is funded in whole or in part by proceeds of a loan made by a lender, specified federal agency, dealer or creditor subject to the regulation.

Exemptions – 12 CFR 1024.5(b)

The following transactions are exempt from coverage:

- A loan primarily for business, commercial or agricultural purposes (definition identical to Regulation Z, 12 CFR 1026.3(a)(1)).
- A temporary loan, such as a construction loan. (The exemption does not apply if the loan is used as, or may be converted to, permanent financing by the same financial institution or is used to finance transfer of title to the first user of the property.) If the lender issues a commitment for permanent financing, it is covered by the regulation.
- Any construction loan with a term of two years or more is covered by the regulation, unless it is made to a bona fide contractor. “Bridge” or “swing” loans are not covered by the regulation.
- A loan secured by vacant or unimproved property where no proceeds of the loan will be used to construct a one-to-four family residential structure. If the proceeds will be used to locate a manufactured home or construct a structure within two years from the date of settlement, the loan is covered.
- An assumption, unless the mortgage instruments require lender approval for the assumption and the lender approves the assumption.
- A conversion of a loan to different terms which are consistent with provisions of the original mortgage instrument, as long as a new note is not required, even if the lender charges an additional fee for the conversion.⁸
- A bona fide transfer of a loan obligation in the secondary market. (However, the mortgage servicing requirements of Subpart C, 12 CFR 1024.30-41, still apply.) Mortgage broker transactions that are table funded (the loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds) are not secondary market transactions and therefore are covered by RESPA. Similarly, neither the creation of a dealer loan or consumer credit contract, nor the first assignment of such loan or contract to a lender, is a secondary market transaction.

⁸ 12 CFR 1024.5(b)(6).

CFPB Consumer Laws and Regulations

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Partial Exemptions for Certain Mortgage Loans – 12 CFR 1024.5(d)

Most closed-end mortgage loans are exempt from the requirement to provide the Good Faith Estimate, HUD-1 settlement statement, and application servicing disclosure requirements of 12 CFR 1024.6, 1024.7, 1024.8, 1024.10, and 1024.33(a). Instead, these loans are subject to disclosure, timing, and other requirements under TILA and Regulation Z. Specifically, the aforementioned provisions do not apply to a federally related mortgage loan that:

- Is subject to the special disclosure (TILA-RESPA Integrated Disclosure) requirements for certain consumer credit transactions secured by real property set forth in Regulation Z, 12 CFR 1026.19(e), (f), and (g); or
- Is subject to the partial exemption under 12 CFR 1026.3(h) (i.e., certain no-interest loans secured by subordinate liens made for the purpose of down payment or similar home buyer assistance, property rehabilitation, energy efficiency, or foreclosure avoidance or prevention. (12 CFR 1026.3(h))

Note that a creditor may not use the TILA-RESPA Integrated Disclosure forms instead of the GFE, HUD-1, and Truth in Lending forms for transactions that continue to be covered by TILA or RESPA that require those disclosures (e.g., reverse mortgages).

Summary of Applicable Disclosure Requirements:

<p><i>Use TILA-RESPA Integrated Disclosures (See Regulation Z):</i></p> <ul style="list-style-type: none"> • Most closed-end mortgage loans, including: <ul style="list-style-type: none"> ○ Construction-only loans ○ Loans secured by vacant land or by 25 or more acres 	<p><i>Continue to use existing TIL, RESPA Disclosures (as applicable):</i></p> <ul style="list-style-type: none"> • HELOCs (subject to disclosure requirements under Regulation Z, 12 CFR 1026.40) • Reverse mortgages⁹ (subject to existing TIL and GFE disclosures) • Chattel-secured mortgages (i.e., mortgages secured by a mobile home or by a dwelling that is not attached to real property, such as land) (subject to existing TIL disclosures, and not RESPA)
<p><i>But note:</i> in both cases, there is a partial exemption from these disclosures under 12 CFR 1026.3(h) for loans secured by subordinate liens and associated with certain housing assistance loan programs for low- and moderate-income persons</p>	

⁹ Open-end reverse mortgages receive open-end disclosures, rather than GFEs or HUD-1s.

Holden Act Disclosure

The **Holden Act** prohibits lender from discriminating against borrowers on the basis of race, religion, color, sex, or marital status. It also requires lenders to disclose this equal qualification opportunity to prospective borrowers.

Truth in Lending Act (TILA)

The **Truth in Lending Act (TILA)** is a federal law passed in 1968 that created a standardized system for calculating and disclosing loan interest rates. It was designed to make various mortgage product terms, including costs, points, and fees, easier for consumers to understand.

One of TILA's main provisions requires lenders to use an annual percentage rate (APR) as the standard mortgage description term for mortgage products. APR is the cost of credit expressed as a yearly rate in a percentage.

Lenders must also provide to borrowers with a **Truth in Lending Disclosure Statement**. This statement provides borrowers with a simplified version of the mortgage terms. It must disclose:

- *Principal loan amount*
- *Security interest description*. The type of mortgage being used.
- *Annual Percentage Rate (APR)*
- *Variable interest rate* (if applicable). Refers to the term limitations of rate increases for an adjustable rate mortgage*.
- *Monthly mortgage payments*
- *Finance charge*. The amount each dollar costs to borrow.
- *Charges excluded from finance charge*. Charges other than the cost to borrow. This includes property taxes and insurance premiums.
- *Itemization of financing amount*. A borrower has the right to receive a written itemization of the costs to take out a loan.
- *Payment schedule*
- *Specific loan terms*. Information regarding acceleration clauses, due-on-sale clauses, other "demand" clauses, prepayment penalties, late payment charges, and terms of default.
- *Identity of lender*
- *Required deposit balances*. Indicates if a borrower is required to make a deposit in order to obtain a loan and whether the APR reflects that deposit.

A lender must provide an **adjustable rate mortgage disclosure** to a prospective borrower. An adjustable rate mortgage is a finance program in which the interest rate adjusts based on the credit indexes and current market conditions.

Under TILA, a borrower has the right to rescind a mortgage loan within three days of acceptance. This is called the **right of rescission**. A lender then has up to 20 days to reverse the credit transaction by returning all fees to the borrower.

Notice of Transfer of Loan Servicing

A borrower must be informed if and when the party servicing the loan changes. A written notice that the loan has been transferred must be delivered as first class mail to the borrower. It must be provided prior to the loan being transferred to the new servicing party.

Miscellaneous Disclosures

AIDS Disclosure

The passage of the 1988 Fair Housing Act made it illegal to discriminate against individuals with AIDS. Consequently, California Civil Code now states that a seller is not required to disclose whether or not he or she has AIDS to potential buyers.

Death on Premises

If a death previously occurred on a listed property, the agent and seller are only required to disclose it to the buyer if the death occurred within a period of three years.

Conversely, Civil Code Section 1710.2 (a) states:

“No cause of action arises against an owner of real property or his or her agent, or any agent of a transferee of real property, for the failure to disclose to the transferee the occurrence of an occupant's death upon the real property or the manner of death where the death has occurred more than three years prior to the date the transferee offers to purchase, lease, or rent the real property, or that an occupant of that property was afflicted with.”

If a buyer asks an agent directly about a death that occurred more than three years ago, however, the agent must disclose this information.

Megan's Law

Megan's Law is a federal law that requires local and state law enforcement agencies to publish a list of registered sex offenders. The purpose of the law is to make these records easily accessible to the public. Information includes the name, location, picture,

incarceration date, and offense information of the sex offender.

Civil Code Section 2079.10 (a) requires residential purchase and rental agreements of one to four residential units to inform prospective buyers of the publicly available information about the registered sex offenders list.

Elder Abuse Disclosure

The **Elder Abuse Disclosure Law** requires any party who suspects an elderly person of being abused financially due to his or her incoherence or old age to inform the proper authorities.

Escrow holders, notaries, agents, and other financial professionals must report such abuse by phone or through email as soon as the abuse is suspected.

Disclosures to Opposing Party

While an agent has a fiduciary duty to protect the interests of their principal, he or she also must also provide necessary disclosures to the opposing principal and agent. This includes any information that may affect the subject property's value or the opposing principal's decision to move forward with the transaction.

For example, say a buyer wishes to purchase land for the purpose of subdivision. If the seller's agent is aware that the subject property cannot be subdivided, he or she has a fiduciary duty to disclose this information. If the agent is unaware of this fact, however, he or she cannot be held liable.

If an agent discovers pertinent information during the course of the transaction that may affect the opposing principal's decision in the transaction, he or she must disclose it prior to the execution of the purchase agreement.

If a buyer is informed of a specific disclosure after the execution of a purchase agreement, the buyer has three days to terminate the agreement by executing a written termination notice to the seller (California Civil Code, Section 1102.3).