State of California
Department of Real Estate

Disclosures in Real Property Transactions

Sixth Edition
2005

State of California
Department of Real Estate

Disclosures in Real Property Transactions

Sixth Edition
2005

2005 booklet was revised pursuant to a consulting contract with Wallace, Puccio & Garrett; Principal Author and Editor – S. Guy Puccio.

PREFACE

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

Should you need assistance or further information, consult the statutory references included, an attorney or a knowledgeable real estate professional. Also, this booklet has a list of government agencies which you may contact for further information, as appropriate.

Because the laws concerning disclosure obligations may change, you should use this booklet only as a general source of information.

TABLE OF CONTENTS

PART I
TRANSFER AND FINANCING OF REAL PROPERTY

Section I
Disclosures Required of a Seller and/or a Real Estate Broker/Agent

A. Disclosures Upon Transfer of Residential Property 1

1. Termination Right..... 2
2. Real Estate Transfer Disclosure Statement..... 2
3. Local Option Real Estate Transfer Disclosure Statement..... 8
4. Natural Hazards Disclosure 10
5. Mello-Roos Bonds and Taxes..... 15
6. Property Taxes 15
7. Ordnance Locations 16
8. Window Security Bars 16
9. Industrial Uses 16
10. Methamphetamine Contamination..... 16

B. Earthquake Guides..... 17

C. Smoke Detector Statement of Compliance..... 18

D. Disclosure Regarding Lead-Based Paint Hazards 18

E. California's Environmental Hazards Pamphlet 20

F. Delivery of Structural Pest Control Inspection and Certification Reports..... 21

G. Energy Conservation Retrofit and Thermal Insulation Disclosures 21

H. Foreign Investment in Real Property Tax Act 22

I. Notice and Disclosure to Buyer of State Withholding on Disposition of California Real Property..... 22

J. Furnishing Controlling Documents and Financial Statements Concerning Common Interest Developments (CID's) 23

K. Notice Regarding the Advisability of Title Insurance 25

L. Certification Regarding Water Heater's Security Against Earthquake.. 25

M. Data Base – Locations of Registered Sex Offenders 26

Section II
Disclosures Required of Real Estate Agents in the Transfer of Residential Real Property

A. Visual Inspection 27

B. Agency Relationship Disclosures 28

C. Disclosure of the Negotiability of Real Estate Commissions 31

D. No Disclosure Required for Manner/Occurrence of Death; Affliction of Occupant with Aids 32

E. Disclosure of Sales Price Information 32

Section III
Disclosures Required When Financing Real Property

A. Advance Fees 33

B. Seller Financing Disclosure Statement 33

C. California Required Disclosures to Borrowers 36

D. California Required Disclosures to Certain Lenders or Promissory Note Purchasers 38

1. General Disclosure Requirements 38
2. Multi-Lender Transactions 40
3. Construction Loans and Multiple Security Properties in Multi-Lender Transactions. 41
4. Loan Servicing in Multi-Lender and in other than Multi-Lender Transactions. 44

E. Notice of Transfer of Loan Servicing 44

F. Notice of Borrower's or Lender's Right to Copy of Appraisal Report 45

G. Credit Terms – Truth-in-Lending and Regulation Z 45

H. High Cost Loans (Federal) 48

I. California High Cost Mortgage/Loan Disclosures 49

J. Real Estate Settlement Procedures Act (RESPA) 51

K. Advance Disclosures in Loan Transactions Subject to TILA and RESPA 53

L. Disclosure by Agent Receiving Compensation from a Lender 54

M. Adjustable Rate Loan Disclosure 54

N. Equal Credit Opportunity Act – Notice of Adverse Action – Regulation B 55

O. Certain Obligations of Consumer Credit Reporting Agencies 56

P. Disclosure Required by the Housing Financial Discrimination Act of l977 (Holden Act) 58

Section IV
Disclosures Relative to New Residential Subdivisions

A. Public Report: Disclosure of Material Facts about a Subdivision 60

B. Disclosure of the Right to Rescind 61

C. Disclosure and Notice of Blanket Encumbrance 61

D. Delivery of Governing Documents and Disclosures to Prospective Purchaser in a Common Interest Development 62

E. Statement of Defects Disclosure for a Common Interest Development Conversion 63

F. Notices to Tenants to Disclose Intent to Convert an Apartment to Individual Ownership 64

Part II
TRANSFER OF A BUSINESS OPPORTUNITY

A. Definition of Business Opportunity 65

B. Bulk Transfer Law 65

C. Sales Tax Clearance 66

D. Transfer of Liquor License 66

E. Franchise Investment Law 66

F. Fictitious Business Name (DBA) 67

G. Notice of Other Government Agencies 67

LIST OF GOVERNMENT AGENCIES (Federal and State) 69

DEPARTMENT OF REAL ESTATE OFFICES 71

INTRODUCTION

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

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

Because the disclosure requirements discussed in this booklet may change, before proceeding with the disclosures, a principal or agent should review the referenced codes and regulations and check for any recent legislation which may impose new or changed requirements.

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

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

NOTE: *The term broker, licensee or agent, as used in this brochure, collectively refer to a real estate broker and the salesperson who is agent of the broker.*

PART I
TRANSFER AND FINANCING OF REAL PROPERTY

SECTION I
DISCLOSURES REQUIRED OF A SELLER AND/OR A REAL ESTATE BROKER/AGENT

While these disclosures relate mainly to residential property resales, some may also be applicable to the initial sale of subdivided interests as noted in this section and further discussed in Section IV. Remember that sellers and real estate agents must make the disclosures necessary to avoid fraud, misrepresentation or deceit.

A. Disclosures Upon Transfer of Residential Property

This section deals with the major disclosures required by the California Civil Code (commencing at Section 1102). Subject to the exemptions listed below, these requirements apply when real property of 1 to 4 dwelling units is transferred by sale, exchange, installment land sale contract, ground lease coupled with improvements, lease with an option to purchase, or any other option to purchase.

In this discussion, the term “seller” means the transferor, the term “buyer” or “purchaser” means the transferee, and the term “transaction” includes the sale or transfer of the property.

These requirements also pertain to the resale of a manufactured home (as defined in Section 18007 of the Health and Safety Code) or a mobilehome (as defined in Section 18008 of the Health and Safety Code) even if classified as personal property, provided that the manufactured or mobilehome is located on real property and is intended for use as a residence.

The following transfers are ***exempt*** from these disclosure requirements:

- The sale of new homes as part of a subdivision project where a public report must be delivered to the purchaser or a public report is not required. However, when such new homes are sold through a real estate broker, the broker owes the buyer a duty to disclose any material facts which affect the value, desirability and intended use of the property;
- Foreclosure sales;
- Court ordered transfers;
- Transfers by a fiduciary in the administration of a decedent’s estate, a guardianship, conservatorship, or trust except where the trustee is a former owner of the property;

- Transfers to a spouse or to a person or persons in the lineal line of consanguinity;
- Transfers resulting from a judgment of dissolution of marriage, or of legal separation, or from a property settlement agreement incidental to such a judgment;
- Transfers from one co-owner to another;
- Transfers by the State Controller for unclaimed property;
- Transfers resulting from failure to pay taxes; and
- Transfers to or from any governmental entity.

(CAL. CIV. §§ 1102, 1102.2, 1102.3)

1. Termination Right.

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

(CAL. CIV. §1102.3)

2. Real Estate Transfer Disclosure Statement

The Real Estate Transfer Disclosure Statement (TDS) describes the condition of a property and, in the case of a sale, must be given to a prospective buyer as soon as practicable and before transfer of title. In the case of a transfer by a real property sales contract (as defined in Civil Code Section 2985) by a lease coupled with an option to purchase, or by a ground lease coupled with improvements, the TDS is to be delivered before the execution of any of the foregoing.

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

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

(CAL. CIV. § 1102.4)

The following is the format of the Transfer Disclosure Statement:

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF _____, COUNTY OF _____, STATE OF CALIFORNIA, DESCRIBED AS _____. THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH SECTION 1102 OF THE CIVIL CODE AS OF _____, 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.

I

COORDINATION WITH OTHER DISCLOSURE FORMS

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

Substituted Disclosures: The following disclosures have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same:

☐ Inspection reports completed pursuant to the contract of sale or receipt for deposit.

☐ Additional inspection reports or disclosures:

_____

_____

_____

II

SELLER'S INFORMATION

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

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

Seller ___ is ___ is not occupying the property.

A. The subject property has the items checked below (read across):

__Range	__Oven	__Microwave
__Dishwasher	__Trash Compactor	__Garbage Disposal
__Washer/Dryer Hookups		__Rain Gutters
__Burglar Alarms	__Smoke Detector(s)	__Fire Alarm
__TV Antenna	__Satellite Dish	__Intercom
__Central Heating	__Central Air Cndtng.	__Evaporative Cooler(s)
__Wall/Window Air Cndtng.	__Sprinklers	__Public Sewer System
__Septic Tank	__Sump Pump	__Water Softener
__Patio/Decking	__Built-in Barbecue	__Gazebo
__Sauna		
__Hot Tub __ Locking Safety Cover*	__Pool __ Child Resistant Barrier*	__Spa__ Locking Safety Cover*
__Security Gate(s)	__Automatic Garage Door Opener(s)*	__Number Remote Controls
Garage: __Attached	__Not Attached	__Carport
Pool/Spa Heater: __Gas	__Solar	__Electric
Water Heater: __Gas	__Water Heater Anchored, Braced, or Strapped*	__Private Utility or Other _____
Water Supply: __City	__Well	
Gas Supply: __Utility	__Bottled	
__Window Screens	__Window Security Bars	
	__Quick Release Mechanism on Bedroom Windows*	

Exhaust Fan(s) in _____220 Volt Wiring in _____ Fireplace(s) in _____

Gas Starter _____ Roof(s): Type: _____ Age: _____ (approx.)

Other: _____

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): _____

_____

_____

_____

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): _

_____

_____

_____

* This garage door opener or child resistant pool barrier may not be in compliance with the safety standards relating to automatic reversing devices as set forth in Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of, or with the pool safety standards of Article 2.5 (commencing with Section 115920) of Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code. The water heater may not be anchored, braced, or strapped in accordance with Section 19211 of the Health and Safety Code. Window security bars may not have quick-release mechanisms in compliance with the 1995 Edition of the California Building Standards Code.

C. Are you (Seller) aware of any of the following:

1. Substances, materials or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, and contaminated soil or water on the subject property..... __Yes __No
2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property..... __Yes __No
3. Any encroachments, easements or similar matters that may affect your interest in the subject property..... __Yes __No
4. Room additions, structural modifications, or other alterations or repairs made without necessary permits ..... __Yes __No
5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes.. __Yes __No
6. Fill (compacted or otherwise) on the property or any portion thereof..... __Yes __No
7. Any settling from any cause, or slippage, sliding, or other soil problems..... __Yes __No
8. Flooding, drainage or grading problems..... __Yes __No

9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides..... __Yes __No

10. Any zoning violations, nonconforming uses, violations of "setback" requirements ..... __Yes __No

11. Neighborhood noise problems or other nuisances..... __Yes __No

12. CC&R's or other deed restrictions or obligations..... __Yes __No

13. Homeowners' Association which has any authority over the subject property..... __Yes __No

14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas 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, including any lawsuits alleging a defect or deficiency in this real property or "common areas" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others) ..... __Yes __No

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

_____

_____

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

Seller _____ Date _____

Seller _____ Date _____

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:

☐ Agent notes no items for disclosure.

☐ Agent notes the following items:

_____

_____

_____

_____

Agent (Broker
Representing Seller) _____ By _____ Date_____
(Please Print) (Associate Licensee
or Broker-Signature)

IV

AGENT'S INSPECTION DISCLOSURE

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

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

☐ Agent notes no items for disclosure.

☐ Agent notes the following items:

_____

_____

_____

_____

Agent (Broker
Representing Seller) _____ By _____ Date_____
(Please Print) (Associate Licensee
or Broker-Signature)

V

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT

Seller_____ Date_____ Buyer_____ Date_____

Seller_____ Date_____ Buyer_____ Date_____

Agent (Broker
Representing Seller) _____ By _____ Date_____
(Please Print) (Associate Licensee
or Broker-Signature)

Agent (Broker
Obtaining the Offer) _____ By _____ Date_____
(Please Print) (Associate Licensee
or Broker-Signature)

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

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

(CAL. CIV. § 1102 et. seq.)

3. Local Option Real Estate Transfer Disclosure Statement

A city or county may require that the seller provide specific information about the neighborhood or community: The Civil Code requires that such local disclosure statements be in the following format:

LOCAL OPTION

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF _____, COUNTY OF _____, STATE OF CALIFORNIA, DESCRIBED AS _____. THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE-DESCRIBED PROPERTY IN COMPLIANCE WITH ORDINANCE NO. _____ OF THE _____ CITY OR COUNTY CODE AS OF _____, 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.

I

SELLER'S INFORMATION

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

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

1 _____

_____

_____

_____

2. _____

_____

_____

_____

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

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

Seller _____ Date _____

Seller _____ Date _____

II

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller _____ Date_____ Buyer _____ Date_____

Seller _____ Date_____ Buyer _____ Date_____

Agent (Broker Representing Seller) _____ By _____ Date_____
(Please Print) (Associate Licensee or Broker-Signature)

Agent (Broker Obtaining the Offer) _____ By _____ Date_____
(Please Print) (Associate Licensee or Broker-Signature)

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

(CAL. CIV. § 1102.6a)

NOTE: *On and after January 1, 2006, should a city or county not adopt a different or additional local disclosure form, then the required "airport influence area," disclosure shall be made consistent with a current airport influence map. If there is not an available current airport influence map, a written disclosure of an airport located within two statute miles of the subject property shall satisfy this disclosure requirement.*

When providing the above disclosure, the seller, the seller’s agent(s), or the expert retained for such purpose shall determine whether the property is within the jurisdiction of the San Francisco Bay Conservancy and Development Commission, as defined in Section 66620 of the Government

Code. If the property is within the Commission's jurisdiction, the report shall contain the following notice:

NOTICE OF SAN FRANCISCO BAY CONSERVATION
AND DEVELOPMENT COMMISSION JURISDICTION

This property is located within the jurisdiction of the San Francisco Bay Conservation and Development Commission. Use and development of the property within the commission's jurisdiction may be subject to special regulations, restrictions, and permit requirements. You may wish to investigate and determine whether they are acceptable to you and your intended use of the property before you complete your transaction.

(CAL. BUS. & PROF. § 11010; CAL. CIV. §§ 1102.6a, 1103.4, 1353)

4. Natural Hazards Disclosure

Unless the transfer of the property is subject to an exemption from this disclosure, the seller or the seller's agent for this purpose must make appropriate disclosures if the property is in one or more of the following zones or areas:

- **Zone A or Zone V (special flood hazard area)** as designated by the Federal Emergency Management Agency. The seller's agent, or the seller, if acting without an agent, must make this disclosure if:
    - The seller, or the seller's agent has actual knowledge that the property is in a special flood hazard area; or-
    - The local jurisdiction has compiled a list of parcels that are in a special flood hazard area and has posted at the offices of the county recorder, county assessor, and county planning agency a notice that identifies the location of the parcel list.

  (CAL. GOV'T § 8589.3)

- **An area of potential flooding** shown on a map as an area which will be inundated if a dam fails. The seller's agent, or the seller if acting without an agent, must make this disclosure if:
    - The seller, or the seller's agent, has actual knowledge that the property is within a delineated inundation area; or
    - The local jurisdiction has compiled a list of parcels that are in the inundation area and has posted at the offices of the county recorder, county assessor, and county planning agency a notice that identifies the location of the list.

  (CAL. GOV'T § 8589.4)

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

  (CAL. GOV'T § 51183.5)

- **A designated wildland area ("state responsibility area")** that may contain substantial forest fire risks and hazards. The seller ***and the seller's agent*** must make this disclosure if:
  - the seller or the seller's agent has actual knowledge that the property is in a designated wildland fire zone; or-
  - the city or county has received a map of such properties which includes the seller's property and has posted at the offices of the county recorder, county assessor, and county planning agency a notice that identifies the location of the map and any changes to it.*****

  (CAL. PUB. RES. § 4136)

- **An earthquake fault zone**. These zones are over earthquake faults and are usually about one quarter mile in width. The seller's agent, or the seller if acting without an agent, must disclose that the property is in one of these zones if:
  - the seller, or the seller's agent, has actual knowledge that the property is within a delineated earthquake fault zone; or-
  - the city or county has received a map of such properties which includes the seller's property and has posted at the offices of the county recorder, county assessor, and county planning agency a notice that identifies the location of the map and any changes to it.*****

  (CAL. PUB. RES. § 2621.9)

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

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

(CAL. PUB. RES. § 2694)

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

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

The seller or his or her agent may elect to use the services of a third party consultant to complete the NHDS in lieu of completing the NHDS themselves. The use of a third party consultant does not relieve the seller or his/her agent from the obligation to deliver NHDS to the buyer.

(CAL CIV. §§ 1103, 1103.1, 1103.2, 1103.3, 1103.4)

The following is the required format for the NHDS:

NATURAL HAZARD DISCLOSURE STATEMENT

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 _____

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_____

NOTE: *Although the form for the natural hazard disclosures is mandated only for properties described on page 1 of this booklet, the appropriate disclosure must be made in some manner when any real property located in one of the zones is to be sold or transferred.*

(CAL. CIV. § 1103.2)

5. Mello-Roos Bonds and Taxes

The Mello-Roos Community Facilities Act of 1982 authorizes the formation of community facilities districts, the issuance of bonds, and the levying of special taxes to finance designated public facilities and services. The seller of a property consisting of 1 to 4 dwelling units subject to the lien of a Mello-Roos community facilities district or subject to a fixed lien assessment collected in installments to secure bonds issued pursuant to the Improvement Bond Act of 1915 (Division 10, commencing with Section 8500, of the Streets and Highway Code) must make a good faith effort to obtain from the district a disclosure notice concerning the special tax and must give the notice to a prospective buyer. If a district notice is not obtained, a notice obtained from a non-governmental source may be used, provided that it clearly and accurately describes the related tax liabilities.

(CAL. CIV. § 1102.6b)

6. Property Taxes

New legislation effective January 1, 2006, requires a seller or his or her agent to deliver to the prospective purchaser a disclosure notice that includes both of the following:

(1) A notice, in at least 12-point type or a contrasting color, as follows:

> "California property tax law requires the Assessor to revalue real property at the time the ownership of the property changes. Because of this law, you may receive one or two supplemental tax bills, depending on when your loan closes.
>
> The supplemental tax bills are not mailed to your lender. If you have arranged for your property tax payments to be paid through an impound account, the supplemental tax bills will not be paid by your lender. It is your responsibility to pay these supplemental bills directly to the Tax Collector.
>
> If you have any question concerning this matter, please call your local Tax Collector's Office."

(2) A title must be included in at least 14-point type or a contrasting color that reads as follows:

> "Notice of Your 'Supplemental' Property Tax Bill."

The disclosure notice requirements of this section may be satisfied by including the required information in the Mello-Roos disclosure (see Part I, Section I, Subsection A, Item 5 – Mello-Roos Bonds and Taxes). Supplemental taxes may be assessed whether a new loan is obtained or an existing loan is assumed to accomplish the purchase of the property, or whether the property is purchased without financing.

(CAL. CIV. §1102.6c)

7. Ordnance Locations

Federal and state agencies have identified certain areas once used for military training and which may contain live ammunition. A seller of residential property (again, 1 to 4 dwelling units) located within one mile of such a potential hazard must give the buyer written notice thereof as soon as practicable before transfer of title. This obligation depends upon the seller having actual knowledge of the hazard.

(CAL. CIV. § 1102.15)

8. Window Security Bars

A seller must disclose on the Real Estate Transfer Disclosure Statement (TDS) or if mandated in the Local Option TDS, the existence of window security bars and any safety release mechanism on the bars.

(CAL CIV. § 1102.16)

9. Industrial Uses

A seller who has actual knowledge must disclose on the Real Estate Transfer Disclosure Statement (TDS) or if mandated in the local option TDS, should the property be adjacent to or zoned to allow an industrial use described in Section 731A of the Code of Civil Procedure, or affected by a nuisance created by such use.

(CAL. CIV. § 1102.17)

10. Methamphetamine Contamination

New legislation effective January 1, 2006, requires local health officers to make an assessment of a property after receiving notification from a law enforcement agency of potential contamination or of known or suspected contamination by a methamphetamine laboratory activity. If the property is determined to be contaminated, an order prohibiting its use or habitation shall be issued. Until the property owner receives a notice from a local health officer that the property identified in an order requires no further action, the property owner shall notify the prospective buyer in writing of the order, and provide the prospective buyer with a copy of the order. The prospective buyer shall acknowledge, in writing, the receipt of a copy of the order.

(CAL. HEALTH & SAFETY § 25400.10 et. seq.)

B. Earthquake Guides

The California Seismic Safety Commission has developed a *"Homeowner's Guide to Earthquake Safety."* The guide includes information on geologic and seismic hazards, explanations of related structural and nonstructural hazards, recommendations for mitigating earthquake damage, and a statement that safety cannot be guaranteed with respect to a major earthquake and that only precautions such as retrofitting can be undertaken to reduce the risk of various types of damage. The Seismic Safety Commission has also developed a *"Commercial Property Owner's Guide to Earthquake Safety."* These guides are available at **www.seismic.ca.gov** or by calling (916) 263-5506.

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

Delivery of a booklet is required in the following transactions:

- Transfer of any real property improved with a residential dwelling built prior to January 1, 1960 and consisting of 1 to 4 units any of which are of conventional light-frame construction (*Homeowner's Guide*); and
- Transfer of any unreinforced masonry building with wood-frame floors or roofs built before January 1, 1975 (*Commercial Property Owner's Guide*).

In a transfer of residential dwellings consisting of 1 to 4 units, the following structural deficiencies and any corrective measures taken, which are within the seller's actual knowledge, are to be disclosed to prospective buyers:

- Absence of foundation anchor bolts;
- Unbraced or inappropriately braced perimeter cripple walls;
- Unbraced or inappropriately braced first-story walls;
- Unreinforced masonry perimeter foundation;
- Unreinforced masonry dwelling walls;
- Habitable room or rooms above a garage; or
- Water heater not anchored, strapped, or braced.

Certain exemptions apply to the obligation to deliver the booklet when transferring either a dwelling of 1 to 4 units or a ***reinforced*** masonry

building. These exemptions are essentially the same as those that apply to delivery of the Real Estate Transfer Disclosure Statement. (See Part I, Section I, Subsection A, Item 2 – Real Estate Transfer Disclosure Statement.)

(CAL. PUB. RES. §§2621 et. seq., 2690 et. seq.; CAL. BUS. & PROF. §§ 10147, 10149; CAL. CIV. §§2079.8, 2079.9; CAL. GOV'T §§ 8875 et. seq., 8893.2, §8897 et. seq.)

C. Smoke Detector Statement of Compliance

Whenever a sale (or exchange) of a single family dwelling occurs, the seller must provide the buyer with a written statement representing that the property is in compliance with California law regarding smoke detectors. Some local ordinances impose more stringent smoke detector requirements than state law. Therefore, local city or county building or public safety departments should be consulted regarding smoke detector requirements.

The State Building Code mandates that all existing dwelling units have a smoke detector installed in a central location outside each sleeping area. In a two-story home with bedrooms on both floors, at least two smoke detectors would be required.

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

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

(CAL. HEALTH & SAFETY § 13113.8; CAL. BUILDING CODE § 1210; STATE FIRE MARSHALL REGULATIONS 740 et. seq.)

D. Disclosure Regarding Lead-Based Paint Hazards

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

The federal Real Estate Disclosure and Notification Rule (the Rule) requires that owners of "residential dwellings" built before 1978 to disclose to their agents and to prospective buyers or lessees/renters the known presence of or any information and any reports about lead-based paint and/or lead-based paint hazards (e.g., location and condition of the painted surfaces, etc.). The

Rule defines a residential dwelling as a single-family dwelling or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

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

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

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

The Rule requires that a seller of target housing offer a prospective buyer 10 days to inspect for lead-based paint and lead-based paint hazards. The 10 days to inspect can be increased, decreased, or waived by written agreement between buyer and seller. The Rule does not require a seller to pay for an inspection or to remove any lead-based paint/hazards, but gives a buyer the opportunity to have the property inspected. A list of certified lead inspectors and contractors is available by calling the California Department of Health Services at 1-800-597-LEAD.

The federal Environmental Protection Agency (EPA) publishes a pamphlet entitled, "*Protect Your Family From Lead In Your Home*," which is available at **http://www.epa.gov/opptintr/lead/leadprot.htm**. This pamphlet describes ways to recognize and reduce lead hazards. The Rule

requires that a seller or lessor/landlord of target housing deliver this pamphlet to a prospective buyer or lessee/tenant before a purchase, lease or rental agreement is formed.

The Rule further requires that the seller's or lessor's/landlord's Lead-Based Paint or Lead-Based Paint Hazards Disclosures; the Lead Warning Statement; and the prospective buyer's or lessee's/tenant's acknowledgment of receipt of that information; the offer of inspection period (or waiver of same); and the EPA pamphlet each be included in an attachment to the transaction documentation. The Seller or lessor/landlord, the prospective buyer or lessee/tenant, and the agent(s) must each sign and date the attachments. The retention period for sellers or lessors/landlords and agent(s) of this document is three years from completion of the sale or transfer, or from commencement of the lease/rental.

A real estate agent must ensure that:

- His or her principal (seller/lessor/landlord) is aware of the disclosure requirements;
- The transaction documentation includes the required notifications and disclosures;
- The buyer or lessee/renter receives the EPA pamphlet; and
- In the case of a sale or transfer, the buyer is offered an opportunity to have the property inspected for lead-based paint and lead-based paint hazards.

Violation of the Rule may result in civil and/or criminal penalties. For the purposes of these requirements, real estate "agent" does not include one who represents only the buyer and receives compensation only from the buyer.

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

(42 U.S.C. § 4852d*; 24 C.F.R.. PART 35; CAL. HEALTH & SAFETY §§ 124125 to 124165)*

E. California's Environmental Hazards Pamphlet

As previously discussed in this section, a California seller of residential real property consisting of 1 to 4 dwelling units (with a few exceptions) must give the buyer a Real Estate Transfer Disclosure Statement (TDS). The statement must specify environmental hazards of which the seller is aware (e.g., asbestos, radon gas, lead-based paint, formaldehyde, fuel or chemical storage tanks, contaminated soil or water, etc.). The seller or the seller's agent(s) may give the buyer of real property subject to Section 1102 of the Civil Code or of any other real property, including manufactured housing as

defined in Section 18007 of the Health and Safety Code, a pamphlet entitled, "*Environmental Hazards: A Guide for Homeowners, Buyers, Landlords, and Tenants*." If the buyer receives the pamphlet, neither the seller nor any agent in the transaction is required to furnish more information concerning such hazards, unless the seller or the agent(s) has/have actual knowledge of the existence of an environmental hazard on or affecting the property.

NOTE: *The environmental hazards pamphlet has been maintained and updated by the California Association of REALTORS® for several years. It is available for purchase at* ***http://www.car.org/mall/mall.htm*** *or from Val Forms, a private vendor, at (925) 461-0570.*

(CAL. CIV. § 2079.7)

F. Delivery of Structural Pest Control Inspection and Certification Reports

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

If more than one real estate broker is acting as the seller's agent, the broker who obtained the offer is responsible for delivery of the report in person or by mail, unless the seller directs otherwise in writing. The real estate broker responsible for delivery must retain for 3 years a record of the actions taken to effect delivery.

(CAL. BUS. & PROF. §§ 8519 et. seq., 10148; CAL. CIV. § 1099; COMMISSIONER'S REGULATION 2905)

G. Energy Conservation Retrofit and Thermal Insulation Disclosures

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

Federal law requires that a "new home" seller (including a subdivider) disclose in every sales contract the type, thickness, and R-value of the

insulation which has been or will be installed. However, if the buyer signs a sales contract before it is known what type of insulation will be installed, or if there is a change in the contract regarding insulation, the seller shall give the buyer the required information as soon as it is available.

(16 C.F.R. PART 460 et. seq.; CAL. PUB. RES. § 25402 et. seq.)

H. Foreign Investment in Real Property Tax Act

Federal law requires that a buyer of real property must withhold and send to the Internal Revenue Service (IRS) l0% of the gross sales price if the seller of the real property is a "foreign person." The primary grounds for exemption from this requirement are: the seller's non-foreign affidavit and U.S. taxpayer I.D. number; a qualifying statement obtained through the IRS attesting to other arrangements resulting in collection of or exemption the tax; or the sales price does not exceed $300,000 and the buyer intends to reside in the property.

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

(*26 U.S.C. § 1445*)

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

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

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

Transactions are exempt from withholding if:

- The ***total*** sales price is less than $100,000.
- The property qualifies as the seller's or decedent's principal residence under Internal Revenue Service Code Section 121. Generally, a home will qualify as a principal residence if, during the five-year period ending on the date of sale, the seller or the decedent owned ***and*** lived in the property as their main home for at least two years. Notwithstanding the two-year requirement, the last use of the property must be that of the seller's or decedent's principal residence.

- The transaction must result in either a net loss or a net gain that is not required to be recognized for California income or franchise tax purposes. The seller must complete Form 593-L, "*Real Estate Withholding-Computation of Estimated Gain or Loss*."
- The property is subject to an involuntary conversion and, therefore, the transaction will qualify for non-recognition of gain for California income tax purposes under Internal Revenue Service Code Section 1033.
- The property is being transferred by certain corporations, partnerships, or other entities which have no permanent place of business in California and/or otherwise qualify for an exemption.
- The property is being transferred by a trustee under a deed of trust or a mortgage with a power of sale, or pursuant to a decree of foreclosure, or by a deed in lieu of foreclosure.

There may be other restrictions, limitations, or exceptions for special circumstances. For more information, obtain IRS Publication 523, "*Selling Your Home*," at **www.irs.gov**, or contact the IRS toll free at 1-800-829-3676. In addition, withholding may be reduced or deferred when:

- The sale qualifies as an IRS Code Section 1031 exchange. However, withholding will be required on any cash the seller receives.
- The sale is an installment sale and the buyer agrees in writing to withhold on each principal payment including the down payment and on any balloon payment. The buyer must complete Form 593-I, "*Real Estate Withholding Installment Sale Agreement*."

For further information, contact the Franchise Tax Board and/or a qualified tax advisor.

(CAL. REV. & TAX. § 18662)

J. Furnishing Controlling Documents and Financial Statements Concerning Common Interest Developments (CID's)

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

- A copy of the governing documents of the development, including any operating rules and a copy of the association's articles of incorporation,

or if not incorporated, a written statement from an authorized representative that the association is not incorporated;

- If there is an age restriction not consistent with Civil Code Section 51.3, a statement that the age restriction is only enforceable to the extent permitted by law and specifying the applicable provisions of law;
- A copy of the financial documents of the association including financial statement, the operating budget, the most recent reserve study and the assessment and reserve funding disclosure summary form (see Civil Code 1365 and 1365.5);
- A written statement from an authorized representative of the association specifying the amount of the current regular and special assessments, the current fees, as well as any unpaid assessments, late charges, interest, and costs of collection which are or may become a lien against the separate interest and any fines or penalties levied upon the owner and which remain unpaid.
- A copy or summary of any notice previously sent to the owner that sets forth any alleged violation of the governing documents that remains unresolved.
- A copy of any preliminary list of any construction defects and a statement that a final determination of the defects has yet to occur, including whether the list of defects is accurate and complete.
- A disclosure of any settlement agreement or other instrument between the association and the developer regarding construction defects, and the following information in connection therewith:

  "(1) A general description of the defects that the association reasonably believes, as of the date of the disclosure, will be corrected or replaced.

  (2) A good faith estimate, as of the date of the disclosure, of when the association believes that the defects identified in (1) will be corrected or replaced. The association may state that the estimate may be modified.

  (3) The status of the claims for defects in the design or construction of the common interest development that were not identified in paragraph (1) whether expressed in a preliminary list of defects sent to each member of the association or otherwise claimed and disclosed to the members of the association."
- Information regarding any approved change in the assessments or fees which are not yet due and payable as of the disclosure date.

NOTE: *Upon written request, the association is to provide within 10 days the above information to or as directed by the owner. In addition, some transactional documents require that the owner secure for the prospective buyer copies of minutes of proceedings, which may be obtained from the association by the owner in accordance with Civil Code Section 1365.2.*

(CAL. CIV. §§ 1368, 1375 , 1375.1(a)(1),(2),(3))

K. Notice Regarding the Advisability of Title Insurance

In an escrow for a sale (or exchange) of real property where no title insurance is to be issued, the buyer (or both parties to an exchange) must receive and sign/acknowledge the following notice as a separate document in the escrow:

"IMPORTANT: IN A PURCHASE OR EXCHANGE OF REAL PROPERTY, IT MAY BE ADVISABLE TO OBTAIN TITLE INSURANCE IN CONNECTION WITH THE CLOSE OF ESCROW SINCE THERE MAY BE PRIOR RECORDED LIENS AND ENCUMBRANCES WHICH AFFECT YOUR INTEREST IN THE PROPERTY BEING ACQUIRED. A NEW POLICY OF TITLE INSURANCE SHOULD BE OBTAINED IN ORDER TO INSURE YOUR INTEREST IN THE PROPERTY THAT YOU ARE ACQUIRING."

NOTE: *While the statute does not expressly assign the duty, it is reasonable to assume that delivery of the notice is an obligation of the escrow holder. A real estate broker conducting an escrow pursuant to the exemption set forth in Financial Code Section 17006(a)(4) would, therefore, be responsible for delivery of the notice.*

(CAL. CIV. § 1057.6)

L. Certification Regarding Water Heater's Security Against Earthquake

The seller of any real property containing a water heater must certify in writing to a prospective buyer that the water heater has been braced, anchored or strapped to resist falling or horizontal movement due to earthquake motion. The minimum standard for this security is set forth in the California Plumbing Code, which may be more restrictively amended by local or municipal code or ordinance. The certification can be included with the *Homeowner's Guide to Earthquake Safety*, in the Real Estate Purchase Contract or Receipt for Deposit, or with the Real Estate Transfer Disclosure Statement.

(CAL. HEALTH & SAFETY § 19211)

M. Data Base – Locations of Registered Sex Offenders

Written leases or rental agreements for residential real property and contracts (including real property sales contracts as defined in Civil Code Section 2985) for the sale of residential real property of 1 to 4 dwelling units must contain, in not less than eight-point type, a notice as specified in paragraph (1), (2), or (3):

(1) A contract entered into by the parties on or after July 1, 1999, and before September 1, 2005, shall contain the following notice:

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

(2) A contract entered into by the parties on or after September 1, 2005, and before April 1, 2006, shall contain either the notice specified in paragraph (1) or the notice specified in paragraph (3).

(3) A contract entered into by the parties on or after April 1, 2006, shall contain the following notice:

Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at **www.meganslaw.ca.gov**. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides.

(CAL. CIV. § 2079.10a)

SECTION II
DISCLOSURES REQUIRED OF REAL ESTATE AGENTS IN THE TRANSFER OF RESIDENTIAL REAL PROPERTY

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

A. Visual Inspection

Listing and selling brokers/agents must each conduct a reasonably competent and diligent visual inspection of real property, which consists of 1 to 4 dwelling units, that is sold through said brokers/agents. The same obligation applies to manufactured homes (as defined in Health and Safety Code Section 18007) when the foregoing property is being transferred through brokers/agents. The purpose of the visual inspection is to disclose to the prospective buyer all material facts affecting the property's value, desirability, and intended use.

This inspection/disclosure requirement applies to property of 1 to 4 dwelling units, but does not apply to the sale of new homes as part of a subdivision project when the sale is either subject to or exempted from the issuance of a Public Report.

However, the agents remain obligated to disclose material facts about which they have notice or knowledge whether such facts are included in a Subdivision Public Report or in disclosures made by the developer when no Public Report is required.

For the limited purpose of making disclosures as a result of the aforesaid visual inspections, the agents do not have to inspect:

- Areas not reasonably accessible;
- Areas off the site of the property;
- Public records or permits concerning the title or use of the property; or
- The common area if the property is in a common interest development if the seller and the seller's broker(s)/agent(s) comply with Civil Code Section 1368. (See Part I, Section I, Subsection J – Furnishing Controlling Documents and Financial Statements Concerning CIDs.)

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

Each agent's inspection certification is contained in the Real Estate Transfer Disclosure Statement. In addition to the foregoing, real estate agents must disclose all material facts affecting the value, desirability**,** and intended use about which they have or should have notice or knowledge that may not be discernable from the required visual inspection.

(CAL. BUS. & PROF. § 10176(a); CAL. CIV. § 2079 et. seq.)

B. Agency Relationship Disclosures

To provide an explanation of agency relationships and duties, the law requires that a real estate broker disclose in writing the general duties which arise from certain agency relationships. Additionally, the broker's status as agent of the seller, agent of the buyer, or agent of both the seller and buyer (dual agent) is to be disclosed to the principals of the transaction who must consent to the agency relationship(s) disclosed. This requirement applies to the sale, exchange, or lease (for more than one year) of real property improved with 1 to 4 dwelling units, or the sale of a manufactured home (as defined in Health and Safety Code Section 18007).

The required agency disclosure form includes the following specific language:

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP
(As required by the Civil Code)

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

SELLER'S AGENT

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

To the Seller:

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

To the Buyer and the Seller:

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

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

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

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

BUYER'S AGENT

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

To the Buyer:

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

To the Buyer and the Seller:

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

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

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

AGENT REPRESENTING BOTH SELLER AND BUYER

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

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

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

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

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

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

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

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

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

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

_____ is the agent of (check one):
(Name of Listing Agent)

[ ] the seller exclusively; or

[ ] both the buyer and seller.

_____ is the agent of (check one):
(Name of Selling Agent if not
the same as the Listing Agent)

[ ] the buyer exclusively; or

[ ] the seller exclusively; or

[ ] both the buyer and seller.

The law requires that "When you [the principal] enter into a discussion with a real estate agent regarding a real estate transaction, you [the principal] should from the outset understand what type of agency relationship representation you [the principal] wish to have with the agent in the transaction." Accordingly, the disclosure form must be provided in a timely fashion 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 acknowledgment 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 acknowledgment 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."

Should either the buyer or seller refuse to sign the required acknowledgement of receipt of the disclosure form, the broker/agent representing that principal must prepare, sign, and date a written declaration of the facts surrounding the refusal.

Neither the payment of compensation nor the obligation of the buyer or seller to compensate the broker(s)/agent(s) will determine a particular agency relationship. Agency relationship(s) are factual and arise out of the conduct of the parties. However, the disclosure of and consent to the described agency relationship(s) establishes a rebuttable presumption of the agency relationship(s) which are intended by the parties.

A dual agent (where the same broker/agent represents both the seller and the buyer) is expressly prohibited from discussing without the prior written consent of the appropriate principal any asking or offering price (e.g., that the seller would take less or the buyer would pay more than that which has been set forth in the written listing agreement or the written offer to purchase). The parties may agree in writing to change the agency relationship(s) prior to the commencement of the real estate transaction.

(CAL. CIV. § 2079.13 et. seq.)

C. Disclosure of the Negotiability of Real Estate Commissions

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

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

This notice must be physically placed before the provision in the agreement for compensation of the broker(s)/agent(s), and the amount or rate of compensation cannot be preprinted. Further, any compensation to be received by the broker from the transaction must be fully disclosed.

(CAL. BUS. & PROF. §§ 10147.5, 10176(g))

D. No Disclosure Required for Manner/Occurrence of Death; Affliction of Occupant with Aids

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

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

This controlling statute does not change the law relating to disclosure of any other physical or mental condition or disease of an occupant or the physical condition of the property. If the buyer asks a direct question concerning deaths occurring on the real property, this statute will not protect the owner or broker(s)/agent(s) from misrepresentations.

(CAL. CIV. § 1710.2)

E. Disclosure of Sales Price Information

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

Should the transaction be closed through neutral escrow, a closing statement from the escrow holder will constitute compliance on the part of the broker.

(CAL. BUS. & PROF. § 10141)

SECTION III
DISCLOSURES REQUIRED WHEN FINANCING REAL PROPERTY

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

A. Advance Fees

Unless an appropriate exemption applies, should any kind of fee or charge be contracted for or demanded, imposed, or collected by a mortgage broker (but not a lender) **in advance** of providing the service or closing the loan, California law requires that the broker use with the public an "advance fee" agreement which has been pre-approved by the Real Estate Commissioner. The advance payment of appraisal and credit report fees collected by the broker for payment in the same amount to third-party service providers do not require a prior approved advanced fee agreement.

Advance fees must be deposited into the broker's trust account and disbursements from the trust account may only be made consistent with applicable law, including the requirements set forth in the Commissioner's Regulations.

(CAL. BUS. & PROF. §§ 10026, 10085, 10085.5, 10146; COMMISSIONER'S REGULATIONS 2970 and 2972)

B. Seller Financing Disclosure Statement

Some sellers participate in financing the sale of their property by extending credit to the buyer in the form of a seller "carry-back." This is usually in the form of a promissory note secured by a deed of trust. The state legislature enacted a disclosure law to ensure adequate disclosure and to prevent abuses involving seller-assisted financing plans. This law applies to real property transactions involving residential dwellings of not more than four units when the seller extends credit to the buyer through a written agreement which provides for either a finance charge or more than four payments of principal and interest, or interest only, excluding the down payment.

Unless an exemption applies, written disclosures required by this law are to be delivered to the seller and are the responsibility of the arranger of credit. An "arranger of credit" is defined as a person who is not a party to the transaction (except as noted below), but is involved in negotiation of the credit terms and completion of the credit documents. Unless performing as a defined principal, the arranger must be compensated for arranging the credit for the transaction.

The duty to provide the disclosures also applies to an attorney or a real estate licensee who is a principal in the transaction. The disclosure statement required by this law must be delivered as soon as possible before the execution of any note or security document. The arranger of credit, the buyer, and the seller each must sign and receive a copy of the disclosure statement. If there is more than one arranger of credit, the arranger obtaining the offer from the buyer is responsible for making the disclosure. However, another person may be designated in writing by the parties to the transaction to make the disclosures.

Notwithstanding the foregoing, the arranger of credit representing the seller would have a duty, as agent of the seller, to ensure that the seller receives an appropriate disclosure of the material credit terms of the credit transaction as described herein.

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

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

forwarding the payments is not a neutral third party, a warning that the principals may wish to designate a neutral third party;

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

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

An arranger of credit must inform the seller that a buyer who intends to occupy the real property involved may have the right to homeownership counseling in the event of a default in the mortgage payments, including the payments being made on the seller "carry-back." The person collecting the payments, whether the seller or a loan servicing agent, has the duty to inform the defaulting homeowner of the availability of such counseling. The duty to

inform a defaulting homeowner of the availability of counseling is operative regardless of the nature of the credit transaction, whether the homeowner has suffered a reduced ability to make payments, or whether an arranger of credit is present in the transaction.

(CAL. CIV. § 2956 et. seq.; 12 U.S.C. § 1701x – THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1987)

C. California Required Disclosures to Borrowers

Unless an appropriate exemption applies, a real estate broker who solicits or negotiates loans on behalf of borrowers or lenders to be secured directly or collaterally by liens on real property must deliver a written disclosure statement to the borrower. The statement is to be delivered within three business days of receipt of the borrower's written loan application or before the borrower becomes obligated to complete the loan, whichever is earlier.

The required statement, known as the Mortgage Loan Disclosure Statement (MLDS) or the Mortgage Loan Disclosure Statement/Good Faith Estimate (MLDS/GFE) must be in a form approved by the Real Estate Commissioner and shall contain the following disclosures:

1. Expected maximum costs and expenses of making or arranging the loan which are to be paid by the borrower, including, but not limited to, fees for appraisal, settlement/escrow, credit report, title insurance, recording, and notary services.

2. Total amount of real estate commissions/fees to be received by the broker, regardless of the form, time, and source of payment, for services performed in arranging the loan including, but not limited to, points, loan origination fees, bonuses, rebates, premiums, discounts as well as other charges received by the real estate broker in lieu of interest in transactions where the broker acts as the lender. For example, the broker may act as the lender only, as the lender and the arranger of the secured loan transaction, or as a broker/agent only in the secured loan transaction. The disclosure must distinguish between commissions/fees, bonuses, rebates and premiums paid to the broker and loan origination fees, bonuses, and discounts paid to the lender.

3. Liens against the real property disclosed by the borrower and whether each lien will remain senior or will be subordinate to the lien that will secure the subject loan(s).

4. Liens, including the lien securing the subject loan, which are anticipated to be secured by the real property and the order of priority of such liens.

5. Estimated amounts to be paid by the borrower for:

   - Fire insurance coverage;
   - Balances due on prior liens, including interest, prepayment penalties, fees for reconveyance, or other removal from record of prior liens;
   - Amounts due other creditors; and
   - Assumption, transfer, forwarding and beneficiary statement fees.

6. Estimated balance of the loan(s) to be paid to the borrower after deducting all commissions, loan fees, penalties, and costs and expenses to secure the loan.

7. The principal amount of the loan(s).

8. Rate of interest (whether fixed or variable).

9. Term of the loan(s); number and amount of each installment; the approximate loan balance at maturity; and the following notice in 10-point bold typeface:

   NOTICE TO BORROWER: IF YOU DO NOT HAVE THE FUNDS TO PAY THE BALLOON PAYMENT WHEN IT COMES DUE, YOU MAY HAVE TO OBTAIN A NEW LOAN AGAINST YOUR PROPERTY TO MAKE THE BALLOON PAYMENT. IN THAT CASE, YOU MAY AGAIN HAVE TO PAY COMMISSIONS, FEES, AND EXPENSES FOR THE ARRANGING OF THE NEW LOAN. IN ADDITION, IF YOU ARE UNABLE TO MAKE THE MONTHLY PAYMENTS OR THE BALLOON PAYMENT, YOU MAY LOSE THE PROPERTY AND ALL OF YOUR EQUITY THROUGH FORECLOSURE. KEEP THIS IN MIND IN DECIDING UPON THE AMOUNT AND TERMS OF THIS LOAN.

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

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

12. Terms of prepayment of the loan, including the amount of penalty, if any.

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

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

***NOTE**: If the loan is negotiated in Spanish, Chinese, Tagalog, Vietnamese or Korean, the MLDS or the MLDS/GFE must be provided in that language.*

The Real Estate Commissioner's Regulations contain approved forms for the MLDS AND MLDS/GFE. The forms each include a notice to the borrower of the importance of stating accurately the amount, type, and priority of existing and anticipated liens. The borrower and the broker/agent negotiating the loan must each sign the MLDS or the MLDS/GFE. The broker/agent negotiating the loan must keep a signed copy of the statement on file for three years.

A broker/agent who initially holds himself/herself out as an agent arranging a loan will be subject to this disclosure requirement even though he/she ultimately makes the loan with his/her own money or with broker-controlled funds. In that case, the amount of compensation disclosed will include any loan origination fees, discounts, bonuses, or other compensation that the broker collects as the lender.

(CAL. BUS. & PROF. §§ 10240, 10241, 10245; COMMISSIONER'S REGULATIONS 2840, 2841, 2842.5, 2843)

D. California Required Disclosures to Certain Lenders or Promissory Note Purchasers

1. General Disclosure Requirements.

Depending on the fact situation, a real estate broker may arrange:

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

Should a loan or sale of a promissory note (other than when collateralized) have multiple lenders or note purchasers, it is governed by the multi-lender statute and is issued as discussed below pursuant to an exemption from qualifications and registration under the Corporate Securities Law of 1968, as discussed below.

In both multi-lender and non multi-lender loan transactions, the broker must give the lender or note purchaser the Lender/Purchaser Disclosure Statement

(LPDS) except in those fact situations where the LPDS is not required by statute. Because of the statute's many defined institutional and licensed lender exemptions, this disclosure obligation is owed primarily to private parties and to pension plans regulated by the Employees' Retirement Income Security Act (ERISA) having net worths of less than 15 million dollars. In addition, this disclosure obligation is owed to certain non-ERISA regulated pension plans, e.g., IRA's or SEP-IRAS.

The disclosures contained in the LPDS must include:

- Material terms of the loan;
- Status of all existing loans/liens against the security property;

  NOTE: *A broker is to inform the prospective lender or note purchaser of the option to purchase a title insurance policy or an endorsement to an existing title insurance policy insuring the lender's or note purchaser's interests in the security property. A broker should also deliver to the prospective lender or note purchaser a copy of the intended borrower's written loan application and the borrower's credit report.*

- Information about the security property as follows:
  - Address, assessor's parcel number, and, if available, the legal description;
  - Age, size, and type of construction of any improvements;
  - The fair market value as estimated by an appraisal, a copy of which appraisal report shall be provided to the prospective lender; and

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

  - Existing and expected or anticipated encumbrances and the investor's protective equity (the difference between the market value of the property and the total senior indebtedness plus the subject loan or loans).
- Pertinent data about the borrower, including identity, occupation, employment, income and credit, as represented to the broker by the borrower or through third parties; or, in the sale of a loan, similar information about the ability of the trustor to meet the contractual obligations under the note or contract, including payment history;

- Loan servicing arrangements or lack thereof in other than multi-lender transactions;
- The broker's capacity in the secured transaction as an agent or principal, or as both an agent and principal (a broker may initially hold himself/herself out as arranging a loan but ultimately make the loan with his/her own funds or with broker-controlled funds); and
- If the broker in other than multi-lender transactions will directly or indirectly obtain the use or benefit of some or all of the funds other than for commissions, fees, costs, and expenses for services as an agent, a detailed statement of the intended use and disposition of the funds, including an explanation of the nature of the benefit to the broker.

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

2. Multi-Lender Transactions.

Certain multi-lender transactions arranged by a real estate broker are exempt from qualification and registration under the Corporate Securities Law of 1968 through the Department of Corporations. Unless a securities permit issued by the Department of Corporations or other bona fide exemption, the broker must comply with all the provisions of Business and Professions Code Sections 10237 et seq., including specified notices, advertising, trust accounting, reporting to the Department of Real Estate, disclosure to the prospective lenders or note purchasers and other related requirements. The interests of each lender/purchaser is to be secured directly by a recorded deed of trust on California property describing each lender's interest or an assignment of fractionalized interest in the deed of trust. The deed of trust or an assignment of the interest in the deed of trust must be properly recorded and in no event later than 10 days as set forth Business and Professions Code 10234. These transactions, commonly known as "fractionalized" loans, may not include more than ten lenders or note purchasers, as defined. Each lender or note purchaser must have a qualified net worth or annual income, as specified.

(CAL. BUS. & PROF. § 10238)

"Self-dealing" is not permitted in multi-lender transactions except in limited circumstances that are statutorily defined and the transaction must be fully disclosed in the Lender/Purchaser Disclosure Statement. Further, multi-lender transaction***s*** must provide for loan servicing by a real estate broker or other authorized party and, therefore, are to include servicing agreements with the identified loan servicing agent. In addition, the broker shall disclose

the same information as previously described for single lender/purchaser transactions, as well as the following information:

- A separate notice of the right to obtain a copy of the appraisal;
- A written statement from the broker including the analysis of and support for exceeding the maximum statutory loan-to-value ratios (the amount of the loan or loans in relationship to the market value of the security property, which in no event is to exceed 80 percent of the current fair market value of improved real property or 50 percent of the current market value of unimproved real property or 65% in those circumstances where the unimproved real property is zoned single family residential and all offsite improvements are in place;

  NOTE: *if the loan is subject to certain defined mortgage insurance coverage, the foregoing loan-to-value ratio maximums may be exceeded by the amount of the loan covered by the such insurance;*

- Default and foreclosure procedures for governing the actions of all holders of interests in the loan by the vote of holders of more than 50 percent of the beneficial interests**,** excluding any interest held by the broker or an affiliate of the broker;

  NOTE: *This requirement must be included in the documentation of the transaction.*

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

(CAL. BUS. & PROF. § 10238)

3. Construction Loans and Multiple Security Properties in Multi-Lender Transactions.

As of January 1, 2004, the multi-lender statutory exemption was amended expanding the ability of a real estate broker to arrange transactions which would include construction loans and loans with multiple security properties. Although this expansion provides limited authority, such loan transactions have become commonplace within the mortgage industry.

The amendments, among others, redefined the phrase “current market value” which may now be deemed to be the value of the completed project (the construction, development, or improvements being financed), provided that the following safeguards are met and appropriate disclosures thereof are delivered to the lenders or note purchasers:

- An independent neutral third party escrow holder is used for all deposits and disbursements. This safeguard specifically excludes real estate brokers from issuing construction or improvement loan disbursements and requires the use of joint control agents pursuant to Financial Code Section 17005.1;
- The loan must be fully funded up front with all loan proceeds deposited in an authorized escrow prior to recording the deed or deeds of trust;
- A comprehensive, clearly drafted and detailed "draw schedule" must be developed and included in the loan documentation to ensure proper and timely disbursements to allow for the completion of the construction, land development or building improvement project;
- The disbursement "draws" are to be based upon verification from an independent qualified person who certifies the work completed to the date of inspection meets the related building codes and construction standards, and that the "draws" were made in accordance with the construction, development or building improvement contract and "draw" schedule;
- The qualified person may not be an employee, agent, or affiliate of the real estate broker and is defined to be licensed architect, general contractor, structural engineer, or a local government building inspector acting in an official capacity;

  NOTE: *It is unlikely that a local government building inspector could or would provide the service required to meet this safeguard standard within the scope of his/her official capacity.*

- The appraisal is to be completed in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) by an appropriately state licensed or certified appraiser. As required by USPAP, the appraisal report is to include "as is" and "as completed" values when the appraisal report is based upon a hypothetical condition, e.g., improvements to be constructed or a development to be accomplished in the future.

  NOTE: *This means that to finance a construction, development, or building improvement project without knowing in advance the form, type, quality, square footage, etc., of the improvements based upon plans, specifications, and estimated cost breakdowns and the prices of comparable improved properties in that marketplace would be inappropriate. This limitation would also apply to loans secured by raw land where subsequent loan disbursements are contemplated to fund the development project including, but not limited to, the acquisition of entitlements and the cost of preparation by a registered civil engineer or*

other design professionals of the tentative tract map, grading and site plans, and the design and location of roads and utilities.

- The transactional documents are to include a detailed description of the actions that may be taken in the event of a failure to complete the project, whether the failure is due to default, insufficiency of funds, or other causes; and
- The entire amount of the construction, development, or rehabilitation loan cannot exceed 2.5 million dollars.

The aforementioned amendments also expand the ability of a real estate broker to arrange transactions secured by more than one parcel of real property. When the loan being arranged by the real estate broker is intended to be secured by more than one parcel of real property, the multi-lender statute (as amended) requires safeguards be established and that the lenders or note purchasers receive disclosures regarding each of same as follows:

- The intended security properties are to be separately appraised and a current market value is to be established for each;
- Each intended security property is to be assigned a portion of the principal of the note or interest therein which may not exceed the percentage of the current market value statutorily established for the type of security property involved;
- The address, description and estimated current market value of each intended security property must be disclosed to each lender or note purchaser;
- The loan-to-value percentage for each intended security property, after the loan amount is proportioned, must be established and disclosed to each lender or note purchaser;
- The amount of available equity (the total equity as well as the equity allocated by each intended security property) after the principal amount has been proportioned to each intended security property must be established and disclosed to each lender or note purchaser;
- The use of the revised Lender/Purchaser Disclosure Statement forms promulgated by the Department of Real Estate are now required; and
- The real estate broker is to disclose any other information that may be material or essential to avoid misleading the lenders or note purchasers, i.e., all material loan terms and investment risks are to be disclosed.

Finally, in multi-lender transactions, the real estate broker must include a disclosure within each loan file describing whether the exemption from qualification and registration or the permit issued pursuant to qualification

and registration by the Department of Corporations upon which the broker is relying for the securities being issued in connection with the transaction.

4. Loan Servicing in Multi-Lender and in other than Multi-Lender Transactions.

Real estate brokers who service loans are required to provide certain disclosures to the lenders or note holders as well. Any such servicing on behalf of a borrower, lender or note holder must be done pursuant to a written authorization or servicing agreement. California law does not allow the advancing of funds by a broker for payments that should have been paid or tendered by the borrower without a securities permit from the Department of Corporations.

In the event that a borrower does not make a scheduled payment and the broker causes other funds to be applied to protect the security of the note or contract being serviced, including the debt service on a senior lien, the broker must give a written notice of the advance to the lender or note holder not later than 10 days after making such payment. Payments made by the broker from funds other than the borrower's; any promise by the broker to pay, or to guarantee the payments or the investment, or to ensure the rate of return on the investment are to occur only under a securities permit obtained from the Department of Corporations.

In multi-lender transactions, separate loan servicing by an authorized person or entity for that purpose must take place. Also, the servicing agreement is to provide that the lenders or note purchasers are to receive the funds to which they are entitled from borrower loan payments within 25 days of receipt of said payments by the servicing agent.

(CAL. BUS. & PROF. §§ 10231.2, 10232.4, 10232.5, 10232.6, 10233, 10233.1, 10237, 10238 et. seq.; CAL. CORP. § 25707; COMMISSIONER'S REGULATION 2846)

E. Notice of Transfer of Loan Servicing

Should a loan be secured by California real property containing 1 to 4 residential units, the entity servicing the loan is required to provide a written notice to the borrower whenever the servicing/collection function is transferred, even though the loan transaction was not subject to the Real Estate Settlement Procedures Act (RESPA). The notice must be delivered by first class mail before the borrower is obligated to redirect the payments. Transfer of the servicing/collection function to a trustee exercising a power of sale under a deed of trust or other applicable security instrument does not constitute a transfer of loan servicing under California law controlling the notice requirements described above.

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

(CAL. CIV. § 2937; 12 U.S.C. §2601 et. seq.)

F. Notice of Borrower's or Lender's Right to Copy of Appraisal Report

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

The lender must give this notice with the "good faith estimate" of loan charges required by the Real Estate Settlement Procedures Act (RESPA) and by California law. If the loan does not fall under the RESPA requirement, the lender must give the appraisal notice at the time of application or not later than 15 days after receipt of the application. The notice must be a separate document printed in not less than 10-point type. For non-residential property (i.e., other than 1 to 4 residential units), the notice is only required if the loan involves purchase money financing or a refinancing of purchase money debt.

If a real estate broker makes or arranges a loan in an amount less than $30,000 secured by a senior trust deed, or a loan of less than $20,000 secured by a junior trust deed, the broker must deliver a copy of the appraisal to both the borrower and the lender at or before the closing of the loan transaction. This requirement only depends on the borrower being charged a fee for the appraisal or other valuation of the improved security property. Finally, certain lenders and note purchasers are also entitled to receive copies of appraisal reports prepared in connection with intended security properties for loans being made or promissory noted being purchased.

(15 U.S.C. § 1691 et. seq.; CAL. BUS. & PROF. §§ 10238, 10232.4, 10232.5, 10238, 10241.3, 11423)

G. Credit Terms – Truth-in-Lending and Regulation Z

The Truth-in-Lending Act (TILA) is a federal law enacted to promote the informed use of consumer credit by requiring creditors/lenders to disclose various terms and conditions of credit. Regulation Z and the Official Staff Commentaries which interpret the Regulations are issued by the Board of Governors of the Federal Reserve System to implement TILA. The Federal Trade Commission enforces TILA and Regulation Z.

TILA requires a creditor to be responsible for furnishing certain disclosures to the consumer before making a contract for a loan. With respect to real estate loans, a "creditor" includes (among others) a person or company who regularly extends credit for loans secured by a dwelling, including a mobilehome or trailer (if used as a residence), and the credit extended is subject to a finance charge or is payable by written agreement in more than four installments, excluding the down payment. For the purposes of TILA, regularly extending credit is defined to mean five or more transactions per year. In the case of high-cost mortgages, the threshold is two or more per year if made directly by the creditor/lender, or one or more per year when the loan is made through a real estate broker performing as a mortgage broker.

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

- credit extended primarily for business, commercial, or agricultural purposes; or
- credit extended to other than a natural person**,** i.e., an entity.

Regulation Z requires that creditors make certain disclosures for real property secured loans. The first four disclosures must include simple descriptive phrases of explanation similar to those shown in italics, as follows:

- **Amount financed** – *The amount of credit provided to you or on your behalf (principal amount borrowed less prepaid finance charges includable)*;
- **Finance charge** – *The dollar amount the credit will cost you*;
- **Annual percentage rate** – *The cost of your credit as a yearly rate*;
- **Total of payments** – *The amount you will have paid when you have made all the scheduled payments*;
- **Payment schedule** – The number, amount, and timing of payments;
- **Identity of the creditor/ lender** – The name of the person or entity making the disclosure;
- **Itemization of the amount financed** – A statement that the consumer has a right to receive a written itemization and a space in the statement for the consumer to indicate whether the itemization is requested;
- **Variable interest rate and discounted variable rate loans** – Disclosures of the limitations and the effects of a rate increase and an example of payment terms resulting from the increase (may be

accomplished by giving the consumer the "*Consumer Handbook on Adjustable-Rate Mortgages*" or a suitable substitute, as defined);

- **Demand features of the loan** – When the creditor/lender may demand payment in full of the loan irrespective of any stated maturity date**,** excluding borrower default or the exercise of due-on-sale clauses;
- **Loan prepayment penalties** – Whether such penalties are charged by the creditor/lender or, if uncertainty exists, a statement to that effect and whether any prepaid finance charge is subject to rebate;
- **Late payment charge** –The amount of charge for delinquent payments stated either as a percentage or a dollar amount;
- **Description of the security interest** – The deed of trust or mortgage which will be retained by the creditor/lender as security for the loan;
- **Insurance** – Whether premiums for coverage are included in the finance charge;
- **Charges or fees to be excluded from the finance charge** – Certain security interest charges such as taxes or other fees paid to public entities, or the premium for insurance in lieu of perfecting the security interest (if subject to the Real Estate Settlement Procedures Act (RESPA), the required RESPA statement is a sufficient disclosure);
- **Specific terms of the contract** – Those terms related to nonpayment, default, acceleration, or prepayment penalties;
- **Due-on-sale clauses** – In applicable transactions, a statement that the loan is subject to acceleration upon sale or transfer of the security property or of other conditions about the loan assumption policy which are contained in the loan documents and a statement whether the creditor/lender will allow subsequent buyers to assume the remaining obligation; and
- **Required deposit balances by the borrower** – Whether, as a condition of the loan such balances are required and a statement that the annual percentage rate does or does not reflect such required deposit.

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

- Consummation of the loan transaction;
- Delivery of all material truth-in-lending disclosures; or
- Delivery of the notice of the right to cancel.

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

(*15 U.S.C. § 1601, et. seq.; 12 C.F.R. PART 226 (REG. Z, TRUTH IN LENDING)*)

H. High Cost Loans (Federal)

The Truth-in-Lending Act (TILA) was amended in 1994 with respect to certain loans, other than purchase money loans, secured by the borrower's principal dwelling. In these "high rate/high cost loan transactions, also known as "Section 32" loans, further restrictions are placed on creditors/lenders, including additional disclosures and cancellation rights. The amendment defines a creditor/lender as someone who, in any 12-month period, originates more than one high-rate/high-cost loan, i.e., two or more. Also, ***any*** such loan (one or more) arranged by a real estate broker acting as a mortgage broker is subject to these requirements.

A "high-rate loan" is one in which the annual percentage rate (APR) exceeds by 10 points or more the yield on Treasury Securities having a similar term.

A high-rate loan is defined as:

- For a senior loan/mortgage, the APR exceeds by more than 8 percentage points the rates on Treasury Securities of comparable maturity;
- For a junior loan/mortgage, the APR exceeds by more than 10 percentage points the rates on Treasury Securities of comparable maturity.

A "high-cost loan" is one in which the total points and fees exceed the greater of 8% of the loan amount or, as of January 1, 2005, $510.00 (adjusted annually as of each January 1 thereafter based on the change in the applicable Consumer Price Index).

At least three business days before a high-rate OR high-cost loan is funded, the following disclosures must be made:

- The creditor/lender must provide a written notice stating that the loan need not be completed, even if the borrower has signed the loan application and received the required disclosures. The borrower has three business days to decide whether to sign the loan agreement after the borrower receives the special Section 32 disclosures;
- The notice must include a warning to the borrower that, he/she could lose his/her residence (the security property) and any money put into it, if payments are not made; and
- The lender must disclose the APR, the regular payment amount, any authorized balloon payment, and the loan amount (plus where the amount borrowed includes credit insurance premiums that fact must be stated). For variable rate loans, the lender must disclose that the rate and monthly payment may increase and state the amount of the maximum monthly payment and interest rate, as applicable.

These disclosures are in addition to the other TILA disclosures that must be provided no later than the closing of the loan or prior thereto as required by law.

(15 U.S.C. § 1601 et. seq.)

I. California High Cost Mortgage/Loan Disclosures

The California Financial Code defines certain high cost loans as "covered loans," which loans are subject to various requirements, restrictions, standards and penalties. A "covered loan" is one that does not exceed the most current conforming loan limit for a single-family first mortgage loan established by the Federal National Mortgage Association (FNMA) and which exceeds specified points, fees, and/or includes APRs that exceed a defined limit in comparison to Treasury Securities of a similar term as the contemplated loan.

For 2006, the conforming FNMA loan limit is set at $359,650 for loans/mortgages secured by single-family properties. This law adjusts the covered loan limits automatically to track with FNMA conforming loan limits.

The following are disclosures required in covered loan transactions:

- At least three business days prior to loan consummation, the loan originator (defined as either the lender or broker for this purpose) must disclose in writing to the borrower the terms of any lawfully allowed prepayment penalty and the rates, points, and fees for the "covered loan"

that would be charged as compared to the rates, points, and fees for accepting a “covered loan” ***without*** a prepayment penalty.

- A “covered loan” shall not contain a provision for negative amortization, unless the “covered loan” is a first (senior) mortgage. The loan originator must disclose to the borrower that the loan contains a negative amortization provision that may add principal to the balance of the loan.
- A “covered loan” shall not be made unless the following disclosure, written in 12-point font or larger, has been provided to the borrower no later than three business days prior to signing of the loan documents for the transaction:

CONSUMER CAUTION AND HOME OWNERSHIP
COUNSELING NOTICE

If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.

Mortgage loan rates and closing costs and fees vary based on many other factors, including your particular credit and financial circumstances, your earnings history, the loan-to-value requested, and the type of property that will secure your loan. Higher rates and fees may be justified depending on the individual circumstances of a particular consumer’s application. You should shop around and compare loan rates and fees.

This particular loan may have a higher rate and total points and fees than other mortgage loans and is, or may be, subject to the additional disclosure and substantive protections under Division 1.6 (commencing with Section 4970 of the Financial Code. You should consider consulting a qualified independent credit counselor or other experienced financial adviser regarding the rate, fees, and provisions of this mortgage loan before you proceed. For information on contacting a qualified credit counselor, ask your lender or call the United States Department of Housing and Urban Development's counseling hotline at 1-888-466-3487 or go to **http://www.hud.gov/fha/sfh/hcc** for a list of counselors.

You are not required to complete any loan agreement merely because you have received these disclosures or have signed a loan application. If you proceed with this mortgage loan, you should also remember that you may face serious financial risks if you use this loan to pay off credit card debts and other debts in connection with this transaction and then subsequently incur significant new credit card charges or other debts. If you continue to accumulate debt after this loan is closed and then experience financial difficulties, you could lose your home and any equity you have in it if you do not meet your mortgage loan obligations.

Property taxes and homeowner's insurance are your responsibility. Not all lenders provide escrow services for these payments. You should ask your lender about these services.

Your payments on existing debts contribute to your credit ratings. You should not accept any advice to ignore your regular payments to your existing creditors.

- Upon request, the loan originator of a "covered loan" shall provide to its licensing agency or to the borrower, at no cost, documentation that clearly demonstrates whether the loan is a "covered loan." This documentation shall include, but not be limited to, full disclosure of the original principal balance, the annual percentage rate (APR), and the total point and fees, as defined in Financial Code Section 4970.

(CAL. FIN. § 4970 et. seq.)

J. Real Estate Settlement Procedures Act (RESPA)

The Real Estate Settlement Procedures Act (RESPA) is a federal law whose primary purpose is to help consumers become better shoppers for settlement services. RESPA requires that borrowers receive various disclosures regarding the proposed loan transaction. Some disclosures spell out the costs and expenses associated with the settlement or closing of the loan transaction. Others describe lender servicing and escrow account practices. RESPA also requires that borrowers receive disclosures about business relationships that may exist among lenders/creditors and settlement service providers. RESPA disclosures include:

- **Good Faith Estimate of Settlement Costs.** RESPA requires that the lender and the real estate broker acting as a mortgage broker (if present) each provide to the borrower their own good faith estimate of settlement service charges or of anticipated closing costs. In the case of a mortgage broker, the good faith estimate is to be issued with the mortgage loan disclosure statement (MLDS/GFE) previously described in Section III , Subsection C – California Required Disclosures to Borrowers. This estimate is to be given at the time of the lender's or mortgage broker's receipt of the borrower's loan application, and the estimate is to be mailed or otherwise delivered within the next three business days. The amounts listed on the Good Faith Estimate are only estimates and not a guarantee — actual fees, costs, and expenses may vary. However, as the name implies, the lender and mortgage broker must prepare and offer the estimates of the expected fees, costs, and expenses in good faith.

- **Servicing Disclosure Statement.** RESPA requires the lender or mortgage broker to provide a written disclosure as to whether he/she expects that someone else will be servicing the loan. Again, this disclosure is to be given at the time of the loan application or within three business days thereof.

- **Affiliated Business Arrangements.** Several businesses that offer settlement services may be owned or controlled by a common parent. These businesses are known as "affiliates." When a lender, a real estate broker, a real estate broker acting as a mortgage broker, or other participant in the settlement or loan escrow refers the borrower to an affiliate for a settlement service (e.g., a real estate broker refers a buyer to a mortgage broker affiliate), RESPA requires the referring party to give the borrower an Affiliated Business Arrangement Disclosure. This form states that the buyer/borrower is generally not required, with certain exceptions, to use the affiliate and is free to shop for other service providers. Affiliated business arrangements may also exist between creditors/lenders and settlement service providers and may include continuing business relationships arising from agreements between the parties.
- **HUD-1 Settlement Statement.** One business day before the settlement or the anticipated close of the loan escrow, the borrower has the right to inspect the proposed HUD-1 Settlement Statement. This statement itemizes the services provided and the fees charged and the costs and expenses imposed. This form is filled out by the settlement agent or the escrow holder who is conducting the settlement or the escrow. The fully completed and final HUD-1 Settlement Statement generally must be delivered or mailed to the borrower on or before the settlement or the close of the loan escrow. In cases where the principals of the settlement or of the escrow do not meet, the settlement or escrow agent will mail the HUD-1 statement after settlement or loan closing.
- **Escrow Account Operation and Disclosures.** At the settlement or loan closing or within the next 45 days, the loan servicer must give an initial escrow account statement. The form will show all of the payments which are expected to be deposited into the escrow account and all of the disbursements which are expected to be made from the escrow account during the year ahead. The lender or servicer will annually review the escrow account (a trust account maintained for the future payment of insurance premiums and property taxes) and send a disclosure each year which shows the prior year's activity and any adjustments necessary in the escrow payments that will be made in the forthcoming year.

RESPA prohibits any "kickbacks" or the payment of unearned fees to any person or entity (including a real estate broker) as compensation for referrals to any real estate settlement/escrow service provider. This includes non-cash inducement offers to brokers such as paid vacations. RESPA does not prohibit a lender or settlement service provider from offering an incentive to a borrower, provided that the incentive is not based on the borrower

referring business to the lender or service provider. Written agreements between real estate brokers to cooperate and share customary and reasonable commissions may be acceptable if limited to compensation for the sale transaction.

RESPA Regulations require that third parties providing settlement services in loan transactions subject to this law be reasonably compensated in relation to the value of the services rendered and of the goods and facilities provided. Generally, when a real estate broker receives customary and reasonably earned commissions/fees for services rendered and/or reimbursements for costs and expenses actually incurred, it would neither be in violation of RESPA nor California law as long as such commissions/fees, costs and expenses are fully disclosed. This includes any compensation the broker receives directly or indirectly from the lender as well as from the borrower.

The HUD-1 Settlement Statement must also show any direct or indirect payments by the lender to affiliated or independent settlement service providers. If payments are made outside of escrow, they must be shown as "P.O.C." (paid outside of closing) on the HUD-1 settlement statement. HUD/FHA is charged with the responsibility of enforcing RESPA, and their General Counsel's Office or their Enforcement Section should be contacted for further information and clarification.

(12 U. S.C. §. 2601 et. seq. - THE REAL ESTATE SETTLEMENT PROCEDURES ACT (RESPA); 24 C.F.R. PART 3500 – (REGULATION X – THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992); CAL. BUS. & PROF. §§ 10240, 10176(a),(g))

K. Advance Disclosures in Loan Transactions Subject to TILA and RESPA

In addition to being subject to the Truth-in-Lending Act (TILA), senior and junior loan transactions for the financing of the initial purchase, construction/take-out, refinancing or further encumbering of owner and non-owner occupied residential property of 1 to 4 units may be also subject to the Real Estate Settlement Procedures Act (RESPA). Generally, loans to be secured by 1 to 4 residential units will be subject to either TILA or RESPA, or both, depending upon the facts of the situation. When such loans are subject to either TILA or RESPA, they are commonly termed as "Federally related."

Borrowers of loans subject to RESPA are typically entitled to receive a TILA disclosure from the creditor/lender concurrently with the RESPA Good Faith Estimate. The purpose of the early TILA disclosure and of the RESPA Good Faith Estimate is to give the borrower an opportunity to compare the loan terms being offered to the terms available from other

creditors/lenders. In such transactions, a real estate broker acting as a mortgage broker is to complete and timely deliver to the borrower the California required Mortgage Loan Disclosure Statement/Good Faith Estimate (MLDS/GFE).

TILA also includes detailed requirements for the advertising of consumer credit, including real estate loans, and TILA describes various acts which creditors/lenders are prohibited from performing.

(15 U. S.C. § 1601, et. seq.; 12 C.F.R. PART 226 et. seq.- (REG. Z, TRUTH IN LENDING))

L. Disclosure by Agent Receiving Compensation from a Lender

A real estate licensee who acts as the agent for either party in the sale, lease or exchange of real property, a mobilehome, or a business opportunity must disclose to both parties the form, amount, and source of any compensation received or expected to be received from a lender in connection with the securing of financing related to the transaction. The disclosure must be given to each party to the transaction before the transaction closes escrow. Real estate licensees must disclose to their principals all compensation or expected compensation, regardless of the form of the time of payment.

(COMMISSIONER'S REGULATION 2904 AND CAL. BUS. & PROF. § 10176(a), (g))

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

M. Adjustable Rate Loan Disclosure

A lender offering adjustable-rate residential mortgage loans must provide prospective borrowers with a copy of the most recent Federal Reserve Board publication which provides information on such loans. It is entitled "*Consumer Handbook on Adjustable-Rate Mortgages*" and is available at **http://www.hud.gov/cnsumgd.cfm**. The publication must be given at the earlier of:

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

Federally regulated lenders and lenders who have adopted, entitled to adopt, or are otherwise subject to federal rules (alternative mortgage lenders) may achieve compliance by providing the disclosures at the same time and under the same circumstances when the lender/creditor makes federally required disclosures pursuant to the Truth-in-Lending Act (TILA).

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

(12 U.S.C. § 3801 et. seq.; 12 C.F.R. PART 226 (REG. Z, TRUTH IN LENDING); 12 C.F.R. § 560.210; CAL. CIV. § 1921)

N. Equal Credit Opportunity Act – Notice of Adverse Action – Regulation B

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

A lender/creditor who denies an application for credit must provide the applicant with a statement of reasons or a written notification of the applicant's right to obtain a statement of reasons. The statement and notice of adverse action must generally be provided within 30 days after receiving the ***completed*** loan application. (In certain credit transactions, the notice period may be longer.) The notification and statement from the lender/creditor may be verbal if in the preceding calendar year the lender/creditor acted on less than l50 loan applications.

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

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

(15 U.S.C. § 1691 et. seq.; 12 C.F.R. PART 202 et. seq. (REG. B); CAL. CIV. § 1785.1 et. seq.)

O. Certain Obligations of Consumer Credit Reporting Agencies

Since 2000 numerous amendments or additions to the Consumer Credit Reporting Law have been made by the California Legislature. Most of these changes have occurred as a result of growing incidences of credit and identity fraud and as a result of the adoption by various lenders/creditors of the use of credit scores as a means of measuring a consumer's credit history and to permit near instant evaluation of the credit risk presented by a particular consumer/borrower.

The term "credit score" is defined as "… a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default. The numerical value of the categorization derived from this analysis may also be referred to as a "risk predictor" or "risk score." "Credit score" does not include any mortgage score or rating of an automated underwriting system that considers one or more factors in addition to credit information, including but not limited to, the loan-to-value ratio, the amount of down payment, or a consumer's financial assets. "Credit score" does not include other elements of the underwriting process or underwriting decisions.

To establish a consumer's "credit score," certain relevant elements or reasons are identified which are believed by the developers of this system to affect the "credit score" for the particular consumer/borrower. The elements or reasons are defined in the Civil Code as "key factors."

When a "credit score" has been issued on a particular individual or consumer and the consumer is an applicant for a home loan, the consumer is to receive the following notice:

NOTICE TO THE HOME LOAN APPLICANT

In connection with your application for a home loan, the lender must disclose to you the score that a credit bureau distributed to users and the lender used in connection with your home loan, and the key factors affecting your credit scores.

The credit score is a computer generated summary calculated at the time of the request and based on information a credit bureau or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and payment patterns change, and how credit scoring technologies change.

Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another.

If you have questions about your credit score or the credit information that is furnished to you, contact the credit bureau at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The credit bureau plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decision on a loan application.

If you have questions concerning the terms of the loan, contact the lender.

In addition to the above notice, the individual or consumer is to receive, together with a copy of the credit report issued by a credit reporting agency, a list of the factors not to exceed four which have materially affected the outcome of the "credit score." The notice and the disclosure of the four factors affecting the "credit score" are to occur early in the loan process to allow the consumer to address any issues presented by the credit report or the "credit score," including the four factors about which the individual consumer may be in disagreement.

The individual or consumer is to be provided with the name and address and the website of the person or entity who developed the score or methodology of the score. In addition, the individual or consumer is to be provided with the name, address, website and other contact information for the credit repositories who maintain credit and financial information about each individual or consumer who issue their own form of credit score. These repositories are:

- EQUIFAX PO BOX 740241, ATLANTA, GA 30374-0241 1-800-525-6285 **www.equifax.com**
- EXPERIAN PO BOX 9532, ALLEN, TX 75013 1-888-397-3742 **www.experian.com**
- TRANSUNION PO BOX 6790, FULLERTON, CA 92864-6790 1-800-680-7289 **www.transunion.com**

As previously discussed, credit and identity fraud have become an epidemic in America and in California. In an effort to provide some protection to

consumers from the misuse of their credit standing, financial worthiness, and their identity, the California legislature has added to the Civil Code two procedures. The first is known as a "Security Alert" and is authorized by Civil Code Section 1785.11.1. This procedure allows a consumer to make a request in writing or by telephone to a consumer credit reporting agency to include an alert in the credit file to be included in any subsequent report issued on that consumer. Each recipient of a credit report issued on the consumer following the imposition in the file of the "Security Alert" will notify the recipients of the reports that the consumer's identity may have been used without the consumer's consent to fraudulently obtain goods and services in the consumer's name.

The second protection enacted by the legislature pursuant to Civil Code Section 1785.11.2 is a "Security Freeze" which may be placed on a consumer's credit report. The "Security Freeze" would prohibit the release to third parties of a credit report or other information about the consumer. A consumer may elect to place a "Security Freeze" on his or her credit report by making a request in writing by certified mail to a credit reporting agency, or directly to one or more of the credit repositories.

The result of the foregoing is a notice placed in a consumer's credit report that subject to certain exceptions would prohibit a consumer credit reporting agency from releasing a consumer's credit report or any information from the report without the express authorization of the consumer. Upon request, the credit repositories previously identified in this section will issue to the consumer a personal identification number (PIN) which must be used by the consumer when an authorized credit request has been made. The use of the PIN number will allow a credit reporting agency to lawfully issue a credit report, or information from the report, to a third party who may extending credit or making a loan to or arranging the loan for the consumer.

(CAL. CIV. § 1785.1, et. seq.)

P. Disclosure Required by the Housing Financial Discrimination Act of l977 (Holden Act)

Federal policy is to ensure fair housing by prohibiting discrimination based on race, color, religion, sex, national origin, marital status, age, or physical disabilities in connection with the sale, rental, construction, or financing of housing. To supplement federal legislation, state laws have been enacted to forbid the discriminatory practice known as "red-lining" that results in blanket refusals by some lenders to make loans in neighborhoods of declining property values.

The Holden Act prohibits the consideration of race, color, religion, sex, marital status, national origin, or ancestry in lending for the purchase,

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

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

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

(*CAL. HEALTH & SAFETY § 35800 et. seq.*)

SECTION IV
DISCLOSURES RELATIVE TO NEW RESIDENTIAL SUBDIVISIONS

Under the Subdivided Lands Law, a subdivision exists when improved or unimproved land is divided for the purpose of sale, lease or financing (whether immediate or future) into five or more parcels. The law applies to residential single-lot subdivisions, common interest developments, time-shares (of 12 or more interests), and mandatory leases of five or more years in a mobilehome park. Among other exemptions, this law does not apply to: certain industrial and commercial subdivisions, standard in-city subdivisions wherein each lot, parcel or unit will be sold with a completed residential structure, and subdivisions located entirely outside of California (except a time-share subdivision with one or more component sites located within the United States).

A. Public Report: Disclosure of Material Facts about a Subdivision

Unless the project is exempt by operation of law, a person intending to offer subdivided lands for sale or lease, if that is the marketing plan, must apply for and obtain a public report from the Department of Real Estate. The public report discloses to prospective buyers pertinent facts about a subdivision. The report may include information about utilities and water, roads, soil and geologic conditions, title, zoning and use, hazards, and any financial arrangements for completion of the subdivision.

In the case of a common interest development, information is also provided about the homeowners association, the assessments, budget including estimated reserves, and the governing documents. For further information regarding common interest developments, please refer to booklets which are published by the Department of Real Estate available at **www.dre.ca.gov** entitled:

- "*Living in a California Common Interest Development;*"
- "*Operating Cost Manual for Homeowners Associations;*" and
- "*Reserve Study Guidelines for Homeowner Association Budgets*."

A subdivider or his/her broker(s)/agent(s) must post a copy of the public report in a conspicuous place in any office where sales of subdivision interests are conducted and must give a copy to any member of the public who asks for one and to each prospective buyer prior to entering into a contract to purchase. The subdivider, owner, or the broker(s)/agent(s) of the subdivider or owner must have each prospective buyer sign a receipt that he or she has received and has had an opportunity to read the public report

before entering into an agreement to purchase. The subdivider is required to keep the receipt for three years.

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

(CAL. BUS. & PROF. § 11000, et. seq.; CAL. CIV. § 1350 et. seq.)

B. Disclosure of the Right to Rescind

Purchasers in two types of subdivisions have an unqualified right of rescission as follows:

1. Timeshare buyers have a right to rescind the purchase within seven calendar days after receipt of the Public Report or the date of signing the purchase contract, whichever is later.
2. Undivided interest buyers have a right to rescind the purchase by midnight of the third calendar day following the day the purchaser executed the offer to purchase.

(CAL. BUS. & PROF. §§ 11000.2, 11238)

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

(CAL. BUS. & PROF. §§ 11238, 11239; COMMISSIONER'S REGULATIONS 2792.30, 2792.31)

C. Disclosure and Notice of Blanket Encumbrance

A ***blanket encumbrance*** is a deed of trust, mortgage, or other lien or encumbrance (excepting taxes or assessments levied by public authority) which affects more than one lot or unit in a subdivision. Section 11013.2 of the Business and Professions Code mandates protection of a buyer's funds, unless the lot or unit can be unconditionally released from the blanket

encumbrance. If there is a blanket encumbrance and the project is not subject to Section 11013.2, a prospective buyer, or lessee for a period of more than five years, must receive and sign the following notice prior to the sale, or lease:

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

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

_____	_____
Date	Signature of Buyer or Lessee

When the prospective buyer or lessee receives and signs the foregoing notice, the buyer or lessee acknowledges awareness of the blanket encumbrance and the possible consequences thereof. This may include the inability of the builder/developer to use or retain earnest money deposits advanced by the prospective purchaser prior to the release of the blanket encumbrance from the parcel being purchased.

(CAL. CIV. § 1133)

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

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

- The declaration of covenants, conditions, and restrictions;
- The articles of incorporation and bylaws for the association;
- Any other instrument which establishes or defines the common, mutual, and reciprocal rights and responsibilities of the owners or lessees of interests in the development;
- The current budget including estimated reserves and related financial statements of the association; and

- A statement prepared by the governing body of the association regarding any outstanding delinquent assessments and related charges levied by the association against the subdivision interest the prospective buyer (or lessee) is considering buying (or leasing).

In addition, the subdivider and the broker(s)/agent(s) must deliver to the prospective buyer (or lessee) copies of the foregoing documents prior to close of escrow.

In the case of resale of common interest developments, the owner or his/her agent must provide various documents to the prospective purchaser. (See Part I, Section I, Subsection J – Furnishing Controlling Documents and Financial Statements Concerning CID's).

(CAL. BUS. & PROF. § 11018.6; CAL. CIV. § 1368)

E. Statement of Defects Disclosure for a Common Interest Development Conversion

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

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

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

(CAL. CIV. § 1134)

F. Notices to Tenants to Disclose Intent to Convert an Apartment to Individual Ownership

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

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

(CAL. GOV'T §§ 66427.1, 66452.8, 66452.9, 66452.50, 66452.51)

PART II
TRANSFER OF A BUSINESS OPPORTUNITY

Unless an exemption applies, a real estate license is required to engage in the listing, sale, transfer or lease of business opportunities on behalf of another or others for compensation or expectation of compensation regardless of form or time of payment.

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

NOTE: *Securities dealers (brokers-dealers) may engage in certain mergers and acquisitions of business opportunities without possessing a real estate broker's license.*

A. Definition of Business Opportunity

The term "business opportunity" is defined in the Real Estate Law as the sale or lease of the business and goodwill of an existing business enterprise or opportunity. The sale or lease of a business usually involves the transfer of business personal property, although sometimes real property is involved. The sale or lease of a business opportunity usually includes the sale or transfer of the stock-in-trade, fixtures, and goodwill. Typical business opportunities include grocery stores, drug stores, gasoline service stations, beverage shops, bars, bakeries, among others.

(CAL. BUS. & PROF. § 10030)

B. Bulk Transfer Law

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

Businesses subject to this law include those whose principal activity is the sale of merchandise, as well as those that manufacture what they sell. Also included are the businesses described above, among others.

Unless otherwise limited by law, bulk transfers of goods within California are subject to this law.

(U.C.C. § 6101 et. seq.)

C. Sales Tax Clearance

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

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

(*CAL. REV. & TAX. § 6811*)

D. Transfer of Liquor License

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

(CAL. BUS. & PROF. § 24073)

E. Franchise Investment Law

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

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

- Identified in an application registered with the Corporations Commissioner for an offering of a franchise in California;
- Licensed as a real estate broker; or
- Licensed by the Corporations Commissioner as a broker-dealer or agent thereof under the Corporate Securities Law of l968.

(CAL. CORP. § 31210)

F. Fictitious Business Name (DBA)

Every individual or entity that regularly transacts business for profit in California under a fictitious business name must file a fictitious business name statement no later than 40 days after commencing business.

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

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

A "fictitious business name" is:

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

(CAL. BUS. & PROF. § 17900 et. seq.)

G. Notice of Other Government Agencies

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

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

GOVERNMENT AGENCIES

Federal Agencies

Federal Trade Commission (FTC)
Consumer Specialists
901 Market Street, # 570
San Francisco, CA 94103
877-FTC-HELP (382-4357)
www.ftc.gov

U.S. Department of Housing and Urban Development (HUD)
Local offices in, Fresno, Los Angeles, Sacramento, San Diego, San Francisco, Santa Ana. (202) 708-1112 or **www.hud.gov/localoffices.cfm**

State Agencies

Alcoholic Beverage Control
3927 Lennane Drive, Suite 100
Sacramento, CA 95834
(916) 419-2500
www.abc.ca.gov

Business, Transportation & Housing Agency
980 9th Street, Suite 2450
Sacramento, CA 95814-2719
(916) 323-5400
www.bth.ca.gov

Corporations, Department of
1515 K Street, Suite 200
Sacramento, CA 95814-4052
(916) 445-7205
(866) 275-2677 or 866-ASK-CORP
www.corp.ca.gov

Energy Commission
1516 9th Street
Sacramento, CA 95814
916-654-5106
(800) 772-3300
www.energy.ca.gov

Equalization, Board of
450 N Street
Sacramento, CA 95814
(800) 400-7115
www.boe.ca.gov

Financial Institutions, Department of
111 Pine Street, Suite 1100
San Francisco, CA 94111-5613
(415) 263-8500
www.dfi.ca.gov

State Agencies (continued)

Franchise Tax Board
P. O. Box 1468
Sacramento, CA 95812-1468
(800) 338-0505 or (916) 845-6600
www.ftb.ca.gov

Geologist, State
California Geological Survey
801 K Street
Sacramento, CA 95814
(916) 445-1825
www.consrv.ca.gov/cgs/

Insurance, Department of
Consumer Communications Bureau
300 South Spring Street, South Tower
Los Angeles, CA 90013
1-800-927-HELP (4357) or (213) 897-8921
www.insurance.ca.gov

Real Estate Appraisers, Office of
1102 Q Street, Suite 4100
Sacramento, CA 95814
(916) 552-9000
www.orea.ca.gov

Seismic Safety Commission
1755 Creekside Oaks Drive, Suite 100
Sacramento, California
(916) 263-5506
www.seismic.ca.gov

Structural Pest Control Board
1422 Howe Avenue, Suite 18
Sacramento, CA 95825-3280
(916) 561-8708
www.pestboard.ca.gov

Toxic Substances Control, Department of
P.O. Box 806
Sacramento, CA 95812-0806
(916) 255-3545
www.dtsc.ca.gov

Water Resources, Department of
P. O. Box 942836,
Sacramento, CA 94236
(916) 653-6192
www.dwr.ca.gov

Department of Real Estate Offices

Sacramento Principal Office
1651 Exposition Blvd.
Sacramento, CA 95813-7000
(877) 373-4542

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

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

Oakland District Office
1515 Clay Street, Suite 702
Oakland, CA 94612-1402
(510) 622-2552

San Diego District Office
8620 Spectrum Center Blvd.,
Suite 301
San Diego, CA 92123
(619) 525-4192

Following are additional DRE publications available at **www.dre.ca.gov**:

- Real Estate Law
- Reference Book – A Real Estate Guide
- Instructions to License Applicants
- Real Estate Bulletin
- Mortgage Loan Bulletin
- Subdivision Industry Bulletin
- Trust Funds
- Broker Compliance Evaluation Manual
- Frequently Asked Questions – Mortgage Loan Brokering in California
- Trust Deed Investments – What You Should Know!!
- Using the Services of a Mortgage Broker[1, 2]
- Sources of Home Loans[1, 2]
- Reverse Mortgages – Is One Right for You?
- Living in a California Common Interest Development[1, 2]
- Reserve Study Guidelines for Homeowner Association Budgets
- Operating Cost Manual for Real Estate Homeowner Associations
- Subdivision Public Report Application Guide
- A Guide for Residents Purchasing their Mobilehome Park
- A Consumer Guide to Filing Real Estate Complaints[1, 2]
- Recovery Account[1, 2]
- Publications Request Form (RE 350)

[1] *Available in Spanish*
[2] *Available in Traditional Chinese*