REAL ESTATE TRANSFER DISCLOSURE STATEMENT

(CALIFORNIA CIVIL CODE 1102, ET SEQ.)

CALIFORNIA ASSOCIATION OF REALTORS® (CAR) STANDARD FORM

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF _____, COUNTY OF _____, STATE OF CALIFORNIA, DESCRIBED AS _____.

THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH SECTION 1102 OF THE CIVIL CODE AS OF _____, 19____. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I
COORDINATION WITH OTHER DISCLOSURE FORMS

This Real Estate Transfer Disclosure Statement is made pursuant to Section 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zone and purchase-money liens on residential property).

Substituted Disclosures: The following disclosures have or will be in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same: _____

(LIST ALL SUBSTITUTED DISCLOSURE FORMS TO BE USED IN CONNECTION WITH THIS TRANSACTION)

II
SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in conpection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller ☐ is ☐ is not occupying the property.

A. The subject property has the items checked below (read across):

☐ Range
☐ Dishwasher
☐ Washer/Dryer Hookups
☐ Burglar Alarms
☐ T.V. Antenna
☐ Central Heating
☐ Wall/Window Air Conditioning
☐ Septic Tank
☐ Patio/Decking
☐ Sauna
☐ Security Gate(s)
Garage: ☐ Attached
Pool/Spa Heater: ☐ Gas
Water Heater: ☐ Gas
Water Supply: ☐ City
Gas Supply: ☐ Utility

☐ Oven
☐ Trash Compactor
☐ Window Screens
☐ Smoke Detector(s)
☐ Satellite Dish
☐ Central Air Conditioning
☐ Sprinklers
☐ Sump Pump
☐ Built-in Barbecue
☐ Pool
☐ Automatic Garage Door Opener(s)*
☐ Not Attached
☐ Solar
☐ Solar
☐ Well
☐ Bottled

☐ Microwave
☐ Garbage Disposal
☐ Rain Gutters
☐ Fire Alarm
☐ Intercom
☐ Evaporator Cooler(s)
☐ Public Sewer System
☐ Water Softener
☐ Gazebo
☐ Spa ☐ Hot Tub
☐ Number of Remote Controls _____
☐ Carport
☐ Electric
☐ Electric
☐ Private Utility ☐ Other _____

Exhaust Fan(s) in _____ 220 Volt Wiring in _____
Fireplace(s) in _____ ☐ Gas Starter
☐ Roof(s): Type: _____ Age: _____ (approx.)
☐ Other: _____

Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? ☐ Yes ☐ No If yes, then describe. (Attach additional sheets if necessary.): _____

B. Are you (Seller) aware of any significant defects/malfunctions in any of the following? ☐ Yes ☐ No If yes, check appropriate space(s) below.

☐ Interior Walls ☐ Ceilings ☐ Floors ☐ Exterior Walls ☐ Insulation ☐ Roof(s) ☐ Windows ☐ Doors ☐ Foundation ☐ Slab(s)
☐ Driveways ☐ Sidewalks ☐ Walls/Fences ☐ Electrical Systems ☐ Plumbing/Sewers/Septics ☐ Other Structural Components

(Describe: _____)

If any of the above is checked, explain. (Attach additional sheets if necessary): _____

*This garage door opener may not be in compliance with the safety standards relating to automatic reversing devices as set forth in Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of the Health and Safety Code.

Buyer and Seller acknowledge receipt of copy of this page, which constitutes Page 1 of 2 Pages.

Buyer's Initials (_____) (_____) Seller's Initials (_____) (_____)

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525 South Virgil Avenue, Los Angeles, California 90020
IN COMPLIANCE WITH CIVIL CODE SECTION 1102.6 / EFFECTIVE JULY 1, 1991.

BUYER'S COPY

OFFICE USE ONLY
Reviewed by Broker or Designee _____
Date _____

EQUAL HOUSING OPPORTUNITY

SAMPLE

Subject Property Address: _____ _____, 19 __

C. Are you (Seller) aware of any of the following:

1. Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, and contaminated soil or water on the subject property. ☐ Yes ☐ No
2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property. ☐ Yes ☐ No
3. Any encroachments, easements or similar matters that may affect your interest in the subject property. ☐ Yes ☐ No
4. Room additions, structural modifications, or other alterations or repairs made without necessary permits. ☐ Yes ☐ No
5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes. ☐ Yes ☐ No
6. Landfill (compacted or otherwise) on the property or any portion thereof. ☐ Yes ☐ No
7. Any settling from any cause, or slippage, sliding, or other soil problems. ☐ Yes ☐ No
8. Flooding, drainage or grading problems. ☐ Yes ☐ No
9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides. ☐ Yes ☐ No
10. Any zoning violations, nonconforming uses, violations of "setback" requirements. ☐ Yes ☐ No
11. Neighborhood noise problems or other nuisances. ☐ Yes ☐ No
12. CC&R's or other deed restrictions or obligations. ☐ Yes ☐ No
13. Homeowners' Association which has any authority over the subject property. ☐ Yes ☐ No
14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others). ☐ Yes ☐ No
15. Any notices of abatement or citations against the property. ☐ Yes ☐ No
16. Any lawsuits against the seller threatening to or affecting this real property. ☐ Yes ☐ No

If the answer to any of these is yes, explain. (Attach additional sheets if necessary.): _____

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller _____ Date _____

Seller _____ Date _____

SAMPLE

III
AGENT'S INSPECTION DISCLOSURE

(To be completed only if the seller is represented by an agent in this transaction.)
THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

_____

Agent (Broker Representing Seller) _____ (PLEASE PRINT) By _____ (ASSOCIATE LICENSEE OR BROKER-SIGNATURE) Date _____

AGENT'S INSPECTION DISCLOSURE

(To be completed only if the agent who has obtained the offer is other than the agent above.)
THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

_____

Agent (Broker obtaining the Offer) _____ (PLEASE PRINT) By _____ (ASSOCIATE LICENSEE OR BROKER-SIGNATURE) Date _____

V

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller _____ Date _____ Buyer _____ Date _____

Seller _____ Date _____ Buyer _____ Date _____

Agent (Broker Representing Seller) _____ (PLEASE PRINT) By _____ (ASSOCIATE LICENSEE OR BROKER-SIGNATURE) Date _____

Agent (Broker obtaining the Offer) _____ (PLEASE PRINT) By _____ (ASSOCIATE LICENSEE OR BROKER-SIGNATURE) Date _____

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

This form is available for use by the entire real estate industry. The use of this form is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics.

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Page 2 of _____ Pages.

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Date _____

EQUAL HOUSING OPPORTUNITY

Article 1

MODE OF TRANSFER

Section

1093. Consolidation of separate and distinct legal descriptions into single instrument of conveyance or security document; effect on separate nature of property.

§ 1091. Method of transfer

Law Review and Journal Commentaries

Donative and interspousal transfers of community property in California: Where we are (or should be) after MacDonald. Jerry A. Kasner, 23 Pac.L.J. 361 (1991).

Notes of Decisions

10. —— Signature, formalities of execution

Under California law, valid grant of interest in real property does not require signature of grantee to be valid. In re Van Ness Associates, Ltd., Bkrtcy.N.D.Cal.1994, 173 B.R. 661.

Under California law, creditor's signature on amendment to deed of trust would be unnecessary, and amendment would be valid upon delivery by grantor, absent contrary requirement in deed of trust. In re Van Ness Associates, Ltd., Bkrtcy.N.D.Cal.1994, 173 B.R. 661.

12. Leases

In enacting statutes of frauds governing agreements that cannot be performed within one year generally and agreements to lease real property for period of more than one year, legislature intended that agreement to lease real property for term exceeding one year not be enforceable by lessee unless it is in writing and signed by lessor. Bed, Bath & Beyond of La Jolla, Inc. v. La Jolla Village Square Venture Partners (App. 4 Dist. 1997) 60 Cal. Rptr.2d 830, 52 Cal.App.4th 867.

§ 1093. Consolidation of separate and distinct legal descriptions into single instrument of conveyance or security document; effect on separate nature of property

Absent the express written statement of the grantor contained therein, the consolidation of separate and distinct legal descriptions of real property contained in one or more deeds, mortgages, patents, deeds of trust, contracts of sale, or other instruments of conveyance or security documents, into a subsequent single deed, mortgage, patent, deed of trust, contract of sale, or other instrument of conveyance or security document (whether by means of an individual listing of the legal descriptions in a subsequent single instrument of conveyance or security document, or by means of a consolidated legal description comprised of more than one previously separate and distinct legal description), does not operate in any manner to alter or affect the separate and distinct nature of the real property so described in the subsequent single instrument of conveyance or security document containing either the listing of or the consolidated legal description of the parcels so conveyed or secured thereby.

This section does not constitute a change in, but is declaratory of, the existing law.

(Added by Stats.1985, c. 911, § 1.)

§ 1095. Attorney in fact; execution of instruments

Notes of Decisions

2. Defective execution

Fact that debtor husband, acting as wife's attorney in fact in signing her name to deeds of trust, failed to comply with California statute requiring him to subscribe his own name as attorney in fact did not minimize his authority to bind wife to the deeds of trust where third-party banks reasonably relied on notarized acknowledgments of wife's signatures on the documents. In re Nelson, C.A.9 (Cal.)1985, 761 F.2d 1320.

Article 1.5

DISCLOSURES UPON TRANSFER OF RESIDENTIAL PROPERTY

Section

1102. Application of article; waiver of requirements.

1102.1. Legislative intent; Chapter 817 of Statutes of 1994; waiver of delivery of real estate disclosure statement.

1102.2. Nonapplication of article.

1102.3. Delivery of required written statement from transferor to prospective transferee; indication of compliance with article; disclosures delivered after offer to purchase; time to terminate.

1102.4. Errors, inaccuracies, or omissions of information delivered; liability of transferor; delivery of information by public agency; delivery of reports or opinions prepared by experts.

1102.5. Information subsequently rendered inaccurate; required information unknown or not available.

1102.6. Disclosure form.

1102.6a. Disclosure form.

1102.6b. Disclosure to prospective purchaser of continuing lien securing special tax levy.

1102.6c. Natural hazard disclosure statement; properties within hazardous areas.

1102.7. Good faith required.

1102.8. Specification of items for disclosure not limitation on other disclosure obligations.

1102.9. Amendment of disclosures.

1102.10. Delivery of disclosures; personal delivery or mail.

1102.11. Escrow agent not deemed agent for purposes of disclosure; exception.

1102.12. Licensed real estate brokers as agents in transaction; delivery of disclosure advising transferee of rights to disclosure; record.

1102.13. Failure to comply with article; transfer not invalidated; damages.

1102.14. Definitions.

1102.15. Former federal or state ordnance locations; definition.

1102.16. Window security bars and safety release mechanism; disclosure.

1102.17. Repealed.

Article 1.5 was added by Stats.1985, c. 1574, § 2, operative Jan. 1, 1987.

Cross References

Manufactured homes and mobilehomes, task force to propose changes to make Article 1.5 applicable to such housing, see Health and Safety Code § 18160.

Law Review and Journal Commentaries

Premises liability in California. Irwin E. Sandler, 15 L.A.Law. 38 (Jan. 1993).

§ 1102. Application of article; waiver of requirements

(a) Except as provided in Section 1102.2, this article applies to any transfer by sale, exchange installment land sale contract, as defined in Section 2985, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements, of real property, or residential stock cooperative, improved with or consisting of not less than one nor more than four dwelling units

(b) Except as provided in Section 1102.2, this article shall * * * apply to a resale transaction entered into on or after January 1, * * * 2000, for a manufactured home, as defined in Section 18007 of the Health and Safety Code, which is classified as personal property intended for use as a residence, or a mobilehome, as defined in Section 18008 of the Health and Safety Code, which is classified as personal property intended for use as a residence.

(c) Any waiver of the requirements of this article is void as against public policy.

(Added by Stats.1985, c. 1574, § 2, operative Jan. 1, 1987. Amended by Stats.1986, c. 460, § 1 Stats.1994, c. 817 (S.B.1377), § 1; Stats.1995, c. 335 (A.B.530), § 1; Stats.1996, c. 677 (S.B.1704), § 1 Stats.1997, c. 71 (S.B.384), § 1, eff. July 14, 1997; Stats.1998, c. 693 (S.B.1988), § 1.)

Historical and Statutory Notes

1985 Legislation

Section 3 of Stats.1985, c. 1574, provides:

"This act shall become operative on January 1, 1987."

1986 Legislation

The 1986 amendment included exchange, any other option to purchase and residential stock cooperative, and inserted "or consisting of".

1994 Legislation

The 1994 amendment designated the present text as subd. (a) and added subd. (b), relating to waiver of the requirements of the article.

1995 Legislation

The 1995 amendment, in subd. (a), substituted "Section 1102.2" for "Section 1102.1".

The Assembly Daily Journal for the 1995-96 Regular Session, page 4250, contained the following letter dated Dec. 1, 1995, from Assembly Member Weggeland regarding A.B.530 (Stats.1995, c. 335):

"I am writing to request that this letter be published in the Journal so as to resolve any possible doubt about my intent regarding my legislation.

"Earlier this year I authored Assembly Bill 530, Chapter 335 of the Statutes of 1995, to clarify and codify the

intent behind recent changes to the real estate transfer disclosure form. Among other clarifications to the form itself, those changes were accompanied by legislative intent language which became the subject of my legislation.

"It appears that no language can be without ambiguity. A question has been raised as to whether the bill is applicable to transactions beyond those subject to the residential disclosure law (Civil Code 1102 et seq.), and whether its use would then be required for disclosures that the applicable statute (Civil Code Sec. 1102.2) specifically lists as exempted from the act. Such an absurd and unfortunate result was never intended nor was it ever considered or discussed in the course of the bill's movement through the Legislature.

"I am aware that real estate licensees have occasionally used the agents' portion of the statutory transfer disclosure form to report upon transactions not subject to the form, but my legislation does not speak to this type of transaction or inspection. The main point of the existing intent language, which my bill only codified, was to make it clear that licensees obligations under Civil Code Sec. 2079 et seq. were *not* changed by making the transfer disclosure statement applicable to an 'as is' transaction.

"Thank you for your consideration and cooperation in setting the record straight."

1996 Legislation

The 1996 amendment inserted subd. (b), relating to resale of manufactured homes, and redesignated as subd. (c) former subd. (b).

1997 Legislation

The 1997 amendment, in subd. (b), inserted "which is classified as personal property" in two places and made nonsubstantive changes.

1998 Legislation

Stats.1998, c. 693, § 1, rewrote subd. (b) which formerly provided:

"(b) This article shall be applicable to the resale on or after January 1, 1999, of a manufactured home, as defined in Section 18007 of the Health and Safety Code, which is classified as personal property, or a mobilehome, as defined in Section 18008 of the Health and Safety Code, which is classified as personal property."

Cross References

Manufactured homes and mobilehomes, task force to propose changes to make Article 1.5 applicable to such housing, see Health and Safety Code § 18160.

§ 1102.1. Legislative intent; Chapter 817 of Statutes of 1994; waiver of delivery of real estate disclosure statement

In enacting Chapter 817 of the Statutes of 1994, it was the intent of the Legislature to clarify and facilitate the use of the real estate disclosure statement, as specified in Section 1102.6. The Legislature intended the statement to be used by * * * transferors making disclosures required * * * under this article and by agents making disclosures required by Section 2079 * * * on the agent's portion of the real estate disclosure statement, in transfers subject to this article. In transfers not subject to this article, agents may make required disclosures in a separate writing. The Legislature did not intend to * * * affect the existing obligations of the parties to a real estate contract, or their agents, to disclose any fact materially affecting the value and desirability of the property, including, but not limited to, the physical conditions of the property and previously received reports of physical inspections * * * noted on the disclosure form set forth in Section 1102.6 or 1102.6a, and that nothing in this article shall be construed to change the duty of a real estate broker or salesperson pursuant to Section 2079.

It is also the intent of the Legislature that the delivery of a real estate transfer disclosure statement may not be waived in an "as is" sale, as held in Loughrin v. Superior Court, 15 Cal.App.4th 1188. (Added by Stats.1995, c. 335 (A.B.530), § 2. Amended by Stats.1996, c. 240 (A.B.2383), § 1.)

Historical and Statutory Notes

1995 Legislation

Letter from legislator regarding A.B.530 (Stats.1995, c. 335), see Historical and Statutory Notes under Civil Code § 1102.

1996 Legislation

The 1996 amendment rewrote the first paragraph, which had read:

"In enacting Chapter 817 of the Statutes of 1994, it was the intent of the Legislature to clarify and facilitate the use of the real estate disclosure statement, as specified in Section 1102.6. The Legislature intended the statement to be used by both transferors making required disclosures and by agents making disclosures required by Section 2079; and the Legislature did not intend to adversely affect the existing obligations of the parties to a real estate contract, or their agents, to disclose any fact, including the physical conditions of the property and previously received reports of physical inspections, materially affecting the value and desirability of the property, and that nothing in this article shall be construed to change the duty of a real estate broker or salesperson pursuant to Section 2079."

Former § 1102.1 was renumbered Civil Code § 1102.2 and amended by Stats.1995, c. 335 (A.B.530) § 3.

§ 1102.2. Nonapplication of article

This article does not apply to the following:

(a) Transfers which are required to be preceded by the furnishing to a prospective transferee of a copy of a public report pursuant to Section 11018.1 of the Business and Professions Code and transfers which can be made without a public report pursuant to Section 11010.4 of the Business and Professions Code.

(b) Transfers pursuant to court order, including, but not limited to, transfers ordered by a probate court in administration of an estate, transfers pursuant to a writ of execution, transfers by any foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.

(c) Transfers to a mortgagee by a mortgagor or successor in interest who is in default, transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default, transfers by any foreclosure sale after default, transfers by any foreclosure sale after default in an obligation secured by a mortgage, transfers by a sale under a power of sale or any foreclosure sale under a decree of foreclosure after default in an obligation secured by a deed of trust or secured by any other instrument containing a power of sale, or transfers by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or has acquired the real property by a deed in lieu of foreclosure

(d) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.

(e) Transfers from one coowner to one or more other coowners.

(f) Transfers made to a spouse, or to a person or persons in the lineal line of consanguinity of one or more of the transferors.

(g) Transfers between spouses resulting from a judgment of dissolution of marriage or of lega separation or from a property settlement agreement incidental to such a judgment.

(h) Transfers by the Controller in the course of administering Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure.

(i) Transfers under Chapter 7 (commencing with Section 3691) or Chapter 8 (commencing with Sectior 3771) of Part 6 of Division 1 of the Revenue and Taxation Code.

(j) Transfers or exchanges to or from any governmental entity.

(Formerly § 1102.1, added by Stats.1985, c. 1574, § 2, operative Jan. 1, 1987. Amended by Stats.1986, c. 460, § 2; Stats.1992, c. 163 (A.B.2641), § 7, operative Jan. 1, 1994. Renumbered § 1102.2 and amended by Stats.1995, c. 335 (A.B.530), § 3.)

Law Revision Commission Comment

1992 Amendment

Subdivision (g) of Section 1102.1 is amended to substitute "judgment" for "decree" to conform to the terminology of the Family Code. [22 Cal.L.Rev.Comm.Reports 1 (1992)].

Historical and Statutory Notes

1985 Legislation

For operative provision of Stats.1985, c. 1574, see note under § 1102.

1986 Legislation

The 1986 amendment made subds. (b) and (c) applicable to transfers by any foreclosure sale after default or under decree of foreclosure; inserted "or successor in interest who is" twice in subd. (c); and included exchanges in subd. (j).

1992 Legislation

The 1992 amendment made changes to conform with the enactment of the Family Code by Stats.1992, c. 162.

1995 Legislation

The 1995 amendment amended and renumbered the section without change in the text.

Letter from legislator regarding A.B.530 (Stats.1995, c 335), see Historical and Statutory Notes under Civil Code § 1102.

Former § 1102.2 was renumbered Civil Code § 1102.3 and amended by Stats.1995, c. 335 (A.B.530) § 4.

§ 1102.3. Delivery of required written statement from transferor to prospective transferee; indication of compliance with article; disclosures delivered after offer to purchase; time to terminate

The transferor of any real property subject to this article shall deliver to the prospective transferee the written statement required by this article, as follows:

(a) In the case of a sale, as soon as practicable before transfer of title.

(b) In the case of transfer by a real property sales contract, as defined in Section 2985, or by a lease together with an option to purchase, or a ground lease coupled with improvements, as soon as practicable before execution of the contract. For the purpose of this subdivision, "execution" means the making or acceptance of an offer.

With respect to any transfer subject to subdivision (a) or (b), the transferor shall indicate compliance with this article either on the receipt for deposit, the real property sales contract, the lease, or any addendum attached thereto or on a separate document.

If any disclosure, or any material amendment of any disclosure, required to be made by this article, is delivered after the execution of an offer to purchase, the transferee shall have three days after delivery in person or five days after delivery by deposit in the mail, to terminate his or her offer by delivery of a written notice of termination to the transferor or the transferor's agent.

(Formerly § 1102.2, added by Stats.1985, c. 1574, § 2, operative Jan. 1, 1987. Amended by Stats.1986, c. 460, § 3. Renumbered § 1102.3 and amended by Stats.1995, c. 335 (A.B.530), § 4.)

Historical and Statutory Notes

1985 Legislation

For operative provision of Stats.1985, c. 1574, see note under § 1102.

1986 Legislation

The 1986 amendment inserted "as soon as practicable" in the first sentence and defined "execution" in subd. (b).

1995 Legislation

The 1995 amendment amended and renumbered the section without change in the text.

Letter from legislator regarding A.B.530 (Stats.1995, c. 335), see Historical and Statutory Notes under Civil Code § 1102.

§ 1102.4. Errors, inaccuracies, or omissions of information delivered; liability of transferor; delivery of information by public agency; delivery of reports or opinions prepared by experts

(a) Neither the transferor nor any listing or selling agent shall be liable for any error, inaccuracy, or omission of any information delivered pursuant to this article if the error, inaccuracy, or omission was not within the personal knowledge of the transferor or that listing or selling agent, was based on information timely provided by public agencies or by other persons providing information as specified in subdivision (c) that is required to be disclosed pursuant to this article, and ordinary care was exercised in obtaining and transmitting it.

(b) The delivery of any information required to be disclosed by this article to a prospective transferee by a public agency or other person providing information required to be disclosed pursuant to this article shall be deemed to comply with the requirements of this article and shall relieve the transferor or any listing or selling agent of any further duty under this article with respect to that item of information.

(c) The delivery of a report or opinion prepared by a licensed engineer, land surveyor, geologist, structural pest control operator, contractor, or other expert, dealing with matters within the scope of the professional's license or expertise, shall be sufficient compliance for application of the exemption provided by subdivision (a) if the information is provided to the prospective transferee pursuant to a request therefor, whether written or oral * * *. In responding to such a request, an expert may indicate, in writing, an understanding that the information provided will be used in fulfilling the requirements of Section 1102.6 and, if so, shall indicate the required disclosures, or parts thereof, to which the information being furnished is applicable. Where such a statement is furnished, the expert shall not be responsible for any items of information, or parts thereof, other than those expressly set forth in the statement.

(Added by Stats.1985, c. 1574, § 2, operative Jan. 1, 1987. Amended by Stats.1986, c. 460, § 4.)

Historical and Statutory Notes

1985 Legislation

For operative provision of Stats.1985, c. 1574, see note under § 1102.

1986 Legislation

The 1986 amendment substituted "transferor or listing or selling agent" for "transferor or his or her agent" throughout the section.

§ 1102.5. Information subsequently rendered inaccurate; required information unknown or not available

If information disclosed in accordance with this article is subsequently rendered inaccurate as a result of any act, occurrence, or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this article. If at the time the disclosures are required to be made, an item of information required to be disclosed is unknown or not available to the transferor, and the transferor or his or her agent has made a reasonable effort to ascertain it, the transferor may use an approximation of the information, provided the approximation is clearly identified as such, is reasonable, is based on the best information available to the transferor or his or her agent, and is not used for the purpose of circumventing or evading this article.

(Added by Stats.1985, c. 1574, § 2, operative Jan. 1, 1987.)

Historical and Statutory Notes

1985 Legislation

For operative provision of Stats.1985, c. 1574, see note under § 1102.

Notes of Decisions

Duty to investigate 1

1. Duty to investigate

Relocation management service that sold residential property to purchasers had no common law or statutory duty to investigate former property owners' disclosure statement which failed to mention disturbing noises and commotion caused by next door neighbors; sales agreement contained express disclaimer stating that relocation service had no personal knowledge of property and made no representations concerning property, purchaser assumed burden to investigate under agreement, and relocation service had no reason to doubt disclosure statement. Shapiro v. Sutherland (App. 2 Dist. 1998) 76 Cal.Rptr.2d 101, 64 Cal.App.4th 1534.

§ 1102.6. Disclosure form

The disclosures required by this article pertaining to the property proposed to be transferred are set forth in, and shall be made on a copy of, the following disclosure form:

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF _____, COUNTY OF _____, STATE OF CALIFORNIA, DESCRIBED AS _____. THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH SECTION 1102 OF THE CIVIL CODE AS OF _____, 19___. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I

COORDINATION WITH OTHER DISCLOSURE FORMS

This Real Estate Transfer Disclosure Statement is made pursuant to Section 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zone and purchase-money liens on residential property).

Substituted Disclosures: The following disclosures have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same:

☐ Inspection reports completed pursuant to the contract of sale or receipt for deposit.
☐ Additional inspection reports or disclosures:

_____
_____
_____

SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller___is ___is not occupying the property.

A. The subject property has the items checked below (read across):

__Range	__Oven	__Microwave
__Dishwasher	__Trash Compactor	__Garbage Disposal
__Washer/Dryer Hookups	* * *	__Rain Gutters
__Burglar Alarms	__Smoke Detector(s)	__Fire Alarm
__ TV Antenna	__Satellite Dish	__Intercom
__Central Heating	__Central Air Cndtng.	__Evaporator Cooler(s)
__Wall/Window Air Cndtng.	__Sprinklers	__Public Sewer System
__Septic Tank	__Sump Pump	__Water Softener
__Patio/Decking	__Built-in Barbecue	__Gazebo
__Sauna	* * *	* * *
__ Hot Tub __Locking Safety Cover*	__ Pool __Child Resistant Barrier*	__ Spa __Locking Safety Cover*
__Security Gate(s)	__Automatic Garage Door Opener(s)*	__Number Remote Controls
Garage: __Attached	__Not Attached	__Carport
Pool/Spa Heater: __Gas	__Solar	__Electric
Water Heater: __Gas	__ Water Heater Anchored, Braced, or Strapped*	__Private Utility or Other____
Water Supply: __City	__Well	
Gas Supply: __Utility	__Bottled	
__ Window Screens	__ Window Security Bars __Quick Release Mechanism on Bedroom Windows*	

Exhaust Fan(s) in _____ 220 Volt Wiring in _____ Fireplace(s) in _____
Gas Starter _____ Roof(s): Type: _____ Age: _____ (approx.)
Other:_____

Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? __Yes __No.
If yes, then describe.
(Attach additional sheets if necessary):_____

B. Are you (Seller) aware of any significant defects/malfunctions in any of the following? __Yes __No. If yes, check appropriate space(s) below.

__Interior Walls __Ceilings __Floors __Exterior Walls __Insulation __Roof(s) __Windows __Doors __Foundation __Slab(s) __Driveways __Sidewalks __Walls/Fences __Electrical Systems __Plumbing/Sewers/Septics __Other Structural Components (Describe:_____)

If any of the above is checked, explain. (Attach additional sheets if necessary):_____

* This garage door opener or child resistant pool barrier may not be in compliance with the safety standards relating to automatic reversing devices as set forth in Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of, or with the pool safety standards of Article 2.5 (commencing with Section 115920) of Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code. The water heater may not be anchored, braced, or strapped in accordance with Section 19211 of the Health and Safety Code. Window security bars may not have quick-release mechanisms in compliance with the 1995 Edition of the California Building Standards Code.

C. Are you (Seller) aware of any of the following:

1. Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, and contaminated soil or water on the subject property __Yes __No
2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property ..... __Yes __No
3. Any encroachments, easements or similar matters that may affect your interest in the subject property ..... __Yes __No
4. Room additions, structural modifications, or other alterations or repairs made without necessary permits ..... __Yes __No
5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes ..... __Yes __No
6. Fill (compacted or otherwise) on the property or any portion thereof ..... __Yes __No
7. Any settling from any cause, or slippage, sliding, or other soil problems ..... __Yes __No

8. Flooding, drainage or grading problems ..... __Yes __No
9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides ..... __Yes __No
10. Any zoning violations, nonconforming uses, violations of "setback" requirements ..... __Yes __No
11. Neighborhood noise problems or other nuisances ..... __Yes __No
12. CC&R's or other deed restrictions or obligations ..... __Yes __No
13. Homeowners' Association which has any authority over the subject property ..... __Yes __No
14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas coowned in undivided interest with others) ..... __Yes __No
15. Any notices of abatement or citations against the property ..... __Yes __No
16. Any lawsuits by or against the seller threatening to or affecting this real property, including any lawsuits alleging a defect or deficiency in this real property or "common areas" (facilities such as pools, tennis courts, walkways, or other areas coowned in undivided interest with others) ..... __Yes __No

If the answer to any of these is yes, explain. (Attach additional sheets if necessary.):_____

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller_____ Date_____
Seller_____ Date_____

III [1]

AGENT'S INSPECTION DISCLOSURE

(To be completed only if the Seller is represented by an agent in this transaction.)

THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure.
☐ Agent notes the following items:

Agent (Broker Representing Seller) _____ By _____ Date_____
(Please Print) (Associate Licensee or Broker-Signature)

IV

AGENT'S INSPECTION DISCLOSURE

(To be completed only if the agent who has obtained the offer is other than the agent above.)

THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure.
☐ Agent notes the following items:

Agent (Broker obtaining the Offer) _____ By _____ Date_____
(Please Print) (Associate Licensee or Broker-Signature)

V

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller_____ Date_____ Buyer_____ Date_____
Seller_____ Date_____ Buyer_____ Date_____

Agent (Broker Representing Seller) _____ By _____ Date_____
(Associate Licensee or Broker–Signature)

Agent (Broker obtaining the Offer) _____ By _____ Date_____
(Associate Licensee or Broker–Signature)

SECTION 1102.3 OF THE CIVIL CODE PROVIDES A BUYER WITH THE RIGHT TO RESCIND A PURCHASE CONTRACT FOR AT LEAST THREE DAYS AFTER THE DELIVERY OF THIS DISCLOSURE IF DELIVERY OCCURS AFTER THE SIGNING OF AN OFFER TO PURCHASE. IF YOU WISH TO RESCIND THE CONTRACT, YOU MUST ACT WITHIN THE PRESCRIBED PERIOD.

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

(Added by Stats.1985, c. 1574, § 2, operative Jan. 1, 1987. Amended by Stats.1986, c. 460, § 5; Stats.1989, c. 171, § 1; Stats.1990, c. 1336 (A.B.3600), § 2, operative July 1, 1991; Stats.1994, c. 817 (S.B.1377), § 2; Stats.1996, c. 240 (A.B.2383), § 2; Stats.1996, c. 925 (A.B.3305), § 1; Stats.1996, c. 926 (A.B.3026), § 1.5, operative July 1, 1997.)

[1] Enrolled bill contains no II.

Historical and Statutory Notes

1985 Legislation

For operative provision of Stats.1985, c. 1574, see note under § 1102.

1986 Legislation

The 1986 amendment inserted the first sentence in the introductory paragraph of the form; changed the parenthetical matter in I from "(for example: geologic hazard zones, creative financing, and structural alterations or additions)" to "(for example: special study zone and purchase-money liens on residential property)"; inserted "substituted" in the parenthetical phrase at end of I; included, in II A, gas supply and gas starter matter; inserted insulation in B; inserted item 11 in II C and renumbered former items 11 to 14 accordingly; moved the former second paragraph of III to be the beginning paragraph of V; substituted "the seller" for "the principals" in the parenthetical first sentence of III; added "THE UNDERSIGNED"; deleted references to an agent in the first paragraph in III, and substituted "Agent (Broker Representing Seller)" for "Real Estate Broker" and added "or Broker" after "Associate Licensee" in the signature line in III and in the third line of the acknowledgement in V; inserted a new IV and renumbered former IV to V; and added the fourth signature line in V.

1989 Legislation

The 1989 amendment, in the transfer disclosure statement, in Part II, added paragraph 1 of subd. C relating to materials or products which may be environmentally hazardous; and made nonsubstantive changes throughout.

1990 Legislation

Section 4 of Stats.1990, c. 1336 (A.B.3600), provides:

"Section 2 of this act shall be operative on July 1, 1991."

The 1990 amendment, in the Sellers Information part of the statement, substituted "Automatic Garage Door Opener(s)*" for "Garage Door Opener(s)" in the list in par. A. and added the footnote on garage door openers.

1994 Legislation

The 1994 amendment, in I, inserted "Inspection reports completed pursuant to the contract of sale or receipt for deposit." and "Additional inspection reports or disclosures:"; deleted "II" prior to the second heading; in the heading "SELLERS INFORMATION", substituted "SELLER'S" for "SELLERS"; in C 4 and C 5 under the heading SELLER'S INFORMATION, substituted "Room" for "Rooms"; in C 6 under the heading SELLER'S INFORMATION, substituted "Fill" for "Landfill"; in C 16 under the heading SELLER'S INFORMATION, inserted "by or" following "lawsuits" and ", including any lawsuits alleging a defect or deficiency in this real property or 'common areas' (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)" following "property"; in the heading for III, substituted "AGENT'S" for "AGENTS"; in III, inserted "Agent notes no items for disclosure." and "Agent notes the following items:"; in the heading for IV, substituted "AGENT'S" for "AGENTS"; in IV, inserted "Agent notes no items for disclosure." and "Agent notes the following items:"; and in V following the signature lines, inserted the paragraph relating to the right to rescind under Civil Code § 1102.2.

Section 3 of Stats.1994, c. 817 (S.B.1377), provides:

"It is the intent of the Legislature to clarify and facilitate the use of the real estate disclosure statement specified in Section 1102.6 of the Civil Code. The Legislature does not intend to adversely affect the existing obligations of the parties to a real estate contract, including their agents, to disclose any fact, including the physical conditions of the property and previously received reports of physical inspections, materially affecting the value and desirability of the property.

"It is also the intent of the Legislature that the delivery of a real estate transfer disclosure statement may not be waived in an 'as is' sale, as was held in Loughrin v. Superior Court (1993), 15 Cal. App. 4th 1188."

1996 Legislation

The 1996 amendment, in the portion of the form designated as Seller's Information, rewrote Parts (A) and (B); and substituted the reference to Civil Code § 1102.3 for the reference to Civil Code § 1102.2 in the last paragraph of Part V of the form. Prior to the 1996 amendment, Parts (A) and (B) in the Seller's Information portion of the form had read:

"A. The subject property has the items checked below (read across):

__Range	__Oven	__Microwave
__Dishwasher	__Trash Compactor	__Garbage Disposal
__Washer/Dryer Hookups	__Window Screens	__Rain Gutters
__Burglar Alarms	__Smoke Detector(s)	__Fire Alarm
__T.V. Antenna	__Satellite Dish	__Intercom
__Central Heating	__Central Air Cndtng.	__Evaporator Cooler(s)
__Wall/Window Air Cndtng.	__Sprinklers	__Public Sewer System
__Septic Tank	__Sump Pump	__Water Softener
__Patio/Decking	__Built-in Barbeque	__Gazebo
__Sauna	__Pool	__Spa __Hot Tub
__Security Gate(s)	__Automatic Garage Door Opener(s)*	__Number Remote Controls
Garage: __Attached	__Not Attached	__Carport
Pool/Spa Heater: __Gas	__Solar	__Electric
Water Heater: __Gas		__Private Utility or Other_____
Water Supply: __City	__Well	
Gas Supply: __Utility	__Bottled	

"Exhaust Fan(s) in _____ 220 Volt Wiring in _____ Fireplace(s) in _____
"Gas Starter _____ Roof(s): Type: _____ Age: _____ (approx.)
"Other: _____

"Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? __Yes __No. If yes, then describe.

(Attach additional sheets if necessary): _____

"B. Are you (Seller) aware of any significant defects/malfunctions in any of the following? __Yes __No. If yes, check appropriate space(s) below.

__Interior Walls __Ceilings __Floors __Exterior Walls __Insulation __Roof(s) __Windows __Doors __Foundation __Slab(s) __Driveways __Sidewalks __Walls/Fences __Electrical Systems __Plumbing/Sewers/Septics __Other
Structural Components (Describe: _____)

"If any of the above is checked, explain. (Attach additional sheets if necessary): _____

"* This garage door opener may not be in compliance with the safety standards relating to automatic reversing devices as set forth in Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of the Health and Safety Code."

Section 5 of Stats.1996, c. 926 (A.B.3026), provides:

"Section 1.5 of this bill incorporates amendments to Section 1102.6 of the Civil Code proposed by both this bill [operative July 1, 1997] and AB 3305 [Stats.1996, c. 925, which amends and, operative July 1, 1997, repeals and adds § 1102.6]. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 1102.6 of the Civil Code, and (3) this bill is enacted after AB 3305, in which case Section 1 of this bill shall not become operative."

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Cross References

Water heater strapping, certification of earthquake resistance, see Health and Safety Code § 19211.

Law Review and Journal Commentaries

Review of selected 1989 California legislation. 21 Pac. L.J. 537 (1990).

Notes of Decisions

"As is" provisions 4
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1. Duty to disclose

Residential property owners had common law and statutory obligation in connection with sale of the property to make full disclosure regarding disturbing noises and commotion caused by next door neighbors, assuming such noises and commotion actually occurred and were of sufficient import to materially affect value or desirability of their property. Shapiro v. Sutherland (App. 2 Dist. 1998) 76 Cal.Rptr.2d 101, 64 Cal.App.4th 1534.

Residential property owners who, through employer's relocation program, sold their property to relocation management service could be liable under statute and common law to subsequent purchaser for failure to disclose neighborhood noise problem, despite lack of privity between owners and purchaser; owners knew or should have known that relocation service intended to sell property as quickly as possible and owners had every reason to expect that their written statutory disclosure statement would be delivered to a purchaser when such purchaser was located. Shapiro v. Sutherland (App. 2 Dist. 1998) 76 Cal. Rptr.2d 101, 64 Cal.App.4th 1534.

Vendor had duty to disclose information materially affecting value or desirability of property. Kovich v. Paseo Del Mar Homeowners' Assn. (App. 2 Dist. 1996) 48 Cal. Rptr.2d 758, 41 Cal.App.4th 863.

Vendor and his broker must reveal all factual matters bearing upon quality of property being sold which might be detrimental to value, including that property was constructed on filled land, that structure was in violation of building codes or zoning ordinances, that structure had been condemned, or that it was termite ridden. Sweat v. Hollister (App. 4 Dist. 1995) 43 Cal.Rptr.2d 399, 37 Cal. App.4th 603, modified on denial of rehearing, review denied.

Although neighborhood noise problems and nuisances caused by neighbor would be eliminated by compliance with injunction restricting neighbor's activities, Civil Code would require property owners to disclose to prospective purchasers in real estate transfer disclosure statement that there were "neighborhood noise problems and other nuisances." Alexander v. McKnight (App. 4 Dist. 1992) 9 Cal.Rptr.2d 453, 7 Cal.App.4th 973.

If seller of residential property knows of facts materially affecting value or desirability of property which are known or accessible only to seller and seller also knows that such facts are not known to or within reach of diligent attention and observation of buyer, seller is under duty to disclose them to buyer. Alexander v. McKnight (App. 4 Dist. 1992) 9 Cal.Rptr.2d 453, 7 Cal.App.4th 973.

2. Failure to disclose

Residential property purchasers could not rely, as part of property purchase contract, upon vendor's statement on statutory disclosure form that vendor was unaware of any building code violations respecting property; form stated that it was not warranty of any kind by vendor and was not intended to be part of any contract between vendor and purchaser. Brasier v. Sparks (App. 3 Dist. 1993) 22 Cal.Rptr.2d 1, 17 Cal.App.4th 1756, as modified.

Alleged misrepresentations regarding foundation of house in fixer-upper language in advertisement, seller's agent's disclosure that he was not aware of any settling or other soil problems, and his failure to disclose that he was aware of any significant defects in foundation were not "assertions," required as element of negligent misrepresentation claim by purchasers; statements, at best, made only implied references to foundation, and alleged representations by omission were too remote for positive assertion requirement. Wilson v. Century 21 Great Western Realty (App. 1 Dist. 1993) 18 Cal.Rptr.2d 779, 15 Cal. App.4th 298, rehearing denied, review denied.

Failure to disclose negative fact when it can reasonably be said to have foreseeable depressing effect on value of property is tortious. Alexander v. McKnight (App. 4 Dist. 1992) 9 Cal.Rptr.2d 453, 7 Cal.App.4th 973.

3. Waiver

Purchaser may waive rights to disclosure under statute dealing with residential real estate transfers, as long as such waiver is knowing and explicit. Loughrin v. Superior Court (App. 4 Dist. 1993) 19 Cal.Rptr.2d 161, 15 Cal.App.4th 1188, modified on denial of rehearing.

4. "As is" provisions

Sale of real property "as is" is not equivalent of waiver of potential claims of common-law misrepresentation; "as is" sale simply means that purchaser accepts property in condition visible or observable by him, and although added provision in waiver clause indicating that buyer relies on his inspection of property presumably waives any obligation vendor or his broker may otherwise have to inspect

property for defects, and hence may avoid claim for negligent failure to know of and advise of such defects, augmented "as is" clause will not protect against claims of intentional misrepresentation, fraudulent concealment, or negligent concealment not related to failure to inspect. Loughrin v. Superior Court (App. 4 Dist. 1993) 19 Cal. Rptr.2d 161, 15 Cal.App.4th 1188, modified on denial of rehearing.

Use of "as is" clause in printed addendum to real estate sales contract did not insulate vendor from claims based upon statutory disclosure requirements where body of contract specifically referred to statutory disclosure statement and, by checked boxes, provided that vendor would furnish purchaser with such statement within five calendar days after purchaser's acceptance of contract, obligation to provide disclosure statement was restated in separate paragraph in same addendum which contained "as is" provision, and escrow instructions subsequently executed also provided that vendor was to provide transfer disclosure statement. Loughrin v. Superior Court (App. 4 Dist. 1993) 19 Cal.Rptr.2d 161, 15 Cal.App.4th 1188, modified on denial of rehearing.

5. Ordinances

Vendors and their brokers, having disclosed that house was in flood plain, had no further obligation to disclose that property was subject to restrictions on improvement or alteration in event of partial destruction; existence and effect of city ordinances regulating rebuilding or improvement of house in flood plain was information as readily available to purchasers as to vendors and their brokers. Sweat v. Hollister (App. 4 Dist. 1995) 43 Cal.Rptr.2d 399, 37 Cal.App.4th 603, modified on denial of rehearing, review denied.

6. Legal ramifications

Legal ramifications of factual nature of realty, and conclusion as to how they may adversely impact value, is not a "fact" subject to vendor's disclosure obligation. Sweat v. Hollister (App. 4 Dist. 1995) 43 Cal.Rptr.2d 399, 37 Cal.App.4th 603, modified on denial of rehearing, review denied.

7. Nuisances

A domestic violence shelter does not constitute a nuisance the existence of which must be disclosed by the seller of residential property. 79 Op.Atty.Gen. 112, June 20, 1996.

§ 1102.6a. Disclosure form

(a) On and after July 1, 1990, any city or county may elect to require disclosures on the form set forth in subdivision (b) in addition to those disclosures required by Section 1102.6. However, this section does not affect or limit the authority of a city or county to require disclosures on a different disclosure form in connection with transactions subject to this article pursuant to an ordinance adopted prior to July 1, 1990. Such an ordinance adopted prior to July 1, 1990, may be amended thereafter to revise the disclosure requirements of the ordinance, in the discretion of the city council or county board of supervisors.

(b) Disclosures required pursuant to this section pertaining to the property proposed to be transferred, shall be set forth in, and shall be made on a copy of, the following disclosure form:

LOCAL OPTION

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF _____, COUNTY OF _____, STATE OF CALIFORNIA, DESCRIBED AS _____. THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH ORDINANCE NO. _____ OF THE _____ CITY OR COUNTY CODE AS OF _____, 19___. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I

SELLERS INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AS REQUIRED BY THE CITY OR COUNTY OF _____. AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY, THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

1. _____

_____

_____

_____

2. _____

_____

_____

_____

(Example: Adjacent land is zoned for timber production which may be subject to harvest.)

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller _____ Date _____
Seller _____ Date _____

II

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller _____ Date _____ Buyer _____ Date _____
Seller _____ Date _____ Buyer _____ Date _____

Agent (Broker Representing Seller) _____ By _____ Date _____
(Associate Licensee or Broker-Signature)

Agent (Broker Obtaining the Offer) _____ By _____ Date _____
(Associate Licensee or Broker-Signature)

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

(c) This section does not preclude the use of addenda to the form specified in subdivision (b) to facilitate the required disclosures. This section does not preclude a city or county from using the disclosure form specified in subdivision (b) for a purpose other than that specified in this section.

(Added by Stats.1989, c. 171, § 2.)

Cross References

Water heater strapping, certification of earthquake resistance, see Health and Safety Code § 19211.

Law Review and Journal Commentaries

Review of selected 1989 California legislation. 21 Pac. L.J. 537 (1990).

§ 1102.6b. Disclosure to prospective purchaser of continuing lien securing special tax levy

(a) This section applies to all transfers of real property for which all of the following apply:

(1) The transfer is subject to this article.

(2) The property being transferred is subject to a continuing lien securing the levy of special taxes pursuant to the Mello-Roos Community Facilities Act (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code).

(3) A notice is not required pursuant to Section 53341.5 of the Government Code.

(b) In addition to other disclosure required pursuant to this article, the seller of any real property subject to this section shall make a good faith effort to obtain a disclosure notice concerning the special tax as provided for in Section 53340.2 of the Government Code from each local agency which levies a special tax pursuant to the Mello-Roos Community Facilities Act on the property being transferred, and

shall deliver that notice or those notices to the prospective purchaser, as long as the notices are made available by the local agency.

(c) If a disclosure received pursuant to subdivision (b) has been delivered to the transferee, a seller or his or her agent is not required to provide additional information concerning, and information in the disclosure shall be deemed to satisfy the responsibility of the seller or his or her agent to inform the transferee regarding the special tax and the district. Notwithstanding subdivision (b), nothing in this section imposes a duty to discover a special tax or district not actually known to the agents.

(Added by Stats.1992, c. 772 (S.B.1464), § 1.3, operative July 1, 1993.)

Law Review and Journal Commentaries

Review of selected 1992 California legislation. 24 Pac. L.J. 1019 (1993).

§ 1102.6c. Natural hazard disclosure statement; properties within hazardous areas

(a) This section shall apply only to any real property that is subject to one or more of the following:

(1) Section 8589.3 of the Government Code.

(2) Section 8589.4 of the Government Code.

(3) Section 51183.5 of the Government Code.

(4) Section 2621.9 of the Public Resources Code.

(5) Section 2694 of the Public Resources Code.

(6) Section 4136 of the Public Resources Code.

(b) In addition to the disclosure required pursuant to Section 1102.6, the transferor of any real property that is subject to this section, or his or her agent, shall deliver to the prospective transferee the following natural hazard disclosure statement:

NATURAL HAZARD DISCLOSURE STATEMENT

This statement applies to the following property: _____

The seller and his or her agent(s) disclose the following information with the knowledge that even though this is not a warranty, prospective buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this action to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

The following are representations made by the seller and his or her agent(s) based on their knowledge and maps drawn by the state. This information is a disclosure and is not intended to be part of any contract between the buyer and the seller.

THIS REAL PROPERTY LIES WITHIN THE FOLLOWING HAZARDOUS AREA(S):

A SPECIAL FLOOD HAZARD AREA (Any type Zone 'A' or 'V') designated by the Federal Emergency Management Agency.

Yes _____ No _____ Do not know and information not available from local jurisdiction _____

AN AREA OF POTENTIAL FLOODING shown on a dam failure inundation map pursuant to Section 8589.5 of the Government Code.

Yes _____ No _____ Do not know and information not available from local jurisdiction _____

A VERY HIGH FIRE HAZARD SEVERITY ZONE pursuant to Section 51178 or 51179 of the Government Code. The owner of this property is subject to the maintenance requirements of Section 51182 of the Government Code.

Yes _____ No _____

A WILDLAND AREA THAT MAY CONTAIN SUBSTANTIAL FOREST FIRE RISKS AND HAZARDS pursuant to Section 4125 of the Public Resources Code. The owner of this property is subject to the maintenance requirements of Section 4291 of the Public Resources Code. Additionally, it is not the state's responsibility to provide fire protection services to any building or structure located within the wildlands unless the Department of Forestry and Fire Protection has entered into a cooperative agreement with a local agency for those purposes pursuant to Section 4142 of the Public Resources Code.

Yes _____ No _____
AN EARTHQUAKE FAULT ZONE pursuant to Section 2622 of the Public Resources Code.
Yes _____ No _____
A SEISMIC HAZARD ZONE pursuant to Section 2696 of the Public Resources Code.
Yes (Landslide Zone) _____ Yes (Liquefaction Zone) ____
No _____ Map not yet released by state _____

THESE HAZARDS MAY LIMIT YOUR ABILITY TO DEVELOP THE REAL PROPERTY, TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER A DISASTER.

THE MAPS ON WHICH THESE DISCLOSURES ARE BASED ESTIMATE WHERE NATURAL HAZARDS EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A PROPERTY WILL BE AFFECTED BY A NATURAL DISASTER. BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING THOSE HAZARDS AND OTHER HAZARDS THAT MAY AFFECT THE PROPERTY.

Seller represents that the information herein is true and correct to the best of the seller's knowledge as of the date signed by the seller.

Signature of Seller _____ Date _____
Agent represents that the information herein is true and correct to the best of the agent's knowledge as of the date signed by the agent.
Signature of Agent _____ Date _____
Signature of Agent _____ Date _____
Buyer represents that he or she has read and understands this document.
Signature of Buyer _____ Date _____

(c) If an earthquake fault zone, seismic hazard zone, very high fire hazard severity zone, or wildland fire area map or accompanying information is not of sufficient accuracy or scale that a reasonable person can determine if the subject real property is included in a natural hazard area, the seller or seller's agent shall mark "Yes" on the Natural Hazard Disclosure Statement. The seller or seller's agent may mark "No" on the Natural Hazard Disclosure Statement if he or she attaches a report prepared pursuant to subdivision (c) of Section 1102.4 that verifies the property is not in the hazard zone. Nothing in this subdivision is intended to limit or abridge any existing duty of the seller or the seller's agents to exercise reasonable care in making a determination under this subdivision.

(d) The disclosure required pursuant to this section may be provided by the seller and seller's agent in the Local Option Real Estate Disclosure Statement provided that the Local Option Real Estate Disclosure Statement includes substantially the same information and substantially the same warning that is required by this section.

(e) The disclosure required pursuant to this section is only a disclosure between the seller, the seller's agents, and the buyer, and shall not be used by any other party, including, but not limited to, insurance companies, lenders, or governmental agencies, for any purpose.

(f) The specification of items for disclosure in this section does not limit or abridge any obligation for disclosure created by any other provision of law or that may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction.

(g) In any transaction in which a seller has accepted, prior to June 1, 1998, an offer to purchase, the seller, or his or her agent, shall be deemed to have complied with the requirement of subdivision (b) if the seller or agent delivers to the prospective transferee a statement that includes substantially the same information and warning as the Natural Hazard Disclosure Statement.

(Added by Stats.1998, c. 65 (A.B.1195), § 2, eff. June 9, 1998.)

Historical and Statutory Notes

1998 Legislation

Sections 17, 18, 20, and 21 of Stats.1998, c. 65, provide:

"Sec. 17. The Legislature finds and declares that state law requires several different state departments and agencies to conduct natural hazard mapping and information programs, based on their respective scientific and professional competencies. The Legislature finds and declares that city and county planning agencies sometimes have difficulty using the maps and information produced by state departments and agencies regarding natural hazards because the maps may be at different scales, use different projections, or are otherwise incompatible. The Legislature finds and declares that the lack of compatible maps sometimes makes it difficult for city and county planning agencies to make information regarding natural hazards readily available to landowners, their agents, and the public. Therefore, the Legislature finds and declares that there is a need for state officials to coordinate their natural hazard mapping and information programs to make them more effective. The Legislature encourages the Secretary of the Resources Agency to provide coordination and leadership among the state departments and agencies that conduct natural hazard mapping and information programs.

"Sec. 18. The provisions of this act shall become operative on June 1, 1998, except that Sections 1, 3, 6, and 10 shall be operative upon the effective date of Chapter 7 of the Statutes of 1997, First Extraordinary Session [Chapter 7 was effective Dec. 13, 1997]."

"Sec. 20. It is the intent of the Legislature that the provisions of this act shall supersede the provisions of Chapter 7 of the Statutes of 1997, First Extraordinary Session, in their entirety and, to that intent, the provisions of that chapter shall not become operative.

"Sec. 21. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect [June 9, 1998]. The facts constituting the necessity are:

"In order to resolve ambiguity regarding the effective date for important real estate disclosures and to ensure that comprehensive disclosure of information regarding risk of natural disaster hazards is made available to prospective homebuyers, it is necessary that this act take effect immediately."

Another § 1102.6c, added by Stats.1997-98, 1st Ex. Sess., c. 7 (A.B.6), § 1, relating to natural hazard disclosure statements, was repealed by Stats.1998, c. 65 (A.B. 1195), § 1. See this section.

Section 14 of Stats.1997-98, 1st Ex.Sess., c. 7 (A.B.6), eff. Dec. 13, 1997, provided:

"Sections 1, 2, 4, 7, 8, 9, 10, 11, and 12 of this act shall become operative on March 1, 1998."

The title of act of Stats.1998, c. 2 (S.B.71), an urgency statute eff. Feb. 28, 1998, provides:

"AN ACT to amend Section 14 of Chapter 7 of the 1997-98 First Extraordinary Session, relating to natural hazards, and declaring the urgency thereof, to take effect immediately."

The first paragraph following the enacting clause of Stats.1997, c. 2 (S.B.71), provides:

"Sec. 14. Sections 1, 2, 4, 7, 8, 9, 10, 11, and 12 of Chapter 7 of the 1997-98 First Extraordinary Session shall become operative on June 1, 1998."

§ 1102.7. Good faith required

Each disclosure required by this article and each act which may be performed in making the disclosure, shall be made in good faith. For purposes of this article, "good faith" means honesty in fact in the conduct of the transaction.

(Added by Stats.1985, c. 1574, § 2, operative Jan. 1, 1987.)

Historical and Statutory Notes

1985 Legislation

For operative provision of Stats.1985, c. 1574, see note under § 1102.

§ 1102.8. Specification of items for disclosure not limitation on other disclosure obligations

The specification of items for disclosure in this article does not limit or abridge any obligation for disclosure created by any other provision of law or which may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction.

(Added by Stats.1985, c. 1574, § 2, operative Jan. 1, 1987.)

Historical and Statutory Notes

1985 Legislation

For operative provision of Stats.1985, c. 1574, see note under § 1102.

§ 1102.9. Amendment of disclosures

Any disclosure made pursuant to this article may be amended in writing by the transferor or his or her agent, but the amendment shall be subject to * * * Section 1102.3.

(Added by Stats.1985, c. 1574, § 2, operative Jan. 1, 1987. Amended by Stats.1996, c. 240 (A.B.2383), § 3.)

Historical and Statutory Notes

1985 Legislation

For operative provision of Stats.1985, c. 1574, see note under § 1102.

1996 Legislation

The 1996 amendment substituted "Section 1102.3" for "the provisions of section 1102.2".

§ 1102.10. Delivery of disclosures; personal delivery or mail

Delivery of disclosures required by this article shall be by personal delivery to the transferee or by mail to the prospective transferee. For the purposes of this article, delivery to the spouse of a transferee shall be deemed delivery to the transferee, unless provided otherwise by contract.

(Added by Stats.1985, c. 1574, § 2, operative Jan. 1, 1987.)

Historical and Statutory Notes

1985 Legislation

For operative provision of Stats.1985, c. 1574, see note under § 1102.

§ 1102.11. Escrow agent not deemed agent for purposes of disclosure; exception

Any person or entity, other than a real estate licensee licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code, acting in the capacity of an escrow agent for the transfer of real property subject to this article shall not be deemed the agent of the transferor or transferee for purposes of the disclosure requirements of this article, unless the person or entity is empowered to so act by an express written agreement to that effect. The extent of such an agency shall be governed by the written agreement.

(Added by Stats.1985, c. 1574, § 2, operative Jan. 1, 1987.)

Historical and Statutory Notes

1985 Legislation

For operative provision of Stats.1985, c. 1574, see note under § 1102.

§ 1102.12. Licensed real estate brokers as agents in transaction; delivery of disclosure; advising transferee of rights to disclosure; record

(a) If more than one licensed real estate broker is acting as an agent in a transaction subject to this article, the broker who has obtained the offer made by the transferee shall, except as otherwise provided in this article, deliver the disclosure required by this article to the transferee, unless the transferor has given other written instructions for delivery.

(b) If a licensed real estate broker responsible for delivering the disclosures under this section cannot obtain the disclosure document required and does not have written assurance from the transferee that the disclosure has been received, the broker shall advise the transferee in writing of his or her rights to the disclosure. A licensed real estate broker responsible for delivering disclosures under this section shall maintain a record of the action taken to effect compliance in accordance with Section 10148 of the Business and Professions Code.

(Added by Stats.1985, c. 1574, § 2, operative Jan. 1, 1987. Amended by Stats.1986, c. 460, § 6.)

Historical and Statutory Notes

1985 Legislation

For operative provision of Stats.1985, c. 1574, see note under § 1102.

1986 Legislation

The 1986 amendment substituted "delivering disclosures" for "making disclosures" in both sentences of subd. (b).

§ 1102.13. Failure to comply with article; transfer not invalidated; damages

No transfer subject to this article shall be invalidated solely because of the failure of any person to comply with any provision of this article. However, any person who willfully or negligently violates or fails to perform any duty prescribed by any provision of this article shall be liable in the amount of actual damages suffered by a transferee.

(Added by Stats.1985, c. 1574, § 2, operative Jan. 1, 1987.)

Historical and Statutory Notes

1985 Legislation

For operative provision of Stats.1985, c. 1574, see note under § 1102.

Notes of Decisions

Actual damages 4
Attorney fees 3
Judgment 2
Limitations 1
Scope of duty 5

1. Limitations

Home buyer's claim against real estate broker representing seller, for alleged defects in real estate transfer disclosure statement that broker was required to provide under California statute, was subject to two-year statute of limitations on claims for real estate broker's breach of statutory duties. Loken v. Century 21-Award Properties (App. 4 Dist. 1995) 42 Cal.Rptr.2d 683, 36 Cal.App.4th 263, review denied, certiorari denied 116 S.Ct. 912, 516 U.S. 1113, 133 L.Ed.2d 843.

2. Judgment

Having previously announced that it would enter judgment on the pleadings in favor of broker on home buyer's per se nondisclosure claims, trial court could not, without miscarriage of justice, change its mind after presentation of evidence and enter judgment in favor of home buyer on per se claims; effect of trial court's change of heart was to deprive broker, who had relied on trial court's pronouncement in not presenting evidence on home buyer's per se claims, of opportunity to defend himself. Loken v. Century 21-Award Properties (App. 4 Dist. 1995) 42 Cal.Rptr.2d 683, 36 Cal.App.4th 263, review denied, certiorari denied 116 S.Ct. 912, 516 U.S. 1113, 133 L.Ed.2d 843.

3. Attorney fees

Claim that vendors' and their brokers' disclosure statement was inadequate "arose" out of agreement of purchase of real estate, as required for award of attorney fees under the agreement, since claim would not have come about absent the agreement. Sweat v. Hollister (App. 4 Dist. 1995) 43 Cal.Rptr.2d 399, 37 Cal.App.4th 603, modified on denial of rehearing, review denied.

4. Actual damages

Term "actual damages" within meaning of damages recoverable for deceit in sale of property means compensatory damages, rather than damages as measured by benefit-of-bargain rule. Saunders v. Taylor (App. 4 Dist. 1996) 50 Cal.Rptr.2d 395, 42 Cal.App.4th 1538.

5. Scope of duty

Statutes governing inspections and disclosures incident to sales of real property did not impose duty on real estate sales agents to inspect more than unit offered for sale, such as common areas to planned development. Padgett v. Phariss (App. 4 Dist. 1997) 63 Cal.Rptr.2d 373, 54 Cal.App.4th 1270, review denied.

§ 1102.14. Definitions

(a) As used in this article, "listing agent" means listing agent as defined in subdivision (f) of Section 1086.

(b) As used in this article, "selling agent" means selling agent as defined in subdivision (g) of Section 1086, exclusive of the requirement that the agent be a participant in a multiple listing service as defined in Section 1087.

(Added by Stats.1986, c. 460, § 7.)

§ 1102.15. Former federal or state ordnance locations; definition

The seller of residential real property subject to this article who has actual knowledge of any former federal or state ordnance locations within the neighborhood area shall give written notice of that knowledge as soon as practicable before transfer of title.

For purposes of this section, "former federal or state ordnance locations" means an area identified by an agency or instrumentality of the federal or state government as an area once used for military training purposes which may contain potentially explosive munitions. "Neighborhood area" means within one mile of the residential real property.

The disclosure required by this section does not limit or abridge any obligation for disclosure created by any other law or that may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction.

(Added by Stats.1989, c. 294, § 1.)

Law Review and Journal Commentaries

Review of selected 1989 California legislation. 21 Pac. L.J. 542 (1990).

§ 1102.16. Window security bars and safety release mechanism; disclosure

The disclosure of the existence of any window security bars and any safety release mechanism on those window security bars shall be made pursuant to Section 1102.6 or 1106.6a of the Civil Code.

(Added by Stats.1996, c. 926 (A.B.3026), § 2, operative July 1, 1997.)

§ 1102.17. Repealed by Stats.1998, c. 65 (A.B.1195), § 3, eff. June 9, 1998

Historical and Statutory Notes

The repealed section, added by Stats.1997-98, 1st Ex. Sess., c. 7 (A.B.6), § 2, related to property within special flood hazard areas. See Government Code § 8589.3.

Section 14 of Stats.1997-98, 1st Ex.Sess., c. 7 (A.B.6), eff. Dec. 13, 1997, provided:

"Sections 1, 2, 4, 7, 8, 9, 10, 11, and 12 of this act shall become operative on March 1, 1998."

The title of act of Stats.1998, c. 2 (S.B.71), an urgency statute eff. Feb. 28, 1998, provides:

"AN ACT to amend Section 14 of Chapter 7 of the 1997-98 First Extraordinary Session, relating to natural hazards, and declaring the urgency thereof, to take effect immediately."

The first paragraph following the enacting clause of Stats.1997, c. 2 (S.B.71), provides:

"Sec. 14. Sections 1, 2, 4, 7, 8, 9, 10, 11, and 12 of Chapter 7 of the 1997-98 First Extraordinary Session shall become operative on June 1, 1998."

Sections 17, 18, 20, and 21 of Stats.1998, c. 65, provide:

"Sec. 17. The Legislature finds and declares that state law requires several different state departments and agencies to conduct natural hazard mapping and information programs, based on their respective scientific and professional competencies. The Legislature finds and declares that city and county planning agencies sometimes have difficulty using the maps and information produced by state departments and agencies regarding natural hazards because the maps may be at different scales, use different projections, or are otherwise incompatible. The Legislature finds and declares that the lack of compatible maps sometimes makes it difficult for city and county planning agencies to make information regarding natural hazards readily available to landowners, their agents, and the public. Therefore, the Legislature finds and declares that there is a need for state officials to coordinate their natural hazard mapping and information programs to make them more effective. The Legislature encourages the Secretary of the Resources Agency to provide coordination and leadership among the state departments and agencies that conduct natural hazard mapping and information programs.

"Sec. 18. The provisions of this act shall become operative on June 1, 1998, except that Sections 1, 3, 6, and 10 shall be operative upon the effective date of Chapter 7 of the Statutes of 1997, First Extraordinary Session [Chapter 7 was effective Dec. 13, 1997]."

"Sec. 20. It is the intent of the Legislature that the provisions of this act shall supersede the provisions of Chapter 7 of the Statutes of 1997, First Extraordinary Session, in their entirety and, to that intent, the provisions of that chapter shall not become operative.

"Sec. 21. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect [June 9, 1998]. The facts constituting the necessity are:

"In order to resolve ambiguity regarding the effective date for important real estate disclosures and to ensure that comprehensive disclosure of information regarding risk of natural disaster hazards is made available to prospective homebuyers, it is necessary that this act take effect immediately."

Article 2

EFFECT OF TRANSFER

Section
1133.
Property subject to blanket encumbrance but exempt from compliance with § 11013.2; notice to prospective purchaser or lessee; civil and criminal liability.
1134.5. Repealed.

§ 1104. Easements passing with property

Notes of Decisions

Express grant 4.5

4.5. Express grant

Easement which was expressly granted by deed would not be limited to uses in existence at time of agreement and/or conveyance. Camp Meeker Water System, Inc. v. Public Utilities Com. (1990) 274 Cal.Rptr. 678, 51 Cal.3d 845, 799 P.2d 758.

38. Questions of fact

In lot owners' action for declaration of easement for transmission of electric power across alleged servient lot and damages for denial of access thereto, genuine issues of material fact existed as to whether quasi-easements intended by subdivider's grant to power company for distribution of power were apparent to lot owners when they purchased lot, whether any representations were made by developer that power line on alleged servient lot would service electric needs of owners, and, assuming no express representations, whether subdivider nevertheless knew that lot owners intended to use power line on alleged servient lot for power purposes at time of purchase, precluding summary judgment. George v. Goshgarian (App. 5 Dist. 1983) 189 Cal.Rptr. 94, 139 Cal.App.3d 856.

§ 1105. Fee simple title; presumption

Notes of Decisions

1. In general

Language in deed referring to grant of land is usually sufficient to convey fee simple interest in property. City and County of San Francisco v. Union Pacific R.R. Co. (App. 1 Dist. 1996) 58 Cal.Rptr.2d 1, 50 Cal.App.4th 987, as modified.

2. Intention of parties

Fee simple title is presumed to pass by grant of real property unless it appears from grant that lesser estate was intended. Schwenn v. Kaye (App. 2 Dist. 1984) 202 Cal.Rptr. 374, 155 Cal.App.3d 949.

4. Easements

City was conveyed fee simple title, and grantors retained only surface use easement, by deed that granted city described real property, reserved to grantors certain rights, including right to use surface for planting, irrigating and harvesting crops, and imposed restrictions on city, such as requiring city to give notice before constructing additional facilities; rights reserved and restrictions imposed did not indicate intent to convey less than fee simple interest. City and County of San Francisco v. Union Pacific R.R. Co. (App. 1 Dist. 1996) 58 Cal.Rptr.2d 1, 50 Cal.App.4th 987, as modified.

Use of phrase "remise, release and quit-claim" in granting clause of deed substantially reflected intention to convey title in its entirety, rather than to convey only an easement. City of Manhattan Beach v. Superior Court (1996) 52 Cal.Rptr.2d 82, 13 Cal.4th 232, 914 P.2d 160, rehearing denied, certiorari denied 117 S.Ct. 511, 136 L.Ed.2d 400.

Deed's multiple references to "right of way" indicated intent by grantor to convey an easement rather than title in its entirety. City of Manhattan Beach v. Superior Court (1996) 52 Cal.Rptr.2d 82, 13 Cal.4th 232, 914 P.2d 160, rehearing denied, certiorari denied 117 S.Ct. 511, 136 L.Ed.2d 400.

In construing a deed, court cannot overlook fact that if grantors really intended to convey only an easement, they could have easily so expressed that purpose; their failure to do so must be considered together with presumption that a fee simple title passed and rule that a grant is to be interpreted in favor of grantee. City of Manhattan Beach v. Superior Court (1996) 52 Cal.Rptr.2d 82, 13 Cal.4th 232, 914 P.2d 160, rehearing denied, certiorari denied 117 S.Ct. 511, 136 L.Ed.2d 400.

Subsequent actions of parties to ambiguous deed indicated intent to convey full title to property rather than merely an easement; grantor and grantee's successor subsequently referred to earlier conveyance as a "grant," grantor's subsequent divestiture of all of its holdings excepted interest granted in the subject property, which indicated that grant was not simply an easement that would have passed as an appurtenance with any subsequent transfer, grantor later brought a quiet title action from which it excepted disputed property, indicating that grantor no longer considered that it held any interest therein, grantor's president subsequently indicated that "land" had been conveyed and did not use term "right of way," and when grantor dissolved as a corporation, decree of dissolution indicated that all property had been disposed of, indicating that grantor had granted a fee rather than an easement. City of Manhattan Beach v. Superior Court (1996) 52 Cal.Rptr.2d 82, 13 Cal.4th 232, 914 P.2d 160, rehearing denied, certiorari denied 117 S.Ct. 511, 136 L.Ed.2d 400.

Use of term "right of way" in deed does not determine whether interest so described constitutes easement or fee. Machado v. Southern Pacific Transportation Co. (App. 2 Dist. 1991) 284 Cal.Rptr. 560, 233 Cal.App.3d 347.

7. Limitations inconsistent with grant of fee

Where there is an asserted modifying or limiting clause in a deed, if such clause be of doubtful import, fee contemplated by granting clause of deed will not be cut down. City of Manhattan Beach v. Superior Court (1996) 52 Cal.Rptr.2d 82, 13 Cal.4th 232, 914 P.2d 160, rehearing denied, certiorari denied 117 S.Ct. 511, 136 L.Ed.2d 400.

9. Quitclaim deeds

A quitclaim deed transfers whatever present right or interest grantor has in the property. City of Manhattan Beach v. Superior Court (1996) 52 Cal.Rptr.2d 82, 13 Cal.4th 232, 914 P.2d 160, rehearing denied, certiorari denied 117 S.Ct. 511, 136 L.Ed.2d 400.

Statutory presumption that a fee simple title is intended to pass by a grant of real property, unless it appears from the grant that a lesser estate was intended, applies without distinction to quitclaim deeds. City of Manhattan Beach v. Superior Court (1996) 52 Cal.Rptr.2d 82, 13 Cal.4th 232, 914 P.2d 160, rehearing denied, certiorari denied 117 S.Ct. 511, 136 L.Ed.2d 400.

10. Requisites, form, and sufficiency of grant of fee

As with use of term "quitclaim" in a deed, reference to "remise" and "release" generally signifies relinquishment of all interest held by grantor. City of Manhattan Beach v. Superior Court (1996) 52 Cal.Rptr.2d 82, 13 Cal.4th 232, 914 P.2d 160, rehearing denied, certiorari denied 117 S.Ct. 511, 136 L.Ed.2d 400.

References in a deed to "land," particularly in conjunction with precise and technical designation of location, generally indicate an intention to transfer entire estate, not just a limited right to pass over the property. City of Manhattan Beach v. Superior Court (1996) 52 Cal.Rptr.2d 82, 13 Cal.4th 232, 914 P.2d 160, rehearing denied, certiorari denied 117 S.Ct. 511, 136 L.Ed.2d 400.

12. Particular provisions

Protestant Episcopal Church in Diocese of Los Angeles v. Barker (App. 2 Dist. 1981) 171 Cal.Rptr. 541, 115 Cal.App.3d 599, certiorari denied 102 S.Ct. 323, [main volume] 454 U.S. 864, 70 L.Ed.2d 163.

Deed conveying property for right-of-way for standard gauge railroad constituted grant of land in fee simple, not merely conveyance of easement for operation of railroad, where deed placed description of purpose after language granting land, creating greater emphasis on grant of land, did not contain word "only," or one of similar import so as to limit purpose of grant of land, or create condition subsequent or covenants with right of reverter in event that grantee departed from agreed upon use for property, even though consideration in deed was only $1.00 and deed stated that land which was subject of grant ran over and across land of grantor. Machado v. Southern Pacific Transportation Co. (App. 2 Dist. 1991) 284 Cal.Rptr. 560, 233 Cal.App.3d 347.

§ 1106. Subsequently acquired title; passage by operation of law

Notes of Decisions

1. In general

Where vendor's deed granted fee simple to purchasers, although vendor, at time of deed, did not hold oil and gas rights, vendor's subsequent reacquisition of oil and gas rights resulted in passage of such rights to purchasers under doctrine of after-acquired title, and vendor's reason for reacquiring oil and gas rights was irrelevant to such operation of law. Schwenn v. Kaye (App. 2 Dist. 1984) 202 Cal.Rptr. 374, 155 Cal.App.3d 949.

2. Easements

Fact that grantor did not own property at time he attempted to grant easement did not prevent grantees from asserting interest in property, where grantor subsequently became owner of property; under doctrine of after-acquired title, once grantor became owner of property, he and his successors were estopped from contesting passage of easement to grantees. Noronha v. Stewart (App. 2 Dist. 1988) 245 Cal.Rptr. 94, 199 Cal.App.3d 485, review denied.

§ 1107. Conclusiveness of grant; exception

Notes of Decisions

2. Bona fide purchasers—In general

Good faith encumbrancer for value who first records takes its interest in real property free and clear of unrecorded interests. First Fidelity Thrift & Loan Ass'n v. Alliance Bank (App. 2 Dist. 1998) 71 Cal.Rptr.2d 295, 60 Cal.App.4th 1433, review denied.

9. Judgment or attachment

Abstract of judgment did not attach to real property which judgment debtor conveyed by quitclaim deed if deed was delivered before abstract was recorded. Casey v. Gray (App. 2 Dist. 1993) 16 Cal.Rptr.2d 538, 13 Cal. App.4th 611, modified on denial of rehearing.

§ 1109. Defeated grant upon condition subsequent; reconveyance

Library References

Recommendations relating to marketable title of real property, 16 Cal.L.Rev.Comm. Reports 401 (1982).

§ 1112. Grant of land bounded by highway

Notes of Decisions

Abandonment 12.5

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2. Intent of parties

Evidence supported finding that grantor did not intend to convey any portion of abandoned street in conveyance of 100-foot right-of-way to railroad, so that right-of-way began at south edge of abandoned street, and did not include south half of abandoned street in addition to the described property; grant of specific number of feet carved out of contiguous lots evidenced grantor's intent that street not be included in conveyance, and evidence indicated that grantor planted orange grove to south line of abandoned street and that railroad placed survey stakes beginning at edge of abandoned street to mark four corners of right-of-way. Baker v. Ramirez (App. 5 Dist. 1987) 235 Cal.Rptr. 857, 190 Cal.App.3d 1123.

Extrinsic evidence was properly admitted to determine whether parties intended 100-foot right-of-way granted to railroad to begin at center line of abandoned street or at its south edge, where deed was ambiguous with respect to location of right-of-way. Baker v. Ramirez (App. 5 Dist. 1987) 235 Cal.Rptr. 857, 190 Cal.App.3d 1123.

Where deeds by which landowner acquired title to all of parcel showed no intention to except sidewalk, parkway, or soil under the street from the transfer, deeds transferred those areas to the owner. Jones v. Deeter (App. 2 Dist. 1984) 199 Cal.Rptr. 825, 152 Cal.App.3d 798.

4. Alleys

Statute pursuant to which transfer of land bounded by highway passes title of person whose estate is transferred to soil of highway to center, unless different intent appears from grant, applies to alleys. Besneatte v. Gourdin (App. 4 Dist. 1993) 21 Cal.Rptr.2d 82, 16 Cal.App.4th 1277.

8. Metes and bounds descriptions

Statutory presumption that owner of land bounded by road or street is presumed to own center of way and that transfer of land bounded by highway includes land to center of highway did not apply where grantor used metes and bounds description to convey property; however, metes and bounds description was not determinative of grantor's intent. Besneatte v. Gourdin (App. 4 Dist. 1993) 21 Cal.Rptr.2d 82, 16 Cal.App.4th 1277.

Statute establishing rebuttable presumption that owner of land bounded by road or street is presumed to own to center of way includes alleys. Besneatte v. Gourdin (App. 4 Dist. 1993) 21 Cal.Rptr.2d 82, 16 Cal.App.4th 1277.

12.5. Abandonment

Conveyance of contiguous lots located south of abandoned street included south half of abandoned street, where north half of street had become part of lots located north of street at time street was abandoned, south half of street had become part of lots located south of abandoned street, no portion of street vested in railroad at time 100-foot right-of-way was conveyed to railroad by person who had owned the lots located north and south of the abandoned street, and no prior deeds specifically conveyed the street. Baker v. Ramirez (App. 5 Dist. 1987) 235 Cal.Rptr. 857, 190 Cal.App.3d 1123.

Owner of lots bisected by street was entitled to possess and occupy the street upon its abandonment, with the north half of street becoming part of lots located north of street and south half of street becoming part of lots located south of street. Baker v. Ramirez (App. 5 Dist. 1987) 235 Cal.Rptr. 857, 190 Cal.App.3d 1123.

§ 1113. Grant; implied covenants

Notes of Decisions

2. Prior conveyances

Natural Resources, Inc. v. Wineberg, C.A.9 (Cal.)1965, 349 F.2d 685, [main volume] certiorari denied 86 S.Ct. 617, 382 U.S. 1010, 15 L.Ed.2d 525.

3. Encumbrances—In general

Mere fact that purchaser and title insurer may have known during escrow of possibility of restrictive covenant on property did not necessarily preclude title insurer from recovering in subrogation for vendor's breach of implied covenant arising when vendor conveyed property to purchaser by unrestricted grant deed without excepting restrictive covenant. Fidelity National Title Ins. Co. v. Miller (App. 4 Dist. 1989) 264 Cal.Rptr. 17, 215 Cal.App.3d 1163, rehearing denied.

4. —— Application of covenant against encumbrances

Question of whether title insurer was entitled to equitable subrogation raised fact issue in insurer's suit against vendor who conveyed property by unrestricted grant deed and thus impliedly covenanted that there were no encumbrances against property, even though vendor disclosed to purchaser and title insurer potential existence of restrictive covenant granting neighboring property "view easement"; fact finder could reasonably determine that any act by title insurer in issuing title insurance policy that did not mention restrictive covenant was one of omission, while act of vendor in conveying property without restriction was one of commission that was genesis of problem and that vendor's retaining entire consideration would amount to unjust enrichment. Fidelity National Title Ins. Co. v. Miller (App. 4 Dist. 1989) 264 Cal.Rptr. 17, 215 Cal.App.3d 1163, rehearing denied.

In title insurer's subrogation action against vendor, vendor was not entitled to summary judgment in his favor, on theory that he and purchaser impliedly agreed that grant deed to property would not contain implied covenant against encumbrances and thus there was no basis for subrogation suit after title insurer paid purchaser's claim when restrictive covenant was subsequently discovered; even assuming that implied covenant could be deleted by implied agreement, existence of implied agreement required resolution of triable fact issues and vendor did not show that grant deed was ambiguous or uncertain. Fidelity National Title Ins. Co. v. Miller (App. 4 Dist. 1989) 264 Cal.Rptr. 17, 215 Cal.App.3d 1163, rehearing denied.

§ 1114. Incumbrances defined

Notes of Decisions

1. In general

"Encumbrance" is defined as any right to, or interest in, land which may subsist in another to diminution of its value, but consistent with passing of the fee. 1119 Delaware v. Continental Land Title Co. (App. 2 Dist. 1993) 20 Cal.Rptr.2d 438, 16 Cal.App.4th 992, review denied.

"Encumbrance" is not limited to those specifically mentioned in Civil Code definition. 1119 Delaware v. Continental Land Title Co. (App. 2 Dist. 1993) 20 Cal.Rptr.2d 438, 16 Cal.App.4th 992, review denied.

3. Liens

Presence of hazardous material on land did not constitute an "encumbrance" on title covered by title insurance policy, even though state and federal agencies could impose liens upon property for violation of environmental laws. Lick Mill Creek Apartments v. Chicago Title Ins. Co. (App. 6 Dist. 1991) 283 Cal.Rptr. 231, 231 Cal.App.3d 1654, review denied.

§ 1133. Property subject to blanket encumbrance but exempt from compliance with § 11013.2; notice to prospective purchaser or lessee; civil and criminal liability

(a) If a lot, parcel, or unit of a subdivision is subject to a blanket encumbrance, as defined in Section 11013 of the Business and Professions Code, but is exempt from a requirement of compliance with Section 11013.2 of the Business and Professions Code, the subdivider, his or her agent, or representative, shall not sell, or lease for a term exceeding five years, the lot, parcel, or unit, nor cause it to be sold, or leased for a term exceeding five years, until the prospective purchaser or lessee of the lot, parcel, or unit has been furnished with and has signed a true copy of the following notice:

BUYER/LESSEE IS AWARE OF THE FACT THAT THE LOT, PARCEL, OR UNIT WHICH HE OR SHE IS PROPOSING TO PURCHASE OR LEASE IS SUBJECT TO A DEED OF TRUST, MORTGAGE, OR OTHER LIEN KNOWN AS A "BLANKET ENCUMBRANCE".

IF BUYER/LESSEE PURCHASES OR LEASES THIS LOT, PARCEL, OR UNIT, HE OR SHE COULD LOSE THAT INTEREST THROUGH FORECLOSURE OF THE BLANKET ENCUMBRANCE OR OTHER LEGAL PROCESS EVEN THOUGH BUYER/LESSEE IS NOT DELINQUENT IN HIS OR HER PAYMENTS OR OTHER OBLIGATIONS UNDER THE MORTGAGE, DEED OF TRUST, OR LEASE.

_____ Date _____ Signature of Buyer or Lessee

(b) "Subdivision," as used in subdivision (a), means improved or unimproved land that is divided or proposed to be divided for the purpose of sale, lease, or financing, whether immediate or future, into two