

## SELLERS DISCLOSURE ADVISORY

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IN CALIFORNIA ONLY

Real Estate Forms  
Since 1966



"*Caveat Emptor*" (let the Buyer beware) can no longer be used to protect Sellers, or their agents, from making disclosures to potential Buyers. Required disclosures are becoming increasingly numerous and complicated, and Sellers should exercise considerable care in filling out the various forms that will be presented to them. Below are a few suggestions that may avoid future disputes:

- 1. When in Doubt Disclose.** Experience shows that full disclosure seldom chills a sale. To the contrary, Buyers are more comfortable if the disclosures they receive appear complete and thorough. Remember that disclosures made after the contract is signed triggers a 3-day right of rescission in the Buyer.
- 2. The Disclosure Statements.** California requires Sellers to complete the Real Estate Transfer Disclosure Statement (referred to as the TDS), the Natural Hazard Disclosure Statement and, if the property was built prior to 1978, federal law requires disclosure of lead-based paint hazards. The Sellers must also certify as to certain safety factors, such as smoke detectors and the strapping of water heaters. Since these forms are not exhaustive, agents often provide Sellers with supplemental forms designed to assist the Sellers in making full disclosure. In common interest developments, a condominium disclosure supplement is often used, as well as a request to the homeowners association for all of the documents and information required by law to be furnished to the prospective Buyer. The number of forms can be daunting - but it is important that they all be carefully completed.
- 3. Other Required Disclosures.** Even though a condition of the property or neighborhood may not be referred to in one of the preprinted disclosure forms, it is incumbent on the Sellers to nevertheless reveal all factual matters bearing upon the quality of the property being sold which might be detrimental to its value and which the Buyers might not know or reasonably discover. For example, this could include the fact that neighbors have loud arguments and play music late at night. If the Sellers have had a dispute with the adjoining property owner concerning the location of the common boundary line, this must be revealed to prospective Buyers. There can be many other situations which require written disclosure.
- 4. If a Problem Has Been Repaired Disclose It.** Often where defects such as water intrusions through sliding doors, windows, or roofs have been repaired, the Sellers want to leave the matter alone. During the drought years many Sellers who thought the problem had been fixed were surprised when confronted by unhappy Buyers after the first big storm revealed damaging leaks. It is prudent to indicate what problems have occurred with the property in the past, who fixed them, and when.
- 5. Read the Questions Carefully.** Sellers often claim that some defective condition in the house simply slipped my mind. A judge or arbitrator can find that such slips, although not constituting intentional concealment, nevertheless amount to negligence entitling the Buyer to recover damages. Take your time - reading the questions carefully will often refresh your memory.
- 6. Ask Your Agent for Assistance.** If you have doubts concerning the terminology of a response, or the significance of a question, do not hesitate to ask your agent for guidance. Determining whether a disclosure obligation exists in a particular transaction can be difficult. If a legal question is involved, you should seek professional guidance from a real estate attorney.
- 7. Obtain Professional Inspections When Appropriate.** Many Sellers want to avoid the cost of professional inspections. Such inspections, however, can insulate a Seller from liability since the law provides that the Seller is not liable for errors or omissions in disclosures if the information given to the Buyer is based upon reports by experts dealing with matters within the scope of their license. Of course, Sellers cannot conceal known defects even if they are overlooked by professional inspectors. In some cases, such as the mandatory Natural Hazard Disclosure Statement, a report by an outside service is often required because the Sellers simply do not know the answers to the questions asked in the form. Ask your agent for his or her recommendations.

Receipt of this Advisory is acknowledged by Sellers on \_\_\_\_\_ [\_\_\_\_\_] [\_\_\_\_\_] (Date) (initials)

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