

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:

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

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

(d) 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 (Signature)	(date)
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Associate Licensee (Signature)	(date) Buyer/Seller (Signature)	(date)
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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.

(c) 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).

(d) 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.

(e) 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)