

EVERYTHING YOU NEED TO KNOW ABOUT DISCLOSURES*

*** RECENT DEVELOPMENTS**

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Agenda

New Laws

- The AD form and HOA “Document Bundling”

Recent Cases

- Richman – mixed-use property
- Saffie – MLS representations and BA’s duties

Nov. Forms Release re Disclosures

- SPQ Default Option
- “Fully Complete” TDS and Visual Inspection
- PRBS Replaces the DA

Laws Effective July 2014

- Smoke Alarm
- TDS changes Question #16



DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (Listing Firm to Seller)

(As required by the Civil Code)
(C.A.R. Form AD, Revised 11/12)

☐ (If checked) This form is being provided in connection with a transaction for a leasehold interest in a dwelling exceeding one year as per Civil Code section 2079.13(j) 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. 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 _____ (Salesperson or Broker-Associate) BRE Lic. # _____ Date _____

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) _____
Date _____ Date _____

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

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Reviewed by _____ Date _____

AD REVISED 11/12 (PAGE 1 OF 2)

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

Agent: Robert Bloom Phone: 213.739.8200 Fax: 213.480.7724 Prepared using zipForm® software

Broker: California AOR, 525 S Virgil Ave Los Angeles, CA 90020

The "Agency Disclosure" form (AD)

New Law: Agency Disclosure – “Commercial”

Presently required on:

- Residential 1 – 4 properties
- Residential leases of more than one year
- Manufactured homes (if negotiated by agent)

New Jan. 1st. “Commercial”

- Commercial or industrial property
- Vacant land
- Leases of these types of property if more than one year

Civil Code 2079.13

Confirmation of Agency

Already in all CAR commercial purchase agreements and leases

- RIPA
- VLPA
- CPA
- BPA

No HOA Document Bundling

- **New law:** The legally required CI disclosures to be written up and billed separately from optional disclosures
- Seller to pay the entity that provides the HOA docs
- Form HOA (Homeowners Information Request) is now broken down into 3 forms
- Seller is still required to make request to HOA within 3 days after acceptance
- The Big Change: Seller will be required to bring money into escrow (within 3 days after directed by escrow) per the contract

Civil Code 4528 and 4530. Paragraphs 7D(4), (5) and 20 A of RPA-CA





HOMEOWNER ASSOCIATION INFORMATION REQUEST
AND CHARGES PER DOCUMENTS PROVIDED AS REQUIRED BY SECTION 4525
(C.A.R. Form HOA, Revised 12/13)
FOR USE AFTER JANUARY 1, 2014

Property Address: _____
Owner of Property: _____
Owner's Mailing Address: _____ ("Seller")
(If known or different from property address)

To: Homeowner Association _____ ("HOA")

Pursuant to California Civil Code §§ 4525 and 4530 and the request of Seller (1) upon receipt of this request please provide on this form a written or electronic estimate of fees that will be assessed for providing the requested documents, and (2) within 10 calendar Days from the date of this request, please provide to Seller the items or information listed on page 2 at the mailing address indicated above, or (if checked) to _____

On page 2, please indicate whether the item is attached. If not attached, indicate if not available or not applicable.

Seller or Seller's Agent _____ Date _____

The documents and information provided by the HOA referenced above were provided by:

(print name) (title or position)

☐ Association or ☐ Agent _____ Date: _____

By signing below, the undersigned acknowledge that each has read, understands and has received a copy of this Homeowner Association Information Request.

Seller _____ Date _____

Seller _____ Date _____

Homeowners Association Information Request (form HOA)



Recent Cases

- **Richman v. Hartley (2014)**
 - Seller (“transferor”) of mixed use property improved with 1-4 dwelling units is obligated to complete a TDS.
 - No matter the sophistication of buyer
 - Smith v Rickard (1988) – agent has duty to visually inspect residential portion of mixed use property

Recent Cases

Saffie v. Schmeling (2014)

- On MLS, LA states “Declared buildable by investigating licensed geologist.”
- But on the cover of report the date appears “prominently” “May 20, 1982.”
- Buyer’s agent gave report to buyer and advised buyer to “check it out.” But didn’t point out date to buyer.
- Ruling: Listing broker’s **perfectly accurate** reference to an old inspection report is not false or misleading if it is strictly true, even if county changed building standards after the report issued.
- Judge found Buyer’s agent led Buyer to believe that the report was current and could be relied on as an indication that the property was “ready to build.” Buyer’s agent advice to “check it out” may be breach of fiduciary duty.

Saffie Case Lessons

- Look at date on cover of report and point it out.
- **Buyer's agent:** Recommend further investigation. As a fiduciary for the buyer, should have recommended further investigation rather than relying on the nearly 25 year old report.
- **Buyer's agent:** Do not endorse information provided by the seller and LA.
- **Attribute and disclaim.** Buyer's agent should keep in mind "The information has not been verified" See Salahutdin v Alcantara (1994).
- **Listing Agent:** Do not reference old or outdated reports.
- **Interesting part of case:** In any event buyer could not claim damages based on MLS because buyer was provided with report during escrow, and could have investigated and decided to buy. But...., see Jue v. Smiser (1994)

The Seller Property Questionnaire (form SPQ)



SELLER PROPERTY QUESTIONNAIRE (C.A.R. Form SPQ, Revised 11/13)

This form is not a substitute for the Real Estate Transfer Disclosure Statement (TDS). It is used by the Seller to provide additional information when a TDS is completed or when no TDS is required.

I. Seller makes the following disclosures with regard to the real property or manufactured home described as situated in 123 elm, Assessor's Parcel No. _____, County of los angeles, California ("Property").

II. The following are representations made by the Seller. Unless otherwise specified in writing, Broker and any real estate licensee or other person working with or through Broker has not verified information provided by Seller. A real estate broker is qualified to advise on real estate transactions. If Seller or Buyer desires legal advice, they should consult an attorney.

III. **Note to Seller:** PURPOSE: To tell the Buyer about known material or significant items affecting the value or desirability of the Property and help to eliminate misunderstandings about the condition of the Property.

- Answer based on actual knowledge and recollection at this time.
- Something that you do not consider material or significant may be perceived differently by a Buyer.
- Think about what you would want to know if you were buying the Property today.
- Read the questions carefully and take your time.
- If you do not understand how to answer a question, or what to disclose or how to make a disclosure in response to a question, whether on this form or a TDS, you should consult a real estate attorney in California of your choosing. A broker cannot answer the questions for you or advise you on the legal sufficiency of any answers or disclosures you provide.

IV. **Note to Buyer:** PURPOSE: To give you more information about known material or significant items affecting the value or desirability of the Property and help to eliminate misunderstandings about the condition of the Property.

- Something that may be material or significant to you may not be perceived the same way by the Seller.
- If something is important to you, be sure to put your concerns and questions in writing (C.A.R. form BMI).
- Sellers can only disclose what they actually know. Seller may not know about all material or significant items.
- Seller's disclosures are not a substitute for your own investigations, personal judgments or common sense.

V. **SELLER AWARENESS:** For each statement below, answer the question "Are you (Seller) aware of..." by checking either "Yes" or "No." Provide explanations to answers in the space provided or attach additional comments and check section VI.

A. **STATUTORILY OR CONTRACTUALLY REQUIRED OR RELATED:**

1. Within the last 3 years, the death of an occupant of the Property upon the Property ☐ Yes ☐ No
2. An Order from a government health official identifying the Property as being contaminated by methamphetamine. (If yes, attach a copy of the Order.) ☐ Yes ☐ No
3. The release of an illegal controlled substance on or beneath the Property ☐ Yes ☐ No
4. Whether the Property is located in or adjacent to an "industrial use" zone ☐ Yes ☐ No
5. (In general, a zone or district allowing manufacturing, commercial or airport uses.) ☐ Yes ☐ No
6. Whether the Property is affected by a nuisance created by an "industrial use" zone. (In general, an area once used for military training purposes that may contain potentially explosive munitions.) ☐ Yes ☐ No
7. Whether the Property is a condominium or located in a planned unit development or other common interest subdivision. ☐ Yes ☐ No
8. Insurance claims affecting the Property within the past 5 years. ☐ Yes ☐ No
9. Matters affecting title of the Property ☐ Yes ☐ No
10. Material facts or defects affecting the Property not otherwise disclosed to Buyer ☐ Yes ☐ No

Explanation, or ☐ (if checked) see attached: _____

B. **REPAIRS AND ALTERATIONS:**

1. Any alterations, modifications, remodeling, replacements or material repairs on the Property (including those resulting from Home Warranty claims)
2. Ongoing or recurring maintenance on the Property (for example, drain or sewer clean-out, tree or pest control service)

ARE YOU (SELLER) AWARE OF... ☐ Yes ☐ No

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

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New Contract Term: SPQ is now the default option or if box checked, SSD

- Seller will be required to fill out SPQ (Seller Property Questionnaire)
 - a. Unless the box in 10A(4) is checked for SSD or
 - b. Unless TDS exempt property
- Even if TDS exempt, seller may still fill out either SPQ or SSD (Supplemental Contractual and Statutory Disclosure)

Paragraph 10A(4) of RPA-CA

New contract term: Seller must “fully complete” TDS

Listing Agent must complete visual inspection within seven days

- Seller must if required by law “fully complete” TDS and other disclosures by answering all questions and complete and sign disclosure.
- Listing agent must complete visual inspection within 7 days for TDS to be “fully complete”
- If not, buyer need not remove contingency relating to TDS and visual inspection disclosure.
- If not buyer retains cancellation right.

How does the new term differ from the current contract?

Paragraphs 10A(1) and (2) of RPA-CA

New Contract Term and Form: The DA form is now the PRBS form

- The PRBS form replaces the DA.
- Because you never know if someone in your office is representing a competing buyer or seller.
- Box is “pre-checked” and each agent should provide their client with the PRBS at the time the offer is made. “Possible Representation of More than One Buyer or Seller – Disclosure and Consent”
- Or at broker’s Option before the offer is made use PRMB for buyers PRMS for sellers

Paragraph 2A of RPA-CA

Smoke Alarms

Effective July 2014

- Does not require replacement of existing smoke alarms if operable. But with \$1000 of permitted improvements must be upgraded.
- Implementation July 1, 2014 – Can use existing stock through July 1, 2015
 - 10 year battery
 - Non-removable battery
 - “Hush” feature
- L/T – cannot make T responsible for alarm maintenance
- L/T – January 2016 – smoke alarms must be located per current location standards

TDS Q#16 adds “claims”

Effective July 2014

- Previously TDS required disclosures of “*lawsuits* by or against the Seller threatening to or affecting this real property
- Now any SB800 claim must be included
 - Breach of warranty pursuant to §900 *Claims*
 - Breach of an enhanced protection agreement pursuant to Section § 903
 - §§910 and 914 establish a “non-adversarial” procedure. Builder can offer to fix property or use some other procedure to resolve dispute prior to lawsuit

Questions?

Thank you for Attending

- **I will be at the “Ask an Attorney” booth today 4 to 6, and tomorrow 2:30 to 5**