

Condominium and Other Common Interest Development Disclosures

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INTRODUCTION

Condominiums, community apartment projects, stock cooperatives, and planned developments are the various types of common interest developments in California. When a buyer purchases a unit in one of these developments, the buyer typically is also purchasing a pro-rata share of the common area or the buyer has an interest in the association that owns the common area. In either case, that usually means that the buyer will be required to make monthly payments, known as regular assessments, to pay for the maintenance of the common area. Furthermore, it is possible that the association may decide that it needs the homeowners to pay funds in addition to the regular assessments, called special assessments, to address special or unexpected repairs or additions to the property. For example, special assessments may be imposed for the purpose of replacing a roof damaged by an unexpected storm or adding amenities such as a swimming pool.

Common interest developments also typically have special rules and regulations such as architectural requirements, limitations on the number or size of pets, and permissible age restrictions (i.e., senior housing). Thus, the unique aspects of common interest developments create disclosure requirements in addition to those required in the transfer of other residential properties.

This legal article will provide answers to questions concerning the disclosure rules which apply in the sale of residential common interest developments. See also, C.A.R. legal article, [Homeowners' Associations and Common Interest Developments](#), for a detailed discussion of other issues impacting this form of real estate ownership.

Q1. Where can the disclosure obligations regarding common interest developments be found?

A1. Most of the statutes affecting common interest developments can be found in California Civil Code §§ 4000-6150 (Davis-Stirling Act), California Business and Professions Code §§ 11000 et seq. (Subdivided Lands Law) and "SB800" (California Civil Code §§ 895 et seq.) In particular, for listed disclosure requirements see California Civil Code § 4525 (resale) and California Business and Professions Code § 11018.6 (new subdivision), and California Civil Code § 1134 (conversions).

Q2. What disclosures/documents should be given to a buyer of a unit in a new common interest development?

A2. The following documents, when applicable, should be given to a buyer of a unit in a **new common interest development**:

- **Advisability of Title Insurance** - This is required when no title insurance is issued (not a common situation) (Cal. Civ. Code § 1057.6). This is typically disclosed by the escrow agent.
- **Agency Disclosure and Confirmation** - This is not required if there is a public report. (Cal. Civ. Code

§§ 2079.6, 2079.14).

- **Area of Potential Flooding** -This is one of the six required zone disclosures on the Natural Hazard Disclosure Statement (Cal. Civ. Code § 1103.2).
- **Blanket Encumbrance** - If the common interest development is subject to a Blanket Encumbrance, (See Question 3) and the project is not subject to the Subdivided Lands Law (i.e., fewer than five separate units in the project), then the owner (subdivider) may not sell, or lease for a term exceeding five years, without providing the buyer with a notice containing the language described in California Civil Code § 1133. (Cal. Civ. Code § 1133(a).)
- **Broker's Statutory Duty to Inspect the Property** - This is not required if there is a public report (Cal. Civ. Code §§ 2079, 2079.6).
- **Death** - If there has been a death on the property within the last three years, and if this is a material fact, then it must be disclosed (Cal. Civ. Code § 1710.2).
- **Earthquake Fault Zone** One of the six required zone disclosures on the Natural Hazard Disclosure Statement (Cal. Civ. Code § 1103.2).
- **FHA/HUD Inspection Notice** - Only required if the buyer obtains an FHA loan or for HUD-owned property (HUD Mortgagee Letter 06-24 requires notice to be provided by lender).
- **FIRPTA (Federal Tax Withholding) and California Tax Withholding** - Either the money must be withheld by escrow or the developer must provide an exemption form (Cal. Rev. & Tax Code §§ 18662, 18668; 26 U.S.C. § 1445)
- **Flood Disaster Insurance Requirements** - If the developer received federal flood disaster assistance, the information regarding the insurance requirement must be provided to the buyer (42 U.S.C. § 5154a)
- **Gas and Hazardous Liquid Transmission Pipeline Notice** - This is not required if there is a public report. (Cal. Civ. Code §§ 2079.6 & 2079.10.5)
- **Groundwater Basin Comprehensive Adjudication Notice** - If the developer received a notice of comprehensive adjudication and transfers during the pendency of the adjudication, the developer shall disclose as an attachment to the TDS and attach the court-approved notice. If TDS is not being used, developer shall provide the notice separately.(Cal. Civ. Proc. Code §836(f))
- **Homeowner Association Documents (both for new or resale listed) For properties where the developer/seller is required to give a public report.**

The following documents must be made available for review by the buyer prior to making an offer, and a copy of the documents must be delivered as soon as practically possible prior to the close of escrow:

- (a) The declaration of covenants, conditions, and restrictions for the subdivision.
- (b) Articles of incorporation or association for the subdivision owners association.
- (c) Bylaws for the subdivision owners association.
- (d) Any other instrument which establishes or defines the common, mutual, and reciprocal rights, and responsibilities of the owners or lessees of interests in the subdivision as shareholders or members of the subdivision owners association or otherwise.
- (e) To the extent available, the current financial information and related statements as specified in Civil Code § 5300, for subdivisions subject to those provisions. That civil code section pertains to the association's annual budget report and the information that must be contained therein.
- (f) A statement prepared by the governing body of the association setting forth the outstanding delinquent assessments and related charges levied by the association against the subdivision interests in question under authority of the governing instruments for the subdivision and association.

For common interest development units not subject to a public report. (Typically for common interest developments with fewer than five units California Business and Professions Code section 11100).

All of the homeowner association documents and disclosures required in a resale transaction as stated in question 5.

- **Industrial Use Zone Location** (including Airport Zone) - This is not required if there is a public report (Cal. Civ. Code §§ 1102.2(a), 1102.17)
- **Insulation's Thermal Performance** ("R-value") (16 C.F.R. §§ 460.3, 260.16)
- **Material Facts Disclosure** - Developer must always disclose known material facts affecting the value or desirability of the property (Nussbaum v. Weeks (1990) 214 Cal. App. 3d 1589)
- **Megan's Law Disclosure** - This is not required if there is a public report or the subdivision is exempt from a public report (Cal. Civ. Code §§ 2079.6, 1079.10a). If the disclosure is required it is typically in the purchase agreement.
- **Mello-Roos and 1915 Bond Act Assessments** (Cal. Gov't Code § 53341.5)
- **Military Ordnance Location** - This is not required if there is a public report or the subdivision (Cal. Civ. Code §§ 1102.2(a), 1102.15)
- **Natural Hazard Disclosure Statement** (Cal. Civ. Code § 1103.2)
- **Notice of Private Transfer Fee** - This is not required if the document entitled "Payment of Transfer Fee Required" is recorded in compliance with Civil Code 1098.5 (Cal. Civ. Code §§ 1102.6e, 1098, 1098.5).
- **SB800 - Arbitration or Alternative Procedure Notice** - (At the time the purchase contract is being signed, the developer must notify the buyer whether the developer intends to engage in the arbitration procedure in SB800 or an alternative non adversarial procedure (Cal. Civ. Code §§ 896, 914)
- **SB800 - Copy of the Law** - Developer must provide buyer with a copy of SB800 which is codified in California Civil Code §§ 895 through 945.5; however, condo conversions are exempt from this requirement (Cal. Civ. Code §§ 896, 912(g))
- **SB800 - Maintenance and Preventative Maintenance Recommendations** - Developer shall provide copies of all maintenance and preventative maintenance recommendations that pertain to the unit. The developer shall also provide copies of all manufactured products maintenance, preventive maintenance and limited warranty information.; However, condo conversions are exempt from this requirement (Cal. Civ. Code §§ 896, 912(b)(c))
- **SB800 - Name and Address of Builder's Agent for Service of Process** - Developer must provide the name and address of the agent for service of process; however, condo conversions are exempt from this requirement (Cal. Civ. Code §§ 896, 912(e))
- **SB800 - Prelitigation/Litigation Procedures Notice** - Developer must record on title a notice of the existence of the prelitigation/litigation procedures as well as give a copy to the buyer. Developer must instruct buyer to pass this information as well as all SB800 required information onto a subsequent buyer; however, condo conversions are exempt from this requirement (Cal. Civ. Code §§ 896, 912(f)(h))
- **SB800 - Warranties** (Minimum One-Year Written or Enhanced Protection Warranty and Builder's Limited Contractual Warranties) - Condo conversions are exempt from this requirement (Cal. Civ. Code §§ 896, 900, 903, 912(d))
- **Seismic Hazard Zone** (One of the six required zone disclosures on the Natural Hazard Disclosure Statement) (Cal. Civ. Code § 1103.2)
- **Smoke Detector Compliance** - All smoke detectors must be in compliance with the building code requirements (Cal. Health & Safety Code §§ 13113.7, 13113.8)

- **Smoke Detector Statement of Compliance** - For new single family homes in a subdivision where there is no public report, this notice is required. For condominiums and other types of common interest developments, the statement of compliance is not required (Cal. Health & Safety Code §§ 13113.8)
- **Special Flood Hazard Area** (One of the six required zone disclosures on the Natural Hazard Disclosure Statement) (Cal. Civ. Code § 1103.2)
- **State Responsibility Area** - Fire Hazard Area (One of the six required zone disclosures on the Natural Hazard Disclosure Statement) (Cal. Civ. Code § 1103.2)
- **Subdivision Public Report** - This must be given to a prospective buyer prior to the execution of a binding contract if the subdivision is subject to the Subdivided Lands Law (project consists of five or more separate units) (Cal. Bus. & Prof. Code § 11018.1)
- **Supplemental Property Tax Notice** - This is not required if there is a public report. (Cal. Civ. Code §§ 1102.2(a), 1102.16)
- **Transfer Disclosure Statement** - This is not required if there is a public report. (Cal. Civ. Code §§ 1102.2(a), 1102.3)
- **Very High Fire Severity Zone** (One of the six required zone disclosures on the Natural Hazard Disclosure Statement) (Cal. Civ. Code § 1103.2)
- **Water Heater Bracing Statement of Compliance** (Cal. Health & Safety Code § 19211)
- **Window Security Bars Release Mechanism** - The disclosure of the existence of any window security bars and any safety release mechanism must be made. This is not required if there is a public report. (Cal. Civ. Code §§ 1102.2(a), 1102.3)

Q3. What is a "blanket encumbrance" mentioned in Question 2?

A3. Basically, a "blanket encumbrance" is a lien against an entire subdivision, or a lien against a collection (more than one) of lots or parcels. (Cal. Bus. & Prof. Code § 11013.) A buyer of a unit would not want to be subject to a lien covering the entire subdivision; and thus, a developer should provide the buyer with evidence of a lien release from the lender for each unit sold. Alternatives, such as a bond, are available to protect buyers (Cal. Bus. & Prof. Code § 11013.2). See Question 9 for additional information.

Q4. What disclosures/documents must be given to a buyer of a unit in a common interest development conversion?

A4. In addition to all the documents required for the transfer of a unit in a new common interest development (see Question 2), before transfer of title for the first sale of a unit in a residential condominium, community apartment project, or stock cooperative which was converted from an existing dwelling, the owner (subdivider) must deliver to the prospective buyer a written statement listing all substantial defects or malfunctions in the major systems in the unit, as well as the common areas.

- This written statement must disclose any problems with major systems including, but not limited to, the roof, walls, floors, heating, air conditioning, plumbing, electrical systems or components, and recreational facilities.
- If the owner has inspected the unit and the common areas and has not discovered a substantial defect or malfunction which a reasonable inspection would have uncovered, then the owner must provide a written disclaimer.
- The written disclosure provides the buyer with a rescission right, comparable to the rescission right associated with a transfer disclosure statement, if delivered after execution of the purchase agreement (three days if delivered in person and five days after deposit in the mail).
- In addition, the written disclosure must describe the buyer's right, method, and time to rescind.

(Cal. Civ. Code § 1134)

Note: At least 60 days prior to filing of a tentative map, a developer must provide any prospective or existing tenant with notice that the property may subsequently be sold as a separate unit. The form of the notice to prospective tenants can be found in California Government Code Section 66452.8. The form of the notice to existing tenants can be found in California Government Code Section 66452.9. There are additional notices after the subdivision public report has been received by the developer. See [AB 763](#) (eff. 1/1/08) for more details.

Q5. *What disclosures/documents should be given to a buyer in a resale of a unit in common interest development?*

A5. The CAR Sales Disclosure Chart for REALTORS® states the disclosures that need to be provided in a residential 1-4 transactions. All of these disclosures apply equally to the resale of a property in a common interest development. In addition, the following documents, if applicable, should also be delivered to the buyer:

1. A copy of all of the governing documents of the common interest development. If the association is not incorporated the documents shall include a statement in writing from an authorized representative of the association stating that fact. (Cal. Civ. Code § 4525)
2. A statement describing any restrictions in the governing documents limiting the occupancy, residency, or use of a separate interest on the basis of age, including a statement that the restriction is only enforceable to the extent permitted by Cal. Civil Code § 51.3. This is generally for HOA's of CIDs which meet the requirements to be senior housing facilities. Other types of age restrictions in CIDS are generally not enforceable. (Cal. Civ. Code § 4525)
3. A copy of the most recently distributed annual budget report (Cal. Civ. Code § 4525.) The annual budget report includes among other information a summary of the association's reserves, a summary of the association's property, general liability, and earthquake and flood insurance policies, a summary of the reserve funding plan and a statement as to whether the association has any outstanding loans with an original term of more than one year. The full list of documents contained in the annual budget report can be found in Civil Code § 5300.
4. A written statement from an authorized representative of the association regarding the association's current regular and special assessments and fees. Also, the statement shall include any assessment and fees levied upon the seller's and any monetary fines or penalties levied upon the seller's interest which are unpaid on the date of the statement. This statement shall in addition include information on late charges, interest and costs of collection which as of the date of the statement are or could be made a lien upon the seller's interest in the property.
5. A summary of any notice previously sent to the owner alleging any violations of the governing documents that remain unresolved at the time of request.
6. If there has been any litigation or dispute between the builder and the association, and no settlement agreement has been reached, a copy of the initial list of defects provided to each member as required by law including a final determination as to whether that list is accurate and complete has not been made.

7. If there has been a settlement agreement between a builder and the association information required by law regarding the settlement agreement including among other items, a general description of the defects the association reasonably believes as of the date of disclosure to the homeowner, will be corrected or replaced and other information regarding the defects claimed by the association. A full list of information to be provided can be found in Civil Code § 6100.

8. Any change in the association's current regular and special assessments and fees which have been approved by the board of directors but have not yet become due and payable.

9. If there are any provisions in the governing documents that prohibit the rental or leasing of any of the separate units including a description of the prohibition and how it applies.

10. If requested by the prospective buyer, copy of the board approved minutes of the board meetings, excluding executive session meetings, conducted over the past 12 months.

Q6. Does a homeowners' association have an obligation to provide the owner of a unit with the necessary documentation to give to the buyer?

A6. Yes. Upon written request an association must within 10 days provide the owner of a separate interest or any other recipient authorized by the owner with a copy of the items listed in Question 5 (Cal. Civ. Code § 4530). When these documents are requested (such as by using C.A.R. form Homeowner Association Information Request, Form HOA-IR), the association must provide a written or electronic estimate of the fees that will be assessed for providing the documents, and this estimate must be made on a form specified by statute (CAR standard form Homeowner Association Information Request, Form HOA-RS, meets this requirement). The fees (if any) may not exceed the association's actual costs to procure, prepare, reproduce and deliver the requested information (Cal. Civ. Code § 4530). If an HOA maintains the HOA documents electronically, those documents must be made available to a requesting party with no additional fees for electronic delivery. (Cal. Civ. Code § 4530). If the homeowners' association refuses to comply (i.e., "willful" violation), the Civil Code provides a civil penalty not to exceed \$500, plus actual damages incurred by the buyer, plus reasonable attorney's fees (Cal. Civ. Code § 4540).

Q7. If the seller makes a request for the disclosure items as stated under Question 6, may the HOA require the purchase of extra disclosures and services as a condition of delivering the required disclosures?

A7. No. Delivery of the documents required by Cal. Civil Code § 4525 cannot be withheld for any reason nor subject to any condition except the payment of the allowable fee.

Q8. Can the HOA present a charge which combines charges for required disclosures with charges for extra disclosures and services?

A8. No. Fees for any documents required under Cal. Civil Code 4525 must be distinguished from all other fees, fines, or assessments billed as part of the transfer or sales transaction. Moreover, AB 771 requires the HOA to provide the recipient of the disclosures with a statement on a prescribed form which clearly indicates the disclosures and the fee. C.A.R. form HOA-RS may be used to allow the HOA to comply with the law. To use this form the seller (or listing agent) should fill out the top portion of the form and deliver it to the HOA to request the required disclosures.

Q9. What fees may a managing agent for a homeowners' association legally charge a new buyer for preparation and delivery of HOA documents?

A9. The could be interpreted to prohibit passing on a management fee beyond the actual costs of procuring, preparing, reproducing and delivering the HOA documents. The law currently states that an association may contract with any person or entity to "facilitate compliance" with the requirements, regarding document preparation and delivery. This may imply a managing agent hired by the homeowners' association is bound by the same restrictions as the homeowners' association in charging for preparation and delivery of requested documents. Cal. Civ. Code § 4530.

However, this has not been tested and there are associations continuing to charge more than seems reasonable based on the argument that the association's costs include the sometimes significant cost of the third party which prepares and delivers the documents. The argument would be that the cost that the management company charges is part of the actual costs of procuring and producing the documents. Previously, a court permitted a homeowners' association to charge inflated fees for HOA documents based upon the cost that a managing agent charged for such services. (*Berryman v. Merit Property Management, Inc.* (App. 4 Dist. 2007) 62 Cal.Rptr.3d 177.)

Q10. What C.A.R. forms are used to request both required by law and contractually required disclosures from the HOA?

A10. In California it is common for the escrow or title company to order the required (by law) and contractual disclosures. So often, the listing agent need not undertake this task. For those agents that are responsible for ordering these HOA documents directly from the HOA, there are three forms (which were renamed in December 2018) may be used to request these disclosures:

- The HOA Information Request form (HOA-IR)
- Charges for Required HOA Documents (HOA-RS)
- Charges for Other HOA Documents (HOA-RN)

These three forms should be provided to the HOA all together. The reason they are separated is because the law requires that mandatory fees to be separately itemized on a completely separate document with no additional fees for any non- legally required disclosures.

Q11. How many days after acceptance should the HOA Information Request for be given to the HOA?

A11. Three days. While most provisions of the C.A.R. purchase agreements allow for seven days in which the seller may provide disclosures to the buyer, the HOA documents must be requested from the HOA within three days.

Q12. What is the "Buyer Home Owner Association Advisory" (Form BHAA) and is it required to given to the buyer?

A12. This form is an optional form which may be provided to the buyer by either their own agent or the listing agent. It advises buyers of property subject to an HOA of the importance of a thorough review of HOA documents which will govern, affect and, in some cases, may limit their current and future use of the property.

The issues that it covers encompass many of the most common issues that are likely to impact the buyer's decision to buy and provides clear and practical advice. For example: in regard to parking and storage it states directly to the buyer, "You should determine for yourself whether the allotted parking space(s) and

storage space(s), if any, may be described in the assigned spaces by actually parking in those spaces.”

Q13. *Where can readers obtain additional information?*

A13. This legal article is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.'s legal products and services, please visit car.org

Readers who require specific advice should consult an attorney. C.A.R. members requiring legal assistance may contact C.A.R.'s Member Legal Hotline at (213) 739-8282, Monday through Friday, 9 a.m. to 6 p.m. and Saturday, 10 a.m. to 2 p.m. C.A.R. members who are broker-owners, office managers, or Designated REALTORS® may contact the Member Legal Hotline at (213) 739-8350 to receive expedited service. Members may also submit online requests to speak with an attorney on the Member Legal Hotline by going to <http://www.car.org/legal/legal-hotline-access/>. Written correspondence should be addressed to:

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The information contained herein is believed accurate as of March 11, 2019. It is intended to provide general answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney. Revised by Justin Murakawa and Robert Bloom, Esq.

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