EVERYTHING YOU NEED TO KNOW ABOUT DISCLOSURES*
* RECENT DEVELOPMENTS

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Agenda

New Laws
- The AD form and HOA “Document Bundling”

Recent Cases
- Richman – mixed-use property
- Saffie – MLS representations and BA’s duties

Nov. Forms Release re Disclosures
- SPQ Default Option
- “Fully Complete” TDS and Visual Inspection
- PRBS Replaces the DA

Laws Effective July 2014
- Smoke Alarm
- TDS changes Question #16
The “Agency Disclosure” form (AD)

Presently required on:
- Residential 1 – 4 properties
- Residential leases of more than one year
- Manufactured homes (if negotiated by agent)

New Jan. 1st. “Commercial”
- Commercial or industrial property
- Vacant land
- Leases of these types of property if more than one year

Civil Code 2079.13
Confirmation of Agency

Already in all CAR commercial purchase agreements and leases

- RIPA
- VLPA
- CPA
- BPA
No HOA Document Bundling

- **New law:** The legally required CI disclosures to be written up and billed separately from optional disclosures
- Seller to pay the entity that provides the HOA docs
- Form HOA (Homeowners Information Request) is now broken down into 3 forms
- Seller is still required to make request to HOA within 3 days after acceptance
- The Big Change: Seller will be required to bring money into escrow (within 3 days after directed by escrow) per the contract

Civil Code 4528 and 4530. Paragraphs 7D(4), (5) and 20 A of RPA-CA
HOMEOWNER ASSOCIATION INFORMATION REQUEST
AND CHARGES PER DOCUMENTS PROVIDED AS REQUIRED BY SECTION 4525
(C.A.R, Form HOA, Revised 12/13)
FOR USE AFTER JANUARY 1, 2014

Property Address: ____________________________________________________________________
Owner of Property: ____________________________________________________________________
Owner’s Mailing Address: ____________________________________________________________________
(If known or different from property address)

To: Homeowner Association ____________________________________________________________________

Pursuant to California Civil Code §§ 4525 and 4530 and the request of Seller (1) upon receipt of this request please provide on this form a written or electronic estimate of fees that will be assessed for providing the requested documents, and (2) within 10 calendar Days from the date of this request, please provide to Seller the items or information listed on page 2 at the mailing address indicated above, or (if checked) to ____________________________________________________________________

On page 2, please indicate whether the item is attached. If not attached, indicate if not available or not applicable.

Seller or Seller’s Agent ___________________________ Date __________

The documents and information provided by the HOA referenced above were provided by:

(print name) ____________________________________________________________________
(title or position) ____________________________________________________________________

☐ Association or ☐ Agent Date: ____________________________

By signing below, the undersigned acknowledge that each has read, understands and has received a copy of this Homeowner Association Information Request.

Seller ___________________________ Date __________

Seller ___________________________ Date __________

Homeowners Association Information Request (form HOA)
Recent Cases

  - Seller ("transferor") of mixed use property improved with 1-4 dwelling units is obligated to complete a TDS.
  - No matter the sophistication of buyer
- **Smith v. Rickard (1988)** – agent has duty to visually inspect residential portion of mixed use property
Recent Cases

Saffie v. Schmeling (2014)
- On MLS, LA states “Declared buildable by investigating licensed geologist.”
- But on the cover of report the date appears “prominently” “May 20, 1982.”
- Buyer’s agent gave report to buyer and advised buyer to “check it out.” But didn’t point out date to buyer.
- Ruling: Listing broker’s perfectly accurate reference to an old inspection report is not false or misleading if it is strictly true, even if county changed building standards after the report issued.
- Judge found Buyer’s agent led Buyer to believe that the report was current and could be relied on as an indication that the property was “ready to build.” Buyer’s agent advice to “check it out” may be breach of fiduciary duty.
Saffie Case Lessons

- Look at date on cover of report and point it out.
- **Buyer’s agent:** Recommend further investigation. As a fiduciary for the buyer, should have recommended further investigation rather than relying on the nearly 25 year old report.
- **Buyer’s agent:** Do not endorse information provided by the seller and LA.
- **Attribute and disclaim.** Buyer’s agent should keep in mind “The information has not been verified” See Salahutdin v Alcantara (1994).
- **Listing Agent:** Do not reference old or outdated reports.
- **Interesting part of case:** In any event buyer could not claim damages based on MLS because buyer was provided with report during escrow, and could have investigated and decided to buy. But..., see Jue v. Smiser (1994)
The Seller Property Questionnaire (form SPQ)
New Contract Term: SPQ is now the default option or if box checked, SSD

- Seller will be required to fill out SPQ (Seller Property Questionnaire)
  a. Unless the box in 10A(4) is checked for SSD or
  b. Unless TDS exempt property

- Even if TDS exempt, seller may still fill out either SPQ or SSD (Supplemental Contractual and Statutory Disclosure)
  
    Paragraph 10A(4) of RPA-CA
New contract term: Seller must “fully complete” TDS
Listing Agent must complete visual inspection within seven days

- Seller must if required by law “fully complete” TDS and other disclosures by answering all questions and complete and sign disclosure.
- Listing agent must complete visual inspection within 7 days for TDS to be “fully complete”
- If not, buyer need not remove contingency relating to TDS and visual inspection disclosure.
- If not buyer retains cancellation right.

How does the new term differ from the current contract?

Paragraphs 10A(1) and (2) of RPA-CA
New Contract Term and Form: The DA form is now the PRBS form

- The PRBS form replaces the DA.
- Because you never know if someone in your office is representing a competing buyer or seller.
- Box is “pre-checked” and each agent should provide their client with the PRBS at the time the offer is made. “Possible Representation of More than One Buyer or Seller – Disclosure and Consent”
- Or at broker’s Option before the offer is made use PRMB for buyers PRMS for sellers

Paragraph 2A of RPA-CA
Smoke Alarms
Effective July 2014

- Does not require replacement of existing smoke alarms if operable. But with $1000 of permitted improvements must be upgraded.

- Implementation July 1, 2014 – Can use existing stock through July 1, 2015
  - 10 year battery
  - Non-removable battery
  - “Hush” feature

- L/T – cannot make T responsible for alarm maintenance
- L/T – January 2016 – smoke alarms must be located per current location standards
TDS Q#16 adds “claims” Effective July 2014

• Previously TDS required disclosures of “lawsuits by or against the Seller threatening to or affecting this real property

• Now any SB800 claim must be included
  ▪ Breach of warranty pursuant to §900 Claims
  ▪ Breach of an enhanced protection agreement pursuant to Section § 903
  ▪ §§910 and 914 establish a “non-adversarial” procedure. Builder can offer to fix property or use some other procedure to resolve dispute prior to lawsuit
Questions?

Thank you for Attending

- I will be at the “Ask an Attorney” booth today 4 to 6, and tomorrow 2:30 to 5