

# THE C & D NEWSLETTER



**CITRON & DEUTSCH**  
A LAW CORPORATION

Published by:  
**RICHARD K. CITRON**  
**DAVID R. DEUTSCH**  
**MICHELLE LeCOLST-JOHNSTON**  
Attorneys

## DISCLOSURE REQUIREMENTS WHEN SELLING A HOME

This Newsletter shall discuss the obligations of a home owner and real estate broker when selling a home.

### Disclosure Requirements Applicable to Sellers

Since January 1, 1987, the seller of any real property containing up to four dwelling units must complete and deliver to prospective purchasers a statutory form of disclosure document entitled "Real Estate Transfer Disclosure Statement". The disclosure document requires the seller to disclose specified information regarding the property and items on the property, whether these items are in good condition, whether the seller knows of any defects of certain structural components of the property, and whether the seller knows of any restrictions or problems with the property.

The disclosure form indicates whether the property has such items as a dishwasher, trash compactor, garbage disposal, range, oven and/or microwave, washer/dryer hook-ups, central heating or air conditioning, wall or window air conditioning units, smoke detectors, window screens, rain gutters, burglar alarm or fire alarm, T.V. antenna or satellite dish, intercom, sprinkler system, pool, sauna, hot tub, patio, gazebo, built-in barbecue, garage door openers, or security gate. The disclosure statement also indicates whether the property has a septic tank or is hooked up to the public sewer system, whether the property has a gas, electric or solar water heater, the number of fireplaces and whether they have a gas starter, the type of garage or carport, and the type and age of the roof.

The Seller must disclose whether any of the features of the house are not in operating condition. In addition, the Seller must disclose whether the Seller is aware of any defects in the structural portions of the house such as the interior or exterior walls, ceilings, floors, roof, insulation, windows, doors, foundation, driveways, sidewalks, walls, fences, electrical system, plumbing, sewers and septic system.

The Real Estate Transfer Disclosure Statement also requires the seller to disclose any knowledge of (a) any hazardous materials on the property, such as asbestos, radon gas, lead-based paint, or contaminated soil or water; (b) settling, flooding, drainage or grading problems; (c) zoning or "set-back" violations; (d) room additions or structural modifications made without necessary permits or not in compliance with building codes; (e) major damage due to fire, earthquake, floods or landslides; (f) neighborhood noise problems or other nuisances; (g) encroachments, easements, or other restrictions on the property; (h) the existence of a Homeowners Association; (i) any facilities used or owned in common with others, such as a wall, fence, driveway, pool or tennis court; and (j) any notices, citations or lawsuits affecting the property.

The Real Estate Transfer Disclosure Statement is required to be delivered as soon as possible before transfer of title. However, it is advisable for the disclosure statement to be delivered before acceptance of an offer because the buyer has three days after delivery in person or five days after delivery by deposit in the mail to terminate the offer by delivery of a written notice of termination to either the seller or the listing broker.

Neither the seller nor the broker is liable for errors or omissions in Real Estate Transfer Disclosure Statement if the errors or omissions were (a) not within their personal knowledge, (b) were based on a timely report by a public agency or an expert and (c) ordinary care was exercised in obtaining and transmitting the information.

California law also requires the seller of any property to disclose (a) whether the property has an operable smoke detector, (b) whether the property is in a "special studies zone", which is an active earthquake fault zone specified by the State Geologist; (c) terms of seller financing; (d) whether there are any former federal or state ordnance locations in the neighborhood; and (e) any facts materially affecting the value or desirability of the property which are known to or accessible only to the seller where such facts are not known to or within the reach of the diligent attention or observation of the buyer.

Neither the owner nor a broker is obligated to disclose the occurrence of an occupant's death on the property or the manner

of the death where the death occurred more than 3 years prior to the sale, nor is disclosure required of the fact that an occupant of the property had or died from AIDS. However, the owner or broker is liable for intentional misrepresentation regarding such facts.

### Disclosure Requirements Applicable to Brokers

A real estate broker has a duty to conduct a reasonably competent and diligent visual inspection of the property and to disclose to the prospective purchaser "all facts materially affecting the value or desirability of the property" that such an investigation would reveal. A broker is not required to inspect areas that are reasonably and normally inaccessible. Because of the broad language of the law relating to broker disclosures, a broker is well advised to make a full and complete written disclosure of all possible defects in the property, so as to avoid potential claims. The listing broker and selling broker are required to sign their acknowledgement of the receipt of a copy of the Seller's disclosure document, but brokers are not expressly required to make the disclosures specified on the disclosure form.

A lawsuit for breach of the broker's disclosure obligations must be commenced within two years from the earlier of (a) the date of recordation of the property transfer, (b) the date of close of escrow, or (c) the date of occupancy.

A broker must also deliver to the broker's client a specified disclosure form entitled "Disclosure Regarding Real Estate Agency Relationship" which states whether the broker is representing the seller only, the buyer only, or whether it is a dual agency.

### Summary

The seller, the listing broker and the selling broker all have significant disclosure requirements in the sale of residential property. Failure to comply with the disclosure requirements may permit the prospective buyer to rescind the transaction or to sue the seller or brokers for damages.

*This complimentary newsletter is intended to provide general information. Because of the complexities and constant changes in the law, it is important to seek professional advice before acting on any of the matters covered herein.*