



## STANDARD DISCLOSURES AND DISCLAIMERS

It is recommended that the parties read and sign this disclosure statement contemporaneously with the execution and delivery of the statutory agency disclosure form. It is important that the parties review these disclosures before entering into purchase agreement.

Property Address \_\_\_\_\_

1. **ALTERNATIVE DISPUTE RESOLUTION (ADR).** In an attempt to avoid costly and time-consuming litigation, most courts encourage the parties to a dispute to attempt to resolve their differences without litigation either by mediation, binding arbitration, or both. Most standard real estate contracts give the parties the option to agree to some form of ADR.
  - (a) **Mediation:** If mediation is selected, the parties must, before filing litigation, submit their dispute to a neutral third party who helps the parties resolve the conflict by their mutual agreement. Mediation is a private, cooperative, and confidential process in which the parties retain control of the proceedings. Many mediators can skillfully facilitate negotiations, by pointing out weaknesses in the arguments, improving communications, and helping the parties find creative solutions to settle the dispute that may not have occurred to either party. Special courses train mediators in this work, and they often can create a climate free from acrimony. The cost of a mediator, which is usually shared equally between the parties, can vary greatly depending upon the experience of the mediator and the time involved. The result of a successful mediation hearing is a written settlement agreement that is legally enforceable. If agreement is not reached, either party may proceed with arbitration, if also elected, or litigation.
  - (b) **Binding Arbitration:** If the arbitration clause is initialed, any dispute arising out of the agreement must, with few exceptions, be submitted to and decided by a neutral arbitrator selected by the parties or their attorneys. The arbitrator's decision is final and cannot be challenged except where the arbitrator exceeds his or her authority. Under most arbitration provisions there is no recourse for mistakes by the arbitrator in applying the law or interpreting the facts. To avoid inadvertent mistakes, some arbitration clauses require the arbitrator to render a "Tentative Decision" prior to the final award (P.P. Form 101-P CAL). If the arbitration clause permits, each of the parties, with the consent of the arbitrator, has the right to take depositions, demand inspection of documents, and engage in other discovery before the arbitration hearing. Although attorneys usually represent the parties, the hearing is less formal than a court proceeding. Rules of evidence are not strictly applied, and sometimes affidavits and depositions are permitted in lieu of live testimony. The cost of arbitration can vary from a few hundred dollars to several thousand dollars. The arbitrator can normally assess costs, including attorney fees, in his or her discretion. By selecting binding arbitration, a party gives up his or her constitutional right to a jury trial and, unless the arbitration clause expressly provides for judicial review, the right of appeal. If the credibility of a witness becomes significant, the arbitrator will assume this important jury function. These disadvantages should be weighed against the advantage of an expedient and relatively inexpensive resolution of disputes that binding arbitration affords.
  - (c) **Judicial Arbitration:** After litigation is filed, the court will often order the parties to submit their case to an arbitrator chosen from a list supplied by the court. The proceedings are similar to binding arbitration except that, if either party is dissatisfied with the result, he or she can request a trial *de novo* - a new trial before the court or a jury. The court may impose certain penalties if the trial results in a decision less favorable than that rendered by the arbitrator.

While the real estate agents can help explain the meaning of alternative dispute resolution choices given in the purchase agreement, they do not make recommendations. This is a matter for the Buyer and Seller to decide.

## 2. BONDS AND ASSESSMENTS.

- (a) **Mello-Roos Levy:** A Mello-Roos community facilities district may have been established for the area in which the property is located. These districts may levy a special tax for a specified period to be used to support the sale of tax-exempt bonds for various capital improvements or local schools. The Seller is obligated to make a good faith effort to obtain a disclosure notice from any local agencies that levy such a special tax and deliver to the Buyer any such notice made available by those agencies. Preliminary Title reports sometimes refer to this tax as a "community facilities district" or "CFD".
- (b) **Improvement Bond Assessment:** Seller must also make a good faith effort to obtain a disclosure notice of any fixed lien assessment on the property to secure bonds issued pursuant to the Improvement Bond Act of 1915. Both disclosure notices may be contained in a single document.
- (c) **Private Transfer Fee:** Notice must be given by seller when any future transfer is subject to payment of a private transfer fee.

Buyer [ ] [ ] and Seller [ ] [ ] have read this page.

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3. **BOUNDARY LINES, SIZE, AND SCHOOL DISTRICTS.** Any representations regarding property size, building size, or location of boundary lines may not be accurate. Governmental Agencies sometimes use different methods in calculating square footage. The data they provide may not be correct and should be verified. Apparent boundary line indicators such as fences, hedges, walls, or other barriers may not represent the true boundary lines. Neither the Seller nor the agents make any representations regarding boundary locations or the size of the parcel. If the Buyer has any questions in this regard, he or she should obtain a survey. Only a surveyor can render a valid opinion as to the actual boundary lines. Buyer should also inquire as to an ALTA Owners' Title Insurance Policy or CLTA Homeowner's Policy of Title Insurance that can give greater coverage than the CLTA Standard Coverage Policy. Your title company can explain the extended coverage and what additional cost, if any, is involved. It is also important that Buyer contact the appropriate school district to verify the district in which the property is located (attendance area) and the schools his or her children will attend.
4. **COMMON INTEREST DEVELOPMENTS.** In condominiums, planned unit developments, and other projects having common areas, it is important that the Buyer satisfy himself or herself as to the adequacy of the reserves for replacements and the effect, if any, of contemplated or pending litigation brought by or against the homeowners' association. Unanticipated assessments by associations against members for repairs or to finance litigation are a frequent source of controversy. Real estate agents do not investigate or verify these matters. Buyers should understand that under California law, the Homeowners' Association has broad discretion in what constitutes satisfactory repair and maintenance of the common area.
5. **CONDITION OF THE PROPERTY.** The Buyer is advised not to rely upon any representations by either agent or Seller with respect to the condition of the property that are not contained in the purchase agreement or in the disclosure statements. The real property, fixtures, and personal property included in the sale may not be new and have been subject to normal wear and tear. The obligations of the Seller under maintenance provisions of the purchase agreement are not intended to create a warranty with respect to the condition of the property to be maintained, or to create an obligation upon the part of the Seller to repair any item that may fail after delivery of possession.

Section 3703 of the Uniform Building Code requires that all chimneys be fitted with spark arresters. Buyer and Seller are encouraged to contact the appropriate planning and building department to determine the local requirements in this regard.

Buyer should have a termite, roof, contractor's (or home inspection service) and, if applicable, a pool/spa inspection and any other inspections which the Buyer desires by qualified experts. Each of these is a separate area of expertise, and one of these inspections is not a substitute for any of the others. There are no implied warranties in the sale of pre-owned real or personal property. The Buyer has the burden of conducting reasonable inspections of the house in addition to the Sellers disclosures. The Buyer is required under law to exercise the inspection contingency in good faith.

6. **COVENANTS, CONDITIONS, AND RESTRICTIONS.** The Buyer should carefully review any CC&Rs (sometimes referred to as a "Declaration") and other documents and exceptions that affect the property. These documents contain provisions which regulate the use and enjoyment of property and sometimes impose assessments for maintenance of common areas. Copies of the Declaration and other documents referred to in the Preliminary Title Report are normally provided by the title company. Please read them.
7. **DUCT SEALING REQUIREMENTS.** Beginning October 1, 2005, whenever a central air conditioner or furnace is installed or replaced, the homeowner is required to have the home's ducts tested for leaks. If the homeowner has changed the heating, ventilating, or air conditioning equipment without the necessary permits and duct sealing, this must be disclosed to any prospective purchaser. Detailed information regarding this requirement is available at [www.energy.ca.gov/title24/changeout](http://www.energy.ca.gov/title24/changeout).
8. **ESCROW FUNDS.** California Insurance Code 12413.1 requires that the escrow holder cannot close escrow and disburse funds unless it holds sufficient "good funds" to cover the disbursement. "Good Funds" are cash, wire transfers, cashier's or certified checks drawn on California depositories. Out-of-state checks and all drafts are subject to waiting periods which can delay escrow and do not constitute "good funds" until the money is physically transferred to the escrow holder's account.
9. **FAIR HOUSING.** Buyer and Seller understand that state and federal law prohibits discrimination in the sale, rental, appraisal, financing or advertising of housing on the basis of race, color, religion, sex, sexual orientation, marital status, national origin ancestry, familial status, source of income, age, mental or physical disability.

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- 10. HAZARDOUS MATERIALS.** All Buyers of residential property should receive a pamphlet entitled "A Homeowner's Guide To Environmental Hazards and Earthquake Safety." This booklet should be consulted for general information about environmental hazards. The agent in this transaction has no expertise regarding toxic wastes, hazardous materials, or undesirable substances. No representations, either express or implied, have been or will be made with respect to the existence or nonexistence of such materials on the property. A Buyer who is concerned about the presence of such materials should have the property inspected qualified experts.
- 11. INSURANCE.** Because of a variety of factors, the availability of property damage insurance has become problematic in some areas. Buyers are encouraged to secure homeowner's insurance to protect their interests, and to discuss the availability of coverage with their insurance agents early in the transaction. If availability of insurance is questionable, Buyers should consider an insurance contingency addendum to the purchase agreement (P.P. Form 101-N CAL).
- 12. LIQUIDATED DAMAGES.** Most preprinted contract forms contain a provision for the Buyer and Seller to agree, in advance, as to the amount of damages the Seller will suffer if the Buyer breaches the contract. This is usually the amount of the initial deposit, plus any increase in the deposit, provided that the amount in a one-to-four-unit residential transaction is presumably reasonable if it does not exceed 3% of the purchase price. The provision is not valid unless separately initialed by both parties. Any increase in the deposit must also have a separately signed or initialed liquidated damage provision to be valid. In case of a dispute, mutual cancellation instructions are necessary to release these funds from escrow or trust accounts. It is often necessary for litigation or arbitration to be initiated in order to obtain a determination whether a breach has occurred. Neither the escrow holder nor the real estate agents can make this determination.
- 13. MOLD AND MILDEW.** Some types of mold may cause severe health problems. Not all molds are detectable by a visual inspection, but require special testing to be detected. If the Buyer has any concerns, or if there is any indication of any past or present moisture, standing water or water intrusion, Buyer should obtain an inspection by a licensed environmental expert.
- 14. NOISE AND ODOR.** The concept of acceptable noise levels is highly subjective. The Buyer should make his or her own independent assessment of noise from highways or other sources, and not rely upon the personal opinion of the Seller or agents. Homes that have had pets can have undesirable odors. Pet urine contamination can remain dormant for long periods and then become offensive because of humidity or other factors. Carpet cleaning often is not a permanent solution. The Buyer should consider inspection by a qualified expert if contamination of any kind from household pets is suspected.
- 15. PRIVATE ROADS.** If the property shares a common driveway or abuts a private road shared with other property, the Buyer should inquire as to the existence of any road maintenance agreement. Absent any such agreement, the law provides that the owners will share the cost of maintaining the roadway proportionately to the use made of the easement by each owner. (See Civil Code § 845.)
- 16. SAFETY DEVICES.** Section 13113.8(a) of the California Health and Safety Code requires that residences be equipped with operable smoke detectors approved, listed by, and installed in accordance with the State Fire Marshal's regulations. Local law may have additional requirements. Section 13113.8(b) requires that Seller deliver to Buyer a written statement warranting that compliance with such requirements has or will occur before the close of escrow. (P.P. Form 110.81 CAL). State law also requires that water heaters be braced or strapped to avoid movement due to earthquake motion.
- 17. SEPTIC SYSTEMS.** If the property has a septic system, it is important that the Buyer obtain a thorough inspection by a licensed professional. Guidelines for septic system evaluation include a hydraulic test of the system, an evaluation of the septic tank both before and after pumping, and a visual observation of the leach field which should be conducted before, during, and after the hydraulic test of the system.
- 18. SOILS CONDITIONS.** Neither the Seller nor the agents make any representation regarding the susceptibility of the property to damage from earthquake, earth movement, or other geologic hazards. California has a wide range of geologic stability characteristics. Planning departments can supply information regarding the specific property. If Buyer has any concerns regarding soils, drainage, or flooding conditions, he or she should obtain a report from a qualified soils or drainage expert. A contractor's inspection does not normally include a qualified evaluation of soils conditions.

Buyer [ \_\_\_\_\_ ] [ \_\_\_\_\_ ] and Seller [ \_\_\_\_\_ ] [ \_\_\_\_\_ ] have read this page.

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- 19. STORAGE TANKS.** Permits are required for tanks storing flammable or combustible liquids whether or not they are in use. For those tanks presently in use, or intended for future use, an operational permit must be obtained. Buyer is advised to consult with city or county authorities when storage tanks are present on the property to determine local requirements.
- 20. TAX REASSESSMENT.** The property will be reassessed upon change of ownership which will affect the real estate taxes. A supplemental tax bill will be issued which is generally paid by the Seller for the period prior to close of escrow, and by the Buyer for the period after close of escrow. The tax collectors office or the title company can answer any question the parties have in this regard.
- 21. USE AND DESIGN RESTRICTIONS.** Local governments impose restrictions on the use of the property and improvements or modifications. If the Buyer contemplates any change of use or construction, he or she should verify with the local planning and building department whether the proposed change is permissible. It is also recommended that the Buyer verify the legality of any "in law" or "granny" unit on the property. Homeowners often make changes without permits and in violation of building codes and local regulations. Brokers do not investigate the status of permits, zoning, or code compliance and the parties are to satisfy themselves concerning these issues.
- 22. VESTED TITLE.** Title is commonly taken as joint tenants, tenants in common, as community property, (with or without right of survivorship), or as separate property. The manner of taking title can have significant legal and tax consequences. The Buyer should obtain advice from his or her legal or tax counsel regarding this matter and instruct the title company accordingly.
- 23. WATER SHORTAGE AND PLUMBING FIXTURE REQUIREMENTS.** Water districts that face potential water shortages may impose mandatory cutbacks and increased charges for water service. Some districts require, or may require in the future, installation of water efficient plumbing fixtures upon remodeling, adding bathrooms, or increasing the floor space of an existing structure. The Buyer is advised to obtain and review specific information from the water district serving the property, and its impact on Buyer's enjoyment and use of the property.
- 24. WITHHOLDING. (a) Federal:** If the Seller is a foreign person under the Foreign Investment and Real Property Tax Act (I.R.C. 1445), a Buyer is required to withhold 10% of the purchase price and to deposit that amount with the Internal Revenue Service upon close of escrow unless the transaction is exempt. **(b) State:** Under § 18662 of the California Revenue and Taxation Code, a Buyer is required to withhold 3 1/3% of the purchase price and to deposit that amount with the Franchise Tax Board upon close of escrow unless the real property is the principal residence of the Seller (as defined in I.R.C. §121) or the transaction is otherwise exempt. The parties will be required to provide appropriate documentation during the course of the escrow. A real estate Broker is not qualified to give advice on withholding requirements. The Buyer should inquire of the taxing authorities as to his or her responsibilities in this regard.
- 25. CONFIDENTIALITY.** The terms and conditions of an offer are not confidential unless all the parties and their agents have signed a confidentiality agreement.

**LIMITATION OF AGENCY: Real estate brokers and agents are not qualified to give legal, tax, accounting, or insurance advice. For these questions, you should consult with your attorney, accountant, or insurance broker. In addition, real estate brokers and agents do not guarantee the condition of the property, or verify representations made by the parties or their inspectors.**

**THE UNDERSIGNED HAVE READ AND RECEIVED A COPY OF ALL FOUR PAGES OF THIS DISCLOSURE AND DISCLAIMER.**

Buyer \_\_\_\_\_ Date \_\_\_\_\_ Buyer \_\_\_\_\_ Date \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_ Seller \_\_\_\_\_ Date \_\_\_\_\_

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