



## DISCLOSURE OBLIGATIONS

Considerable confusion exists as to what Sellers are obligated to disclose, the extent of the Buyer's obligations and the duties of the Real Estate Agents. This disclosure is designed to give an over-all explanation of the respective rights and obligations of the parties in a residential real estate transaction. However, additional disclosures may be required. **Please read every section.**

### SELLERS

Unless exempt, Sellers must honestly answer all of the questions contained in the Real Estate Transfer Disclosure Statement (RETDS), a form mandated by California statutory law. The fact that the Seller has never resided in the property or is selling the property in its present condition ("as is") does not eliminate the Seller's obligation to make full disclosure. The RETDS does not establish who is obligated to correct, replace or repair any item, in that it is not a warranty or a contract but a statement of the Seller's knowledge of those material facts which affect the value or desirability of the property. Under California case law, Sellers must disclose not only current problems but also known past problems, even those which have been corrected.

The RETDS is **not** an exhaustive list of all of the issues that Sellers must disclose under California law. To facilitate complete disclosure, many Real Estate Agents provide Sellers with a Supplemental Disclosure form designed to fill in the gaps in the state-mandated form. Some purchase contracts require that Sellers complete a supplemental form.

Some of the issues which Sellers must disclose are not readily known by Sellers but are none-the-less mandatory disclosures. Under the Alquist-Priolo Earthquake Fault (also known as the "Special Studies Zone") Sellers **must** disclose if the property is located within a state delineated earthquake fault zone and if the property is located within a seismic or other geotechnical hazard as determined by local jurisdictions. Sellers **must** disclose if the property is located in a federally-designated flood hazard area and California law allows cities, counties and state agencies to control land use within flood hazard areas. Sellers **must** disclose whether the property is located within a state fire responsibility area, defined as where California has the primary financial responsibility for fire prevention. These are generally "wildland areas" which may require state-imposed additional duties. Sellers **must** also disclose if the property is subject to a Mello-Roos Facility District which is formed to finance certain public services and facilities. If such a district exists, Sellers must make a good faith effort to secure a disclosure notice from the local taxing agency and provide the completed notice to the Buyer. Sellers can either research these issues through public agencies and make the disclosures themselves or retain experts to undertake the research, make the disclosures and assume the liability for those disclosures.

Under State law, Sellers are required to disclose whether or not the property is in compliance with the smoke detector laws and whether or not water heaters have been secured by bracing, strapping or anchoring. Local laws may impose additional requirements on these and other health and safety issues.

If the property is a single unit in a common interest development, then Sellers **must** give the Buyer a copy of the governing documents of the common interest development and certain financial information. Sellers can request that the homeowners' association provide that information to the Buyer under Civil Code Section 1368. Sellers **must** also disclose past, current and proposed litigation affecting the unit and/or the common area, as well as any defects in the common area; however, the homeowners' association is not required to make those disclosures to prospective Buyers. Sellers and Buyers should understand that many common interest developments have been, are or may be involved in litigation. It should also be recognized that homeowner association fees and assessments are not fixed and can be increased.

If the property was built before 1978, then Sellers **must** disclose known lead-based paint hazards and whether the property has certain features which would constitute a weakness in the event of an earthquake.

### BUYERS

Buyers should not just rely on what Sellers or Real Estate Agents tell them about the property. Required written disclosures do not take the place of hiring expert inspectors to evaluate the size, condition and use of the property, including but not limited to governmental requirements and limitations, geological and environmental hazards, structural and non-structural systems, waste disposal, water and other utility systems and components, neighborhood conditions, and personal preference factors. Securing this information does not take the place of maintaining the property after escrow closes nor is there a guarantee that changes in those issues will not occur. Buyers have an obligation to exercise reasonable care to protect themselves "including those facts which are known to or within the diligent attention and observation of the buyer" under Civil Code Section 2079.5. When **any** problem is noted in any disclosure or inspection report, Buyers should retain appropriate experts to determine the extent of the problem and the proper means for and the cost of correcting that problem **before** escrow closes. Buyers are encouraged to personally verify the condition and uses of the property and the Seller's compliance with all contractual provisions prior to the close of escrow.

### REAL ESTATE AGENTS

Real Estate Agents are required to disclose potential agency relationships by use of a statutory form. Real Estate Agents can provide certain federal and state pamphlets regarding such issues as environmental hazards and earthquake safety. Real Estate Agents are required to conduct a competent, diligent, visual inspection of the accessible areas of the property and to disclose the results of that inspection. However, that inspection obligation does **not** include an inspection of common areas, matters off-site of the subject property or public records or permits concerning the title or use of the property. Real Estate Agents do not guarantee nor take any responsibility for the size, condition or use of the property and are not obligated to verify the Seller's disclosures. A Real Estate Agent is the person qualified to advise on real estate matters, and is not obligated to give legal, insurance or tax advice.

Date 8/10/09 Seller Mrs Purdy by Pamela Medina Seller \_\_\_\_\_  
Date \_\_\_\_\_ Buyer her attorney in fact. Buyer \_\_\_\_\_