

C A L I F O R N I A L E G I S L A T U R E

SENATE SELECT COMMITTEE  
ON  
MOBILE AND MANUFACTURED HOMES

SENATOR WILLIAM A. CRAVEN  
CHAIR

TRANSCRIPT AND REPORT OF HEARING ON  
MOBILE AND MANUFACTURED HOME SALES:  
DISCLOSURE TO BUYERS



APRIL 9, 1996

STATE CAPITOL  
SACRAMENTO, CALIFORNIA

WILLIAM A. CRAVEN  
CHAIRMAN  
RUBEN S. AYALA  
RALPH C. DILLS  
PATRICK JOHNSTON  
HENRY MELLO  
JACK O'CONNELL



# California Legislature

COMMITTEE ADDRESS  
1020 N STREET  
ROOM 520  
SACRAMENTO, CA 95814  
(916) 324-4282

## Senate Select Committee on Mobilehomes

JOHN G. TENNYSON  
COMMITTEE CONSULTANT  
LOUISE CHERRY  
COMMITTEE SECRETARY

SENATOR WILLIAM A. CRAVEN  
CHAIRMAN

TRANSCRIPT OF HEARING ON

### MOBILE AND MANUFACTURED HOME SALES: DISCLOSURE TO BUYERS

STATE CAPITOL  
SACRAMENTO, CALIFORNIA

APRIL 9, 1996

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**BACKGROUND PAPER**

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### MOBILE AND MANUFACTURED HOME RESALES: DISCLOSURE TO BUYERS HEARING

April 9, 1996 - 3 to 5 pm - Room 113  
State Capitol, Sacramento, CA 95814

### BACKGROUND PAPER Summary

With changes in building codes, design, and size, mobilehomes have been transformed over the past 50 years from their status and use as vehicles and trailers to manufactured housing, providing more affordable housing opportunities to both younger families and retired persons. Although some mobilehomes are secured to permanent foundations on private parcels, most are still installed on non-permanent pier structures or cinder blocks in mobilehome parks, where the homeowner rents or leases a space from the park owner. There are some 5,000 such mobilehome parks in California.

In 1992, the state Department of Housing and Community Development (HCD) and designated local government enforcement agencies began a regular program of inspecting all mobilehome parks and mobilehomes in those parks. As the result, a number of mobilehome owners have been cited with various mobilehome code violations. In addition to the usual complaints about purchasing mobilehomes which turned out to have leaky roofs or faulty appliances, in the last few years homeowners have also been complaining to HCD and their legislators about having to fix code violations, unknowingly inherited from previous owners, which the inspections have brought to light.

Although only mobilehome dealers are authorized to sell new mobilehomes, mobile and manufactured home resales are conducted by both dealers and real estate brokers. Since 1987, real property sales have been subject to buyer disclosure requirements, where the seller checks off whether there are any known problems or defects with a list of items or conditions affecting the property. The seller and real estate agent must then sign the form to certify the disclosure. Current disclosure requirements, while applicable to mobilehomes on permanent foundations which are considered real property, do not apply to mobilehomes located in mobilehome parks.

Drawing on their experiences in purchasing homes with code violations and other defects, some mobilehome owners and brokers have called for disclosure as a condition

of the sale of a mobilehome. Two bills introduced in 1996 would require disclosure on mobilehome resales, but implementation would be approached in different ways.

The purpose of this hearing is for the committee to obtain input on the issues and ramifications of extending disclosure to mobilehome resales.

### The Development of Mobilehomes as Housing

The status of mobilehomes has matured over the years. Fifty years ago, auto campers or trailers could be towed by a car and moved from site to site, much as recreational vehicles today. In the 1950's and '60's trailers became mobilehomes as they grew in size and were installed on non-permanent foundations or support systems in mobilehome parks. Since the mid-1970's, the industry has characterized mobilehomes as manufactured housing. With sloped roofs, conventional siding, and attached two-car garages, some manufactured homes are hard to distinguish from stick-built housing.

In 1976, in adopting nationwide code standards for manufactured housing, the federal government recognized mobilehomes as a form of housing. California had also recognized mobilehomes as housing, and, in 1980, jurisdiction over mobile and manufactured homes was transferred from the Department of Motor Vehicles to an expanded Department of Housing and Community Development (HCD) to oversee code compliance in the manufacture of homes sold in California, licensure and regulation of mobilehome dealers, licensing and titling of mobilehomes, licensing of mobilehome parks, and inspection of mobilehome parks and mobilehome installations.

### Real or Personal Property

Whether a mobile or manufactured home is real or personal property is often confused with the tax status of the home. Prior to July 1, 1980 all mobilehomes in California were subject to a vehicle license fee or in lieu tax (VLF), much like a car. However, if a mobilehome was installed on the mobilehome owner's own parcel, local codes often required the mobilehome to be placed on a permanent foundation as an improvement to the real property. In such cases, the mobilehome lost its VLF status and became subject to property taxation on the local roll.

On July 1, 1980 new legislation became effective which subjected all mobile and manufactured homes sold new, on or after that date, to local property taxation. Older pre-July, 1980 mobilehomes remained on the VLF administered by HCD. Many of the homes subject to property taxation today are not located on private parcels on permanent foundations but are located on rental spaces in mobilehome parks on non-permanent support systems, such as piers or concrete blocks. In these cases, the mobilehome is personal property, despite the fact it is subject to property taxation. Additionally, a number of laws have been passed over the years to assure that mobilehomes subject to property taxes located on rented or leased land are assessed only on the value of the home rather than as an improvement to the park.

### Mobilehome Inspections & Complaints

In 1991, the Legislature passed AB 925 (O'Connell), which required HCD to inspect every mobilehome park and the mobilehome spaces in those parks on a five year basis to assure that state code requirements for parks and the installation of mobilehomes are being met. Later, the Legislature extended the one-time inspection program to seven years, with a sunset date of January 1, 1999. To date, the Department and local government enforcement agencies, which often conduct the inspections for HCD, have completed inspections of more than 60% of the parks.

Many of the code violations which have been discovered as a result of these inspections involve mobilehome installations - misaligned stairs and risers, faulty railings, incorrect set back requirements, improperly designed storage sheds, and the like. Homeowners are cited for these code violations, but only those which pose an immediate danger to health and safety, as determined by the inspector, are required to be brought up to code. Other less serious violations are noted on the record but not subject to repair.

With increasing frequency, the Department of Housing and various legislators' offices have received complaints from mobilehome owners about these citations and the cost of repairs. Many mobilehome owners, especially those who have recently purchased a used mobilehome, believe it is unfair that they are stuck with the cost of repairing code violations, of which they were not aware when they purchased the home. Some have indicated that they would not have purchased the home if they had known of the code violations, or at least it would have made a difference in negotiating the price. Some of these homeowners have advocated a disclosure of such violations as well as other defects upon resale, as now required for conventional homes.

### Dealers & Brokers

Traditionally the province of mobilehome manufacturers and dealers, since the mid-'70's real estate brokers and salespersons have been authorized to sell used mobilehomes as well. Only HCD licensed dealers may sell new mobilehomes, which are covered by a 1 year manufacturer's warranty on electrical, plumbing, heating, cooling, fire safety and structural systems and appliances.

HCD regulated dealers are governed by a strict criminal liability requirement, which makes it unlawful to sell a mobile or manufactured home which does not meet the code for structural, fire, plumbing and electrical equipment. There is no specific statutory duty for mobilehome dealers to inspect mobilehomes for which they serve as agents, although many do an inspection to protect themselves from potential liability.

Real estate brokers and agents are licensed by the Department of Real Estate (DRE). A broker or agent is required to conduct a visual inspection of residential real property, including a manufactured home where that broker or agent is representing the seller of the home. Likewise, the broker is subject to complying with the requirements of the Business and Professional Code, which give the Real Estate Commissioner the power to discipline, suspend or revoke a real estate license. According to the DRE, like a dealer,

a broker may also be subject to strict liability in representing a seller in the sale of a mobile home which does not meet the aforementioned code requirements.

### Disclosure

Under current law, real estate sales are subject to disclosure requirements which include the use of a Transfer Disclosure Statement (TDS), a form on which the seller checks off whether there are any known problems or defects with a list of items or conditions affecting the property. The form is then signed and certified by the seller as well as his or her agent, who also has a responsibility to do a visual inspection of the premises and disclose any known or obvious problems. The format of the TDS is governed by statute. See Appendix.

Disclosure serves two purposes by 1) alerting buyers or consumers to possible problems or defects in the property, which may be relevant in purchasing the property or negotiating a price, and by 2) providing a standard which helps sellers and their brokers defend themselves in subsequent lawsuits by unhappy buyers.

Statutory disclosure requirements do not apply to mobilehomes or manufactured homes unless they have the status of real property by virtue of being permanently affixed to the real estate.

### Legislation

Concerns on the part of real estate brokers as well as consumer complaints have resulted in two pieces of legislation this session, AB 2221(Kevin Murray) and SB 1704 (Craven), which both address the issue of mobilehome disclosure.

AB 2221 is sponsored by the California Association of Realtors. The thrust of the bill is to establish one clear duty of care for a broker or agent in the resale of mobilehomes, one that could be applied to mobilehome dealers as well. Part and parcel of the liability is the establishment of a disclosure requirement for sellers of mobilehomes, the form for which is currently not specified in the bill. If enacted, the disclosure provisions for mobilehomes under this bill would become effective on January 1, 1997. See Appendix.

SB 1704 was introduced by Senator Craven as the result of complaints directed to the Senate Select Committee on Mobile and Manufactured Homes over the last two years from buyers and owners of mobilehomes. The measure would have the Department of Housing and Community Development review and recommend to the Legislature the specific format for disclosure in the context of mobilehomes, which if enacted by the Legislature, would become effective on July 1, 1998. See Appendix.

### Issues

At first glance, disclosure may appear to be as attractive as motherhood and apple pie, but there are a number of issues involving disclosure requirements for mobilehomes which may complicate the issue. Among others, these include:

1. Liability too Strict? Health and Safety Code Section 18025 provides that it is unlawful for a person to offer to sell, sell, rent or lease a mobilehome which does not meet structural, fire, plumbing, heating or electrical code requirements. This means that a seller or his or her agent could be strictly liable for not discovering a hidden structural defect in a used mobilehome, which only came to light after the sale. Ultimately, such a violation is subject to criminal prosecution. Whether it applies to the seller, dealer or real estate broker, is such a “strict liability” standard too strict?

2. A Red Herring? Based on a recent case, where the Department of Real Estate has opined that a real estate agent may, like a dealer, also be subject to strict liability, some propose to repeal the misdemeanor violation for both dealers and brokers. But according to HCD, although the Department has used the statute as the basis for dealer disciplinary action, rarely if ever has a district attorney agreed to prosecute such a “criminal” case. Is the “strict liability” issue a red herring simply designed to shift potential liability away from brokers and dealers by use of disclosure? Does modification of the “strict liability” standard mean that civil adjudication may be required of the parties by HCD before it takes disciplinary measures against licensees in such cases?

3. Would the Public be Better Served? Although both dealers and real estate brokers can sell used mobilehomes, each is governed by different statutes and licensing authorities, and there are inconsistencies in the standards which apply to them. Why have two sets of rules? Should disclosure requirements for dealers and brokers be parallel? Would the public be better served if the Legislature made all requirements for licensees, whether dealers or brokers, who act as an agent in the sale of a mobilehome, more consistent?

4. If Inevitable, Should There be Notice? Ten years ago, when disclosure was enacted for real property transactions, there was more than 1 year’s lead time before the requirements became effective. Assuming the need and inevitability of mobilehome disclosure, should disclosure take effect as soon as possible or with more lead time? Should mobilehome owners have advance notice? Could HCD and local tax collectors notify mobilehome owners of the new requirements at the time of notification of license renewals or property tax bills?

5. Should Disclosure be More than the Mobilehome? The location of a mobilehome on leased land, such as in a mobilehome park, may present unique problems. Although some parks are permanently zoned, most older mobilehome parks still exist on conditional use permits and are subject to a possible closure and change of use of the park. In some parks, the park common areas may be in violation of code standards, such as drainage, flooding, or grading problems, or there may be restrictions on the use of electrical or air conditioning due to limitations on the capacity of the park’s utility system. In other parks, there may a history of animosity between the management and

homeowners and pending litigation over rents, rules and regulations or lease provisions. Is disclosure to be limited to the physical nature of the mobilehome itself, or should zoning, code violations, pending requests for changes of use, complaints, actions for abatement, or litigation involving the park, among others, be a relevant part of disclosure to the buyer? Would a homeowner be aware of all these conditions? Would the park management be willing to disclose them?

6. Code Violations - Disclosure, Inspection & Repair? Mobilehome code violations appear to be a natural for disclosure, since under the AB 925 process, all violations and corrections are supposed to be a matter of record which could be referenced in the disclosure documents or easily found by sellers or agents. But not all inspections will be completed until January 1, 1999, and according to HCD not all local enforcement agencies have kept records of the violations. Should local agencies be required to record and maintain these records? Should disclosure of code violation problems not be phased in until January 1, 1999, after all inspections are to be completed under AB 925? Should a resale trigger an inspection or reinspection as part of the disclosure requirements? To assure better housing standards, should a resale trigger correction of those violations still outstanding as part of the disclosure requirement?

7. For Sale by Owner. According to the Department of Housing, records indicate that less than half of the approximately 50,000 mobilehomes and manufactured homes sold in California last year involved mobilehome dealers. Although there are no records available showing how many of the remaining mobilehomes were sold through real estate brokers, many thousands of mobilehomes are "for sale by owner". Currently, real estate brokers provide their selling clients with guidance on completing the disclosure form and requirements. If disclosure provisions are to be imposed upon the resale of mobilehomes, who is to educate homeowner-sellers, many of whom will have no idea of what is involved and may be in violation of the law for failure to disclose without realizing it? Should disclosure requirements be phased in for homeowner-sellers over a period of years? Alternatively, should all mobilehome sales be required to be conducted through a dealer or broker?

8. Form and Substance? Mobilehomes are a form of housing, yet mobilehome codes, installation requirements, and differences in location vary considerably from conventional housing. Can the existing statutory TDS form be easily adapted for mobilehome disclosure or should there be two distinct forms, one for real property, the other for mobilehomes which are characterized as personal property? There may be some cases where mobilehomes located outside of parks on leased land are personal property. Can the dealer, broker, or seller easily distinguish the difference?

# # #

TRANSCRIPT OF TESTIMONY

APRIL 9, 1996



HEARING OF THE SENATE SELECT COMMITTEE ON  
MOBILE AND MANUFACTURED HOMES

**MOBILE AND MANUFACTURED HOME SALES:**  
**DISCLOSURE TO BUYERS**

Room 113, State Capitol  
Tuesday, April 9, 1996

**SENATOR CRAVEN:** The Senate Committee on Mobile and Manufactured Homes will now come to order. Will you call the roll, please. (Senator Dills and Senator Craven were in attendance.)

I want to welcome you, ladies and gentlemen, to this hearing and I trust that it will be one that is productive for whatever side you may chose to be seated upon. The Senate has other committee hearings now and many of our members are sitting in with other committees, and they may be coming and going during the course of the afternoon, so hopefully you will understand. Since there is a background paper on the front table which goes into disclosure in depth, our introductory remarks will be brief.

In 1985, the Legislature enacted a disclosure bill prompted by the California Association of Realtors, which *requires* sellers to inform buyers of defects and relevant conditions which affect the sale of real property. The specific form used can be found in the background material. Unless permanently attached to land, a mobilehome is not subject to disclosure.

The question before us this year is whether all mobilehomes, including those located in parks, should be subject to disclosure on resale. While mobile and manufactured homes are housing, there are some significant differences from conventional housing which complicate the disclosure issue. Today, we will hear from panels of dealers, brokers, consumers, homeowners, and government representatives. There are a number of issues which could be addressed, but our primary concern is how disclosure can be made meaningful to buyers or consumers, without making it overly burdensome or complicated for the seller.

Our first presentations will be made by the governmental representatives, and I would ask that those who may be here should come forward. Travis Pitts and Dan Garrett. Nice to see you, and thank you for being here. This hearing is being transcribed. It is not being televised, but we would ask, please, that you identify yourself for the record before making your presentation.

**DAN GARRETT:** I am Dan Garrett, from the Department of Real Estate. I will explain briefly the Department's oversight in manufactured home sales. Now, the Department licenses and regulates approximately 330,000 brokers and sales persons in the state and the licensees are agents who owe fiduciary duties to their principals under common law and additionally, there are specific duties codified in statute. Civil Code 2079 requires a licensee to make a competent and diligent visual inspection of property and to disclose

material facts to buyers. Civil Code 1102 and so forth, specifies a specific disclosure statement form to be completed by sellers and their agents on the transfer of a property.

Now, more to the point of how we regulate licensees in these areas. The Business and Profession Code enumerates numerous specific violations for which a license can be revoked or suspended. One of the causes of discipline, Section 10177.2, is a violation of Section 18025 of the Health and Safety Code, and that section of the Code provides that it's unlawful to sell a mobilehome which has substandard structural, plumbing, electrical or other major systems. So it is quite specific in the real estate law that a broker who violates the Health and Safety Code relating to inspections of systems and being inadequate is subject to discipline by the Department. Disciplinary actions on violations of this section are extremely rare. We do have a case, currently, that we are pursuing. In fact, I think it was being heard today in an administrative law hearing. The facts of the case are very straight forward. A broker was involved in the sale of a mobilehome. Subsequent to the sale, HCD did an inspection and found violations of 18025 of the Health and Safety Code. Some systems were deficient. We received a complaint and are taking action under 10177.2. As I say, the outcome is still not decided. Maybe we'll know today or tomorrow. But, it's fairly straightforward, we think.

**SENATOR CRAVEN:** Dan, are you fairly familiar with that case?

**DAN GARRETT:** No, I am personally not familiar with it.

**SENATOR CRAVEN:** Well, maybe then the question I was going to ask you would be inappropriate, but I'll ask it any how. You don't have to answer it. Not that you are withholding anything. When the Department or whomever takes action, or in this instance, who has taken action, comes in to make an appraisal as to the correctness or the efficacy of what was done to approve this sale, is it dealing solely with the length, breadth, width, height, whatever, of a mobilehome and its appurtenant fixtures, if you will, or does it encompass an area greater than that which is occupied by the home itself?

**DAN GARRETT:** Well, that would depend on fact situation of a specific case, and since they are so rare, there is no definitive answer for that. But, I believe in this case it was..., the Department didn't do its own physical examination of the mobilehome... it was based on secondary evidence supplied by the HCD inspection. And, if I am wrong on that, I hope Burt or someone would set me straight. So, it was evidentiary from a second source, not a primary source. We did not inspect it. We probably wouldn't be capable or competent of inspecting it, since we are not engineers or contractors, but HCD did, in this case, and found the violations.

**SENATOR CRAVEN:** Fine. That was sort of ipso facto or, not ipso facto, post facto.

**DAN GARRETT:** Yes.

**SENATOR CRAVEN:** Well, fine. That's good enough. Go ahead, Dan, I didn't mean to...

**DAN GARRETT:** Just to finish up here. Other violations of real estate law by licensees in connection with mobilehome sales is in rough proportion to their volume of transactions. Anecdotally, we do not track mobilehome sale violations as a separate class of complaints. Other than this specific case, the 10177.2, which, of course, pops into everyone's mind because they are so rare. If there was a mobilehome transaction and there was a violation it would be a violation of false promise, or fraud, or misstatement of facts, something like that, it would be generic and most of our violations are based on those kinds of generic violations of fiduciary duties. So, from a disciplinary standpoint, as far as the Department is concerned, there is no extraordinary problem in mobilehome sales indicated at this time. That's not to say that buyers consistently receive adequate disclosure, especially in a park. There you get into a different kind of disclosure. But, we don't receive an inordinate number of complaints about licensees involved in these kinds of sales. I thank you, and I am available for questions.

**SENATOR CRAVEN:** Very good. Travis, how about yourself.

**TRAVIS PITTS:** Senator Craven, Travis Pitts, Department of Housing, Division of Codes and Standards. We license the manufactured housing dealers who are very active in the sale of manufactured homes and mobile homes. We have approximately 850 licensees. We take disciplinary actions against our licensees in the same fashion as DRE does, based upon complaints that we verify by inspection. It's very difficult to enforce the criminal provisions of 18025 of the Health and Safety Code because it is a misdemeanor, and it requires that we file with the district attorney, who must accept the case for filing with the court. Misdemeanor actions, to get them enforced by the district attorney, are quite difficult. We end up taking a disciplinary action against the licensee for the violation, but that doesn't cure the problems of the homeowner who may be out some substantial amount of money.

With respect to 18025 and whether or not it covers the home or the area in and around the home, it covers only the home, Senator. It's unlawful to sell or offer for sale, rent or lease the home. The problems that you are experiencing, and Mr. Tennyson is now experiencing, and the complaints that we both receive, result from our inspections of mobilehome parks throughout the state, and we're moving at an accelerated pace. The substantial amount of those violations we're citing are associated with the installation of the home on the lot and not the home itself. Therefore, 18025 would not be applicable in this particular case. It's rare that we ever get involved in citing a violation with the home. More typically, it's with storage sheds, stairs, rails, porches, weeds, trash and other problems with the lot that wouldn't at all be covered by 18025, and I'd be happy to answer any questions you may have, or anyone else may have.

**SENATOR CRAVEN**: Fine. First of all, let me introduce to those of you in the audience Senator Ruben Ayala who just arrived having been at another hearing, and nice to have you with us, Rube. I don't know whether we have...John, do you have this? This is John Tennyson, consultant for the committee.

**JOHN TENNYSON**: You indicated, Mr. Pitts, that seldom is a violation of 18025 taken to the district attorney, or will a district attorney take that case, but do you use that as a basis for your own administrative, disciplinary action against a dealer, or seller?

**TRAVIS PITTS**: We use the violation as a cause of action against the licensee whether or not we can get a the district attorney to take it. That's a separate cause or a separate course for us. We still take the administrative action against the licensee.

**JOHN TENNYSON**: What would that consist of?

**TRAVIS PITTS**: The administrative action most typically results in the loss of a license by licensee. Again, not a compensation to the purchaser who may have been harmed in some way. The administrative action by us is limited to taking an action against a licensee to suspend or revoke the license.

**JOHN TENNYSON**: Does that become a permanent suspension or can they regain that license?

**TRAVIS PITTS**: It is possible to regain it in later years upon demonstrating that they can satisfactorily now run a mobilehome business, sales business. It is possible. We have had some come back.

**JOHN TENNYSON**: Thank you.

**SENATOR CRAVEN**: Dan, do you have anything further?

**DAN GARRETT**: No, sir.

**SENATOR CRAVEN**: Ruben?

**SENATOR AYALA**: Yes. Are these folks from the Department of Housing and Community Development? I have a letter here dated March 23, 1995 to a resident of a mobilehome park. It says "Notice of Violation." The letter is not signed by anybody. Number one, that's wrong. In the number of violations they indicate to make major changes that must be corrected by April 27, 1995. That was last year. And, these folks had just moved in to that mobilehome park or that home. They had to make someone

else's corrections because the deficiencies have been there for quite a while, and obviously they didn't have the financial assistance they needed to do so. But, you're threatening these people by saying that if they don't make the following corrections by April 27, they are going to be penalized, and number one, it's not signed by anybody, so I would have thrown it away to start with. But this is to a friend of mine who sent me the letter that you folks sent to him. Are you familiar with this letter?

**TRAVIS PITTS**: We have mailed those out, Senator, by the thousands. That is a "Notice of Violations", not a letter. In the beginning of our inspection program, the complaint from the homeowners was that they couldn't read our handwritten inspection reports. So we quickly moved to an automated inspection report, where we put the notice in typewritten form, and the last paragraph, I believe, provides the name of the inspector and the telephone number to contact if they have any questions.

**SENATOR AYALA**: You know, there are a number of violations listed, but here is one that says, "The gas meter provided on the lot has been enclosed and obstructed in such a manner as to restrict ventilation or accessibility." Well, that has been there for a number of years and all of a sudden these people are saddled with that correction. It happened to be there when you made the inspection. I don't know how often you make the inspections. How often do you make these inspections?

**TRAVIS PITTS**: We are making inspections now in accordance with AB 925 of 1990. For history, the Legislature suspended our park inspections in 1974. And, we did not make any until the enactment of legislation in 1990 that gave us, as amended, 7 years to inspect every park in the state. Cumulatively, Senator, there had been some 18 years of accumulated problems in the parks before we came back in.

**SENATOR AYALA**: Shouldn't you inspect the mobilehome when ownership takes place and have the owner, not the buyer but the seller, make the corrections prior to the sale?

**TRAVIS PITTS**: Should government require a pre-inspection of the home? I'm not inclined to suggest that.

**SENATOR AYALA**: Well, the government required that they do it after they buy the home which is already in violation to start with.

**TRAVIS PITTS**: We're not actually inspecting the home as much as we are the lot that it sits on. That's where we find the majority of the problems.

**SENATOR AYALA**: The problem still is that you ask these persons to make the corrections that existed for a long time.

**TRAVIS PITTS**: Right.

**SENATOR AYALA**: They just bought the place. If they had known, they would probably either not buy it or allow the seller to make the corrections. So, shouldn't they notify you folks, or someone, that the purchase is taking place and you inspect it to make sure it is all in order before the new buyer takes over? Why saddle the poor little folks with no income with corrections that have been in existence for quite some time?

**TRAVIS PITTS**: Senator, I'm speaking personally, now. If that was an option that the homeowner could exercise...

**SENATOR AYALA**: They don't have to do these things?

**TRAVIS PITTS**: No, I said that if the inspection that you are asking for was optional, that the homeowner could chose whether or not to do that, I would be supportive. But, to make it mandatory that the state agency inspect every home prior to a sale, I have a problem with that. It is not comparable to conventional real property. It is quite costly.

**SENATOR AYALA**: If you make it optional and I'm the seller, I'm not going to tell you about it. So, what's this optional business. It doesn't mean anything. My point is that a lot of older folks with limited income are saddled with a cost none of their making. They purchase a home with those violations, already. I don't know how long they existed, but you tell them by a certain date to correct them or else. These folks, some of them don't have the money to do that. What are they going to do?

**TRAVIS PITTS**: Well, I certainly understand. We've received that complaint many times, Senator, and I don't have the answer for those folks who don't have the money to affect repairs. We are working with many of them.

**SENATOR AYALA**: Can I have someone visit me and we'll talk about these things and see what direction we can recommend for the Department that is fair to everyone. I don't want these mobilehomes that are falling apart and are a hazard to the people living in them, either. But I think that we should be fair and make sure that those who are responsible for the condition of that home be asked to make the corrections, not some individual that buys it. Here's another one. They say the park electrical service equipment is not accessible for inspection. Well, it has probably been like that for years.

**TRAVIS PITTS**: Yes, sir.

**SENATOR AYALA**: Repair or disconnect in case of emergency. Provide unobstructed access 24" wide by 7" high in front of the electrical equipment. I don't think it happened overnight, is what I'm saying. And so...

**TRAVIS PITTS**: That it got covered up? Oh, I fully agree, Senator.

**SENATOR AYALA**: Can I have these folks come to me and we'll ...

**SENATOR CRAVEN**: Well, I'm sure that Mr. Pitts will be happy to do anything. He has been coming to see me for years, and helping me a great deal.

**JOHN TENNYSON**: I'll be happy to work with your office and coordinate something.

**SENATOR AYALA**: We can hold it at the Chairman's office, if you wish. I just want to see if we can streamline the process.

**SENATOR CRAVEN**: Well, this is kind of a sequential thing. In other words, which came first, the chicken or the egg. In other words, I buy something from you and you had a deficiency in it, but you didn't tell me about that, and I bought it, and I've lived with it for years, and then he comes along and says, "Bill, you've got a real problem here." And I say, "I didn't do that, Ruben did that." So, you know, it's one of those things. I understand how nice it would be to have us act immediately upon running all of these things down. But, we don't have enough people to do that. And, we haven't had enough people to examine them to begin with. O'Connell's bill and my bill, I think, are the ones you referred to, I believe. How long ago was that, Travis?

**TRAVIS PITTS**: The original O'Connell legislation was in 1990 and your amendment followed, I think, two years later.

**SENATOR CRAVEN**: Yes. And, we..., weren't we trying at the time to get people in there to look at it every three years?

**TRAVIS PITTS**: Initially, it was every four. Since it's a requirement of both HCD, for the parks we have jurisdiction over, and local governments. They were having some difficulty in meeting the four year requirement, so it was now set out to seven-year inspection cycles.

**SENATOR CRAVEN**: Yes. I'm sure that you would be happy to meet with Senator Ayala or have some of your people...

**TRAVIS PITTS**: I'm sure we can work out something.

**SENATOR CRAVEN**: They're very, very cooperative, Rube. I've never found them to be standoffish at all.

**SENATOR AYALA**: That's great. That's what I'm saying. We can work something out because, you know, you don't inspect every year. So, if I bought a home five years ago with the problems already there, and I inherit those problems, I guess I have to pay for the corrections. But if I knew at the time they existed, I would make the seller correct them before I move in.

**TRAVIS PITTS**: Absolutely. I agree with you, Senator. I'll wait till I hear from Mr. Tennyson.

**SENATOR CRAVEN**: He'll set it up for you.

**SENATOR AYALA**: Thank you very much.

**SENATOR CRAVEN**: You are entirely welcome. Well, neither of you have anything further, do you? Thank you both so very much. I appreciate your presence. Next we have, under the category of brokers and dealers, Burt McChesney, who is with the California Association of Realtors, and Bob West, the Executive Director of the California Manufactured Housing Institute. Good to have you with us. Burt, how are you? Bob, nice to have you here, too. Who wants to start?

**BURT McCHESNEY**: I'd be happy to. Good afternoon, Mr. Chairman. Burt McChesney, representing the California Association of Realtors, who are involved, as Dan pointed out, in the sales of many real property mobilehomes which is a key point to understand here. What leads to some of the confusion is that homes that are on a permanent foundation are real property subject to the current transfer disclosure statement requirements of existing law that apply to traditional housing, as well, which is found in 1102 of the Civil Code, which requires the seller of real property to complete a detailed disclosure statement about the property, the home and the property it sits on. Any known material facts that affect the value or desirability of the property. A real estate licensee who is an agent in such a transaction is required under the Civil Code 2079 to conduct a diligent, visual inspection and disclose on that same form what that inspection reveals to any prospective buyer.

It's our belief -- we'd like to contradict a little bit of what the DRE representative, Mr. Garrett, said -- we do not believe that the liability provisions of 18025, the Health and Safety Code, apply to real estate licensees in the case in which he cites. We do not think that the real estate agent violated the provisions. We believe that the Civil Code Provision 2079, which expressly requires real estate agents to conduct a visual inspection of the mobilehome as well as traditional homes is all that is required. We're also looking anxiously at what happens with this administrative hearing today, because we believe that this administrative hearing is in error, that the section that is being applied does not apply.

We believe that the disclosure provisions of 1102 also ought to be extended and applied to all transactions involving mobilehomes, not just those involving real property, that the law be clarified and simplified and apply the same standard of disclosure, a burden on the seller and their agents to disclose and inspect, and that will solve much of these problems. The law, as both HCD and DRE pointed out, the current strict compliance standard that is appropriate for the sale of a new home, simply doesn't work in the used home environment because it is a criminal sanction. They are not getting any criminal enforcements. DAs aren't going to spend their time enforcing the law. Many of the complaints don't relate to the home itself, but relate to the surrounding property and appurtenance, and it doesn't apply and leads to confusion.

A disclosure provision with a carefully designed statutory disclosure form, as is provided now for real property, including real property mobilehomes, guides the seller through the kinds of disclosures, including disclosures of the land and appurtenant structures, and any known material fact, like the conditions of the park and the rules and the regs of the park and all those things, would need to be disclosed to enable both the seller and the buyer to then adjust the price to reflect the true conditions of the property. Buyers know then what they are getting.

One of the concerns that Senator Ayala has is the situation you place the low-income home buyer, mobilehome buyer, in who then discovers that there are defects and problems that he or she is required to repair after the fact. Those would be required to be disclosed, if you apply this law to all the 1102 sections, to all transactions, and you would enable, then, both the seller and the buyer to negotiate the price, because when the disclosure form is provided one of the statutory provisions is that it gives the buyer a three-day right to rescind the contract upon receipt of the disclosure.

I would point out that often the seller is equally as distressed as the buyer, and if you require the seller to make the repairs, the seller may not have the assets to do those either. But, if you have full disclosure of the condition of the property, the buyer and seller can negotiate a price and negotiate a resolution of those issues satisfactorily to both parties. So that is why we are sponsoring legislation in the State Assembly this year, AB 2221 by Assemblyman Kevin Murray, to clarify the situation with respect to the responsibilities of real estate licensees that it is Section 2079, to apply that same standard to the mobilehome dealers who are selling the personal property mobilehomes, require sellers of mobilehomes regardless of whether they are real property or personal property, to prepare a disclosure statement and provide it to any prospective buyer, and just simplify and clarify and have basically the same standard for mobilehome sales as you have for stick home sales. It will be clear and provide enforceable civil and administrative remedies for buyers who have either been misinformed by the seller or by the agents, whether they are a dealer or a real estate licensee. So, we think it's a satisfactory and acceptable resolution.

One of the questions Mr. Tennyson asked was whether there should be some delay of implementation, and we would respond that I think it might be advisable to have some

postponed effective date. I don't really think the postponement needs to be very long, because it is our understanding that most transactions involving mobilehomes today or, many of them involving agents and dealers, already are complying with, whether correctly or incorrectly, with the transfer disclosure and the inspection provisions. We have been advising our agents, since 1985 when the Civil Code was adopted and the 1102 sections were established, that that was their responsibility--to have their seller fill out a disclosure statement and to conduct a diligent visual inspection of the property.

So, because of the absence of enforcement of the 18025 and the confusion in law as to the burdens on real property owners, the practice has emerged and developed as to compliance with the disclosure provisions with respect, at least, to real property. And we have, and I have copies for you, examples of a disclosure statement that some dealers have developed on their own. It's copied from the real property disclosure forms that are being used in mobilehome transactions today.

**SENATOR CRAVEN**: Burt, let me ask you, as it pertains to that form, that form is equally important to a new home as well as a used home?

**BURT McCHESNEY**: Yes, yes.

**SENATOR CRAVEN**: Now, who actually fills that form out?

**BURT McCHESNEY**: It is filled out -- let me give you copies, here. It is filled out by both the seller and the agent. If you look at the real estate transfer disclosure statement label at the top, this form is the..., we've put our logo on it, but this is specifically prescribed in statute. This is what you have to have on a form. We sell them to our agents with our logo on it, but it is the contents that are statutorily prescribed exactly the way this is. If you look on the back page, it's a two page disclosure statement. The bottom half provides for the disclosures by the agent of what the inspection has revealed.

The first page and the top of this back page walks the seller through the disclosures required to assure that all the material kinds of information that ought to be disclosed are in fact disclosed. It has all the provisions of what the property has on it, including patios and decks and septic tanks and saunas and what kind of water they have, gazebos, fire alarms, smoke detectors, all those things. And then on the back, conditions of the property. Are there neighborhood noise problems, what are the CC&R's or other deed restrictions. Is there a homeowners association, common areas, notices of abatements, earthquake flood or landslide damages or experience on the property. So, it is a fairly comprehensive document that helps guide the seller through the kinds of disclosures that they need to make.

The other form I've given you is an example of one that some dealers have modified. It is not a statutorily required form, but it's almost identical, as you look at it, to the statutory

form that is required for real property, but has been modified a little bit to apply in the mobilehome situation. Whether this is completely satisfactory, we don't know. We've been holding some discussions, including involving Mr. Tennyson, with respect to our bill, Assemblyman Murray's bill with DRE, HCD, the mobilehome dealers, the Golden State Mobilehome Owners Association, to come up with a recommendation of a statutory mobilehome form that would then be required to be prepared by all mobilehome sellers, whether it's real or personal property. We think that's the solution rather than current law.

**SENATOR CRAVEN**: Wouldn't it be logical to suppose that when two individuals are discussing a given property, one is supplying answers to the interrogation from the other. Isn't that to be assumed?

**BURT McCHESNEY**: Yes.

**SENATOR CRAVEN**: Then, somewhere along the line, a third person is going to come in and make a judgment as to the efficacy of what they have done. Isn't that right? Somewhere along the line?

**BURT McCHESNEY**: Somewhere along the line, yes.

**SENATOR CRAVEN**: And, we get back to what Ruben was saying, you know, because he may say, "Well, I didn't know that was here, or I didn't know that that was wrong," or whatever, "and it is something that I didn't do. I've lived with it, but I didn't commit it." And, we really don't have an answer for that except that you better pony up with the money or you're going to be outside looking in.

**BURT McCHESNEY**: Yes, and in the situation with real property, whether stick built, again, or whether it's a mobile home that's been fixed to permanent foundation, the burden currently exists to complete the disclosure statement and then you stand by them as a seller. That you have to disclose any known material facts that affect the value or desirability of the property, as does the agent or broker. So, and then that's enforceable through both civil action, as the buyer if you think that if there was fraud, the seller or the agent intentionally failed to disclose some material facts, you have fraud actions or negligent actions if it was not fraudulent.

**SENATOR CRAVEN**: *Fraud is fraud, regardless of who may have committed it.* Is that not right?

**BURT McCHESNEY**: Right.

**SENATOR CRAVEN**: So, the agent, the real estate agent, is really under the gun to do things properly or else he or she may be in big trouble. Right?

**BURT McCHESNEY**: Yes, and one of the questions asked in the background paper of us was does the department, whether HCD or DRE, have to postpone any administrative action pending a resolution of a civil action? The answer is no. But the departments can move forward on an administrative hearing. In fact they are, in the case that was mentioned earlier, before resolution of a civil action. Though they might want to determine if, in fact, the facts are accurate. But, they're not bound to hold off on administrative action pending the resolution of any civil action.

**SENATOR CRAVEN**: They could, then, if I interpret you properly, say, "Well, we understand, and we understand also that you want to take care of it, so why don't you go ahead and do what you have to do when you can do it. We'll give you the go ahead now and we will inspect it 30 days from today."

**BURT McCHESNEY**: I don't have a lot of details on the case that Dan Garrett mentioned, but my understanding is one of the issues involved in this case is that because the statute is strict, you cannot sell the property if it does not meet these conditions. My understanding is that the real estate broker made an effort to repair the damages, but and if he did, he's still liable because the property was sold and didn't meet the conditions. Even if the conditions are repaired, he still violated the law. Even if you've exercised all your diligence as an agent to try to identify them, based on your level of expertise. You inspect the property, you don't see any damage, you've exercised all your diligence to try and determine these defects, and some other inspector subsequently finds them, you offer to pay and repair, you're still liable. You're still in violation. So, that's a real problem. And a dilemma for our folks, and for sellers. It's not just the agents, but the sellers are in the same bind.

**SENATOR CRAVEN**: I understand. John?

**JOHN TENNYSON**: I had a question with regard to one of the statements you made concerning whether disclosure would resolve some of the problems that Senator Ayala was talking about. Unfortunately, he had to leave for a few minutes. But, what about situations...I noticed, of course, the form says, "Conditions with regard to the property, such as code violations of which the seller is aware." But, what if you have situations in which the seller or the broker or the dealer is not aware. A lot of these things are not very obvious. For example, Mr. Pitts can correct me if I'm wrong, I believe on a mobilehome park space, the administrative code allows you to have a storage shed or cabinet of some kind of 100 square feet, but not more than that. What if the storage shed was put there two or three or four owners ago by somebody who put two of them there that are 75 square feet each? Therefore, you're 50 feet over. You don't know about that. How is that problem going to be resolved by disclosure?

**BURT McCHESNEY**: Disclosure doesn't solve every dilemma. Existing law doesn't resolve every dilemma either. I mean, if what you seek to do is to have the person with the likelihood of the most knowledge, which is the seller, disclose what they know and hold them to a fairly strict standard of if you know it, you've got to disclose it. And rely, in large part on that and then, when there are agents involved, on their inspection and disclosure and their slightly greater level of expertise in some areas and hopefully, if there are agents involved they may be more familiar with those kinds of data and if they know the standard, they have to disclose it as well. But, if no one knows and honestly, in good faith, diligently disclose what they know and they don't know it, I don't know what you do. I mean..., but I don't think existing law solves that dilemma either. And, I am practically sure now that existing law doubly endangers sellers in that they are required..., particularly if they're real property mobile homes, they have to meet the Section 1102 standard.

**SENATOR CRAVEN**: Very good. Thank you very much... Bob.

**BOB WEST**: Thank you, Mr. Chairman. My name is Bob West and I am president of the California Manufactured Housing Institute. We are a non-profit trade association of companies that build, sell and finance manufactured housing and develop and operate manufactured housing in mobilehome communities.

First, I want to say that all of our members, I feel quite certain, are vitally concerned with customer satisfaction. Their livelihood depends upon it. At least one of our manufacturer members rewards each of its retailer dealerships for achieving 87% customer satisfaction verified by independent surveys taken. I recognize these are on new homes, but the interest remains. It is, therefore, our concern that a resolution of this whole issue be achieved for all parties. Today, all of our dealer members are extremely aware of Health and Safety Code Section 18025, their responsibilities and their liabilities. And, for the most part, when they sell a home they will invariably pursue or they will pursue one of the following.

First, they will make an effort to do a diligent visual walkthrough with the seller. Their idea is that if they note deficiencies they will advise the seller that before they close that sale, those deficiencies need to be corrected or they won't be a part of it. My opinion is there's a couple of shortcomings in this approach. All of our dealers and their personnel are not completely familiar with the codes, and so they aren't going to spot all code compliance, maybe, as well as they should. Secondly, if there is a non-compliance outside of the home in the park, they are not qualified to evaluate that situation. In some cases, independent third party inspectors are hired, generally either at the option of the seller or the buyer. These inspectors have a thorough knowledge of the code and generally more so than a lot of the dealers do, and of the violations. But, this doesn't always happen, particularly if the buyer or the seller is not willing to invest the money to hire this inspector.

As was just mentioned, some of our dealers are currently using a disclosure statement similar to what's being proposed in AB 2221. I believe that on a uniform basis, if this is applied to all agents, then I think it can work well. In 1995 over 50% of the manufactured and mobilehome resales were completed by non-HCD licensed agents. It is our opinion that many of the problems, in so far as code violations are concerned, are in private party transactions. As of now, though, 18025 applies to anybody who sells a home. There's not a way, to my knowledge, to hold a private party accountable. We believe that all licensed sales people, either HCD or DRE, should be on absolute level playing field. All of the regulations and all of the sanctions for violations of those regulations should be equal. If this can't be done equally by two agencies, then it is our opinion that HCD should have the responsibility for whomever is the selling agent.

We also suggest the use of the transfer disclosure statement for all resales of manufactured homes. We believe it should be identical for all personal property homes regardless of who's involved with the sale, regardless who the licensee is. I think there are some differences on real property transactions than on personal property transactions and some of the items to be disclosed on real property transactions may not be appropriate and with which those completing that transfer disclosure statement may not be familiar. Private property sales, private without an agent, need to accomplish much the same. We'd suggest that on a private party sale, before title is transferred, that there be an acknowledgment by the buyer that the seller has completed and reviewed a transfer disclosure statement with him.

If the home is on a land-leased community, we believe the park owner or the manager should complete a separate transfer disclosure statement describing any existing or potential problems in the community with which the licensed sales agent from HCD may not be familiar. Samples of those are described in your background paper in issue three, where they are listed, several of them. That's all I have. I'll be happy to answer any questions on behalf of CMHI. And I want to thank you for the opportunity to speak.

**SENATOR CRAVEN**: Thank you, Bob. I just want to ask you a question relative to the person who perhaps engages with the would-be buyer or seller, as the case may be, on the questionnaire and the filling out of all of that. Is that person paid a stipend for what is done?

**BOB WEST**: The person..., excuse me?

**SENATOR CRAVEN**: The person who is in effect completing the inspection.

**BOB WEST**: In some cases, he is, yes. The third party inspector, yes, he is.

**SENATOR CRAVEN**: Yes, I see. That's common.

**BOB WEST**: And generally paid for by either the buyer or the seller, not by the dealer.

**SENATOR CRAVEN**: So that's really a part of the consummation of a sale.

**BOB WEST**: Yes, although in this case not being mandatory. It's done at either the buyer or seller's option, or both.

**SENATOR CRAVEN**: I see. Although, as you say, it's not mandatory, is that right?

**BOB WEST**: No, it's not.

**SENATOR CRAVEN**: I see. Very well. Any questions? None. Thank you, Bob, very much. We appreciate it. Next we have the category of mobilehome owners and consumers. The first person, lady, that I will ask to come up is Denise Delmatier. I don't know if that's the way she says it, but where I come from that's the way they say it. Next, is Jim Sams, mobilehome owner, Sacramento and Paul Henning, mobilehome owner of Sacramento. We have two more persons and two more seats--Jim Allen, attorney, Endeman, Lincoln, Turek and Heater, and Norm McLeod, mobilehome owner from Carlsbad. Denise, if you will, please.

**DENISE DELMATIER**: Mr. Chairman, my name is Denise Delmatier, and I loved the French pronunciation of my last name. We dropped it some time ago, but it was wonderful. The Gaulco Group has been newly retained by the Golden State Mobilehome Owners League, and we're happy to be here today. We appreciate the opportunity by the Chairman and members of the committee to address these complex issues.

We are aware that we have two separate bills pending, both in the Assembly and, of course, Mr. Chairman, your bill here in this House, that take two different approaches to solving some of the complex issues that your staff has so ably described in the staff analysis. We have sat down with the sponsors of Mr. Murray's bill, AB 2221, and while we have no position on that bill at this time, we recognize that there are some problems associated with the disclosure issue, and we look forward to continuing those discussions. We do recognize, though, that there are a number of issues associated with mobilehome owners that require a great deal of further, thorough investigative analysis, and while we recognize that some interested parties proposing Mr. Murray's bill are eager to move that bill along in a quick fashion, we, on the other hand, want to move a little bit more judiciously in addressing those complex issues, so as to protect the interests of the homeowners. Today I have with me two gentlemen who are members of the League. First of all, Mr. Jim Sams, who is a regional manager and secondly, Mr. Paul Henning, who is a member of the legislative committee.

The one issue that certainly sticks out in my mind as one that was alluded to by Mr. West is the issue of what do you do about the sale by owner of used mobilehomes. And,

obviously, whereas we have some recognized standards of practice for real estate brokers and agents, for homeowners who are in their elder years and who haven't had the training, nor the continuing education requirements of licensed brokers and agents, this can be a real problem requiring folks who are living in mobilehomes to all of a sudden act as if they were agents and brokers and assume the liability therein. So, I'll let Mr. Sams and Mr. Henning address some of those issues.

**SENATOR CRAVEN:** Very good. Thank you. Yes, sir.

**JIM SAMS:** Thank you, Senator Craven, for allowing us to be here and testify today. This is a very important part of our lives.

**SENATOR CRAVEN:** Very good. It's a very important part of ours, too, and I appreciate your kind words.

**JIM SAMS:** Thank you. First of all, my name is Jim Sams. I live in Sacramento in the Olympia Mobilelodge Mobilehome Park and have lived there for 11 years, so I've seen many things happen. As she mentioned, I'm a regional manager, but I'm not here officially for GSMOL, I'm a private person today. I have some concerns and questions about the advisability of the type of legislation proposed.

First, I want to say up front, though, I feel that your bill, with the possibility of more study, is the direction that I really feel should be the way to go. Because many residents will not know about the disclosure requirements they may violate them or be forced to rely on a real estate broker for that information. Consequently, the owner of the mobilehome would be handicapped in trying to sell on his own without a broker. If listed, and a commission is decided upon and the mobilehome, because of needed repairs which are discovered later, sells for a much less price, does the broker then reduce the commission comparably? In other words, there is one case I know of where the person had to pay a high commission even though he had to sell for a much lower price.

Two, people of low income, widows and widowers, probably would be unable to raise enough money to repair the mobilehome and thus be unable to sell it, except at a give-away price. And, of course, the mobilehome would probably then have to be abandoned to the park owner. The mobilehome owner has been deprived of his property.

Three, will park problems complicate the matter? Will sewer problems of the park and ponding, just to name a couple, require disclosure when the mobilehome owner decides to sell? And, this is also a part of this whole disclosure and the effort to sell. Finally, I feel that this should not be a criminal penalty. There may be a matter of civil code or this kind of thing, but a criminal penalty for something which might not be understood by the person who is trying to sell his mobilehome seems to be a very severe way of dealing with this problem. If the Legislature feels that this new control measure is to be a serious

consideration, I do favor SB 1704 for the reason that it allows a period of time to study and to identify unforeseen problems for mobilehome residents, and I think everyone will agree that when we do things fast, many times we make mistakes which we cannot remedy very well or very easily.

In summary, I feel that the real estate interests would be unloading their responsibilities on the mobilehome owner. These are professional people, whereas the people in the mobilehome don't understand these things themselves. And so, I would ask the committee to recommend or as my recommendation to the committee that we not place an undue burden on these people who live in mobilehome parks. I thank you very much, Senator.

**SENATOR CRAVEN**: Thank you, Jim. Yes sir, this is Paul Henning.

**PAUL HENNING**: I am Paul Henning. I live in a mobilehome in South Sacramento, the Golf Green Mobilehome Estates, and I want to thank you for the opportunity of expressing my views on this subject.

The question here is when is a home a home? It appears a home differs on how the structure is mounted. Does it really matter for the determination of disclosure? As long as the structure and the contents are relatively the same. That is, from the foundation up whether it's on foundation or how it is structured underneath. The difference in disclosure of a new home is generally covered with a lease with at least a one year warranty, which is generally covered for about a year. As you know, in the resale of other homes, there is no warranty, and the home and specified contents, such as appliances, are covered in a new home but not in a resale home. This, in my mind, would be a different disclosure than a resale. A resale disclosure would be entirely different than a new home. We know that AB 925 covers the exterior inspection for health and safety violations only, and this is why a disclosure is needed for health and safety reasons for the interior of the home regardless of whether it's on a permanent foundation or not on a permanent foundation.

And, the sale by owner, we really have not discussed this issue in legislation. I've just been with my legislative committee, just been recently appointed to this, and have not had contact with the full committee, but there is a possibility maybe, Senator, when the mobilehome is sent the tax notices from the HCD, maybe there could be a reminder in there of some sort that if a home is sold by the owner, that there could be a telephone number in there and a notice to that homeowner that he has to have a disclosure on it before he sells it, or something to that effect.

**SENATOR CRAVEN**: I understand.

**PAUL HENNING**: And, that's about the extent of it what we have today, here.

**SENATOR CRAVEN**: Very good. Well, thank you very much, Paul. Appreciate it. You have some very fine thoughts. Next is Jim Allen, who is the attorney, and Jim, your turn.

**JIM ALLEN**: Well, thank you, Senator. I came up, basically, on invitation. My partner, Dave Semelsberger was talking with John, here, and they had a discussion of some of the issues which maybe hadn't been thought about. For the most part, I spend 75% of my practice representing residents in mobilehome parks. I try failure-to-maintain lawsuits. Our firm, Endeman, Lincoln, Turek and Heater, I would say is about one of the only firms in the state that'll take these suits, and we try them around the state. But we also do most of the rent control work in the state and have gone to the United States Supreme Court defending the City of Escondido's ordinances. So, I'm really familiar with the problems residents face in mobilehome parks.

One of the problems...., we get calls all of the time from when the HCD goes out, does an inspection. They find all these violations at the park and on the spaces and the people immediately call us, even if we haven't represented them for ten years, they'll still call us. And, the problem is, with this disclosure, most of these problems will not be identified in the disclosure. If you read their statements, HCD goes out there and they'll look at all the code sections which says you have to have so much clearance between the meter and the house. You have to have so much for the shed. You have to have a ramp. If it's too steep, it will be in violation. People don't know this. A Realtor doesn't know this, and certainly a mobilehome resident has no idea these are violations. Well, you have this disclosure, everybody is acting in good faith and trying to disclose what they know, but out of ignorance, and I mean very few people have the knowledge of all these HCD inspections. They don't disclose this. Most of this would not be disclosed anyway. Now, we have created a liability for somebody for failing to do something which is really hard to do. I hire inspectors that go through and inspect the park and the homes when I take these cases, and I look for these things. Residents that I represent have no idea most of the time of these problems.

The other problem is, right now, a lot of the things you see here are the park owner's responsibility. For instance, on this form it talks about drainage. Well, the park owner is responsible to provide positive drainage so that it doesn't pond. That's not a homeowner's responsibility. A park owner is responsible for the sewer system. A park owner is responsible for the water system. A park owner is responsible for gas and electric. Many, many times these people have no idea that it's the park system causing them problems.

For instance, I just recently tried a case where a lady sold a home to a couple I represented. It was a lady who didn't use much electricity. When the family came in, they brought appliances that a family would bring in. They brought in the microwave, a couple TV's and the whatnot. But when they started to use the electricity, they found out they couldn't turn on the air conditioner, they couldn't run two appliances at the same time.

The lady who lived there before had no idea any of this existed. When we got into the case, we found out the home was only served with 8 watt wire which would provide 40 amps. Well, the home had a pedestal that had a 50 amp on it and should have been able to run these things. It was never disclosed. No one would have known about it till they got in. The park owner, however, knew about it the whole time because he was systematically replacing, as homes came in with the 50 amps and not replacing the line, and his electrician knew he should replace the line. And it wasn't discovered till you get in and you have an electrician and everybody look at that.

Well, now who's responsible? In the law suit, the park owner will say, "Well, you didn't disclose it, therefore we'll have to cross-complain against the other person because one of the damages in a failure to maintain, is loss of value." Who's now responsible for that loss in value? The lady who didn't disclose it? or the park owner? If you have disclosure, you are creating legal obligations that you may not be aware of, and when you have to disclose things like sewer, electrical and gas problems that you have no idea about, right now that liability which is on that park owner, could be transferred to the resident and certainly the defense to damages a park owner would raise. So, any law you have with disclosure has to take that into consideration and make it very narrow so it only deals with the home itself and does no inadvertently or unintentionally transfer legal obligations to the resident, which should rightfully be the park owner's responsibility. That's all I have. Thank you.

**SENATOR CRAVEN**: Fine. Thank you very much, Jim. Next is Norm McLeod who is a mobilehome owner from Carlsbad in one of California's finest parks.

**NORM McLEOD**: Yes, I live in Rancho Carlsbad. We are a new ROP park and we just bought it for 36 million dollars. But, I'm a 27 year veteran in mobilehome living, and I lived in Sunnyvale, CA in Plaza del Rey for over 15 years and about 11 years down here.

But, I'm also a pretty hard hat engineer. And I was looking at the real estate transfer document statement within itself, and some of the questions that I would ask, if I was going to buy it, was first, what was the age of the hot water heater. You know, it says here, water heater, but it doesn't say whether it's a 10 year period of time or when it was installed. If you have to put a new one in it's about \$300. Also, the central heating. When was the central heating put in here and what condition is the central heating in. If you have to put a new one in it is about \$1,000. I notice in their form here that they have sprinklers. Well, first, I'd ask whether it's an irrigation sprinkler or a fire sprinkler system today. I noticed here that they have a well. I'd want to know who certified it and whether it was approved to be able to be used or whether it was dried out. And, another is the garbage disposal. I'd like to know what the age of the garbage disposal was, because I figure that after two to three years of age, it's going to have to be replaced.

And, frankly, my whole thing to come right down to it is I've served on the Santa Clara Energy Supervisor's Task Force. I've also been on solid waste. I'm fairly well known

world-wide, incidentally, by environmentalists. And, I feel that it's necessary that a task force be formed to bring together all of these forms so that we're looking at the same thing, because like the two gentlemen here said, many of the things that are disclosed inside a mobilehome are the same things that are inside of a stick house. Thank you.

**SENATOR CRAVEN**: Very good. Thank you very much, Norm. Do any of you wish to make another comment? Paul?

**PAUL HENNING**: Yes sir, Senator, I want to reiterate what Mr. Allen has said. Many times, persons, their porches and everything have dry rot and then they have to be rebuilt, requiring a permit, and I imagine in a lot of parks, they don't get that permit. Same way with the ramps and I believe under Title 25 is...is Mr. Pitts still here?

**SENATOR CRAVEN**: Yes, he is in the back there.

**PAUL HENNING**: OK, I think he will bear this out that it is the manager's responsibility to see that these homes do have permits and they are built correctly. So, therefore, you know, on a resale of a home like this, and there are steps that are maybe only 5" and they are supposed to be 7". I think the park owner and the park manager are the ones that are responsible for this type of negligence and not really the home owner. So, I just wanted to add that, Senator. Thank you.

**SENATOR CRAVEN**: Very good. Appreciate it. Jim?

**JIM SAMS**: I would like to add one thing, Senator, if I may. In my concept of this, if it is going to be done, I would suggest that the Legislature take into account, at some point, the age of the mobilehome we're talking about. Now, I know of mobilehomes that are 30 some years old. Now, to ask that person to bring that up to code or bring it up to any kind of repair when he may have a buyer who will accept it as is, with a waiver, I think that we would be placing a very, very difficult burden on people who are not affluent and who are barely able to sustain their life style in the mobilehome park. So, I would suggest that at some point you determine where would be logical to require this kind of a disclosure. Thank you.

**SENATOR CRAVEN**: Very good. John? Mr. Tennyson.

**JOHN TENNYSON**: I just wanted to make an observation. I think that there may be a little confusion here. Disclosure does not necessarily mean, at least it's my understanding, that you would have to fix all the problems that exist. Rather, you simply would have to identify that those problems exist or that you are aware of such and such a problem. And, that discussion, I think, took place earlier between Mr. Pitts and Senator Ayala with regard to whether everything should be brought up to code at the time of sale. That's an issue that currently would have to be negotiated between buyer and seller, and I don't

think disclosure really changes that other than brings to the attention of the buyer that the problems that are known about exist.

**JIM SAMS**: I was thinking in terms of someone who had to sell. Like a person who had had a stroke, had to go into a nursing home and suddenly they have their mobilehome there and they have a difficult time selling it, even in the best. That was the reason I was concerned about that, John.

**SENATOR CRAVEN**: I think Rube has some...Senator Ayala.

**SENATOR AYALA**: I think John is correct. I don't think with my discussion that those corrections should be made, but should be identified and then the price can be negotiated from there. Whether I'm going to take care it, I'll deduct that from the price or whatever in the home has been identified as a possible problem, so that the buyer knows what he is buying. I think you're correct.

**SENATOR CRAVEN**: OK. You know, Norm McLeod brought up a lot of things that I think the average person would not think of. If some people happen to be like me or my wife. When she sees something that she likes, she doesn't care if, you know, the garbage is connected to the heater, or whatever. She says, "Oh, our curtains will go well in here." See. It's just like when I, I don't know, in my life thus far, I've probably owned maybe 12 or 15 automobiles and the fellow who's trying to sell, invariably has a big smile on his face, and he's moving around like a gymnast, and he wants to open the hood to show me the engine. And I say, "Hey, you're just wasting your time. The only thing it is going to prove for me is that there is one in there. I like the color and the style of this car, and that's it."

So, the question I guess that I'm getting around to in a rather round about way is, how far must we go to ascertain that I'm taken care of down to the last, smallest detail? Government should take care of its people, but there has to be a limit on what they may do, because, of course, all of it becomes expensive to any of us. It's expensive for Norm to go out and use his engineering expertise to pass judgment on things, and to other persons similarly involved, I guess the same thing holds true. So, all of those things I think are certainly well founded, and I think they have great meaning, and one thing that they have that government generally doesn't, they have compassion, I think, because it's being compassionate as it relates to a buyer. The old caveat emptor theory may not really play its way out because you'd like to think I have protection and that I don't have to depend upon myself to enjoy that.

But all of these things, of course, are matters that come before John and myself and members of the committee, and sometimes I don't think you understand how important it is to us that we hear from you, each and every one of you. Whether we agree with you are not, we learn from you. And it's through that learning and the guidance of the

professionals, like Travis who I've known for years, that move us in the right and appropriate direction for the legislation. We have been, I think, fairly successful with material that has been put together out of this committee, and all of that is something we take great pride in, but I'll tell you, you all are entitled to a portion of that, as well, because through you we have learned a great deal.

But, we have one more today to hear from if he is here. John, are you here? John DuPriest? There he is. This is Mr. DuPriest who is a mobilehome park resident purchase consultant, Penryn. That's a good Welsh name. Where's Penryn, John?

**JOHN DuPRIEST**: Penryn is half way between Roseville and Auburn. I'll tell you where it is, and you will immediately know if you remember the old Ground Cow restaurant.

**SENATOR CRAVEN**: Well, I know the two towns that you mentioned.

**SENATOR DILLS**: It's where my Masonic Lodge is.

**SENATOR CRAVEN**: Oh, is it? Well, there you go. OK, John, whatever you have to say.

**JOHN DuPRIEST**: My name is John DuPriest, and I do primarily, my first choice always, is for the residents to purchase their park. I'm a resident park purchase advocate, but lately that gets harder and harder over the years, and lately I've also been representing residents in the purchase of parks by cities in affordable housing, under their affordable housing allocations. And, we've done ten parks in five cities in the last three years.

And, I mention that because when the cities go into this disclosure routine, you'd be absolutely amazed at what they require. And, all those requirements, Mr. Allen spoke to much more eloquently than I could. All of these impacts in the park have impacts on the value of the home. I had a case in the City of Lancaster, in a park there, of ponding under a home, and this person was trying to sell the home, and although this ponding was the fault of the park owner it impacted the value of the mobilehome owner's property. So, they got into a fight over that, and that's something that didn't have to be disclosed. Fortunately, they were buying it during the winter and there was the water. You get into situations, though, if they had bought it in the summer the water wouldn't have been there. And, is that a park owner problem or is that a resident problem to disclose that it is a park owner problem?

One of the things we've realized here today, I think, in discussing all of this is how many different areas impact the value of the home that the homeowner is trying to sell. What's the rent going to be when the new homeowner moves in? Now that is usually disclosed, and they usually disclose what the rental agreement or the new lease is, but we know we

have some park owners who try to get, particularly in rent control areas, they try to get the new person moving in to sign a long-term lease, which makes them exempt from rent control. In fact, that's not required. They don't have to do that, but they don't know that and that impacts the value of the home. So, if that's in the disclosure, that's one more item in the disclosure that should be there, and that's something that should be considered.

I know you had a couple of things -- restrictions on the electrical air conditioning which was mentioned here. We had a park where they had a rule in there that they couldn't have anything but swamp coolers. If you have somebody who has asthma or whatever and they can't do a swamp cooler, that's a disclosure item. I really sympathize with you for taking on this bucket of worms because it's enormous, for where do you draw the line as to what's included and what isn't. And, I suppose you'd have to say within reason everything that impacts on the value of the home has to be disclosed. The rent ordinance, if it is in a rent control area, is it proper disclosure to give to a prospective home owner buyer a copy of the rent ordinance, or do you have a summary of the rent ordinance explaining how much the rents can go up? Is that something in the disclosure? And, I'm not saying that I have a solution for that, but it's something I guarantee you that these mobilehome owners in this room will tell you impact the value of the park or the value of the home.

I believe Mr. Henning and Mr. McChesney mentioned the standard form, regardless of whether it's on a permanent foundation or its a piece of personal property. I think that's essential and I agree that from the foundation up, I don't see that there's any difference, unless I'm missing something. I think that's where it has to be standard. But then, if it's on a piece of private land, it becomes a different matter than if it's in a mobilehome park, with all these impacts. Turnover rents affect the value of the property. He briefly mentioned that we already have, and I frankly was not aware, that we had inspectors who are specialists in mobilehomes. I don't sell mobilehomes so I didn't know that. But I know in the real estate industry in single family homes more and more real estate brokers and agents have come to encourage buyers to hire the services of a professional home inspector because that does take..., it at least gives them some degree of comfort that they may not miss something on their diligent inspection of property. I think that would be an alternative, particularly for the sale by owner.

You mentioned that could we require all mobilehomes to be conducted through a dealer or broker? I don't know how we could do that. It would seem that the people should have the right to sell their own home. But employing and/or letting them know that there is such a person available, a professional who can inspect and give the new buyer reasonable comfort that they've found all of the whatever discrepancies there are, I think that's a need, and we need to get the word out. How to get it out? Perhaps that's part of the disclosure when...I know when they move in a park you'll see signs in the front of a park that says, "If you are contemplating buying a home in this park, check with management." Some parks have that, some don't. Certainly, if there is a sign like that in the park, that could be a requirement that the park themselves, if you come up with this disclosure

legislation and it's firmed up with an appropriate form, the park itself could have those forms available, or at least let the people know. It's a problem in that we sure want these disclosures, but you've got to remember that it impacts my residents when they go to sell their home and some of them absolutely cannot afford a \$20 fix, let along a \$250 fix.

Now, in the residential business, these professional inspectors have two fees. If you pay them upfront -- I know one that happened about 8 or 10 years ago that I was familiar with -- there was a fee of \$175 or he would take it out of escrow and it was \$225. I don't know if that's still viable, but the immediate question becomes, well, if the escrow falls out, then they still have that \$225 fee to pay. So, those are other things that are going to impact the sale of the home and the value of the home. The key to remember is, of all these requirements, how they're going to impact the price that this person is going to get for their home and where's the reasonable balance.

**SENATOR CRAVEN**: Very good. Thank you very much, Mr. DuPriest. Well, ladies and gentlemen, for the first time on record we're going to make an announcement after Ralph. This is Senator Dills. He's the dean of the whole outfit.

**SENATOR DILLS**: I kept quiet because I didn't want to show my ignorance. I do want to point out that whoever drew up this disclosure statement ought to be really commended. As a sometimes attorney and former judge, and all, the information that one is required to know about is overwhelming, and it states that the following representations by the sellers is a disclosure and is not intended, thank goodness, it is not intended to be part of any contract between the buyer and the seller. If that were not in here, then this would be a horrific thing to sign for disclosure of a seller. Just a little sideline on the wisdom of having that disclosure in, so far as sellers are concerned.

Now another thing that has nothing to do with anything except that I do know where Penryn is. There is a quarry there, Griffith Quarry, and our Penryn Lodge is made by operative masons who dug this out of the rock there, the granite there. The granite that came from Penryn is the foundation of this very building here and most of San Francisco Bay. And, so, Penryn has quite a name for itself.

**SENATOR CRAVEN**: Well, I'll tell you why I mentioned it. I am by birth a Philadelphian and I grew up in the Philadelphia area. You know, Philadelphia was settled by the British and had a lot of Welsh in certain areas of the outskirts of Philadelphia and they have typically Welsh names. They have names like Gladwyn, which reminded me of Penryn. Or, Lannark, double "l's", a lot of "gy's" in their language. So when I saw that it was sort of nostalgic, as far as I was concerned. It is a very delightful name.

**SENATOR DILLS**: The Post Office is misspelled. They've left out the "hyn" and just call it Penryn. Very interesting, but as I said not of great significance.

**SENATOR CRAVEN**: You've given them a little lecture and a little bit of geography, I guess. Ruben, is there anything further? I know you've been to the Rules Committee and in and out and back, and I appreciate your being with us.

**SENATOR AYALA**: Mr. Chairman, I came in late and this has been discussed. What is the status of this questionnaire?

**SENATOR CRAVEN**: You mean the one that we talked about with Travis Pitts? Well, it's my understanding that Travis will be at your disposal and he will be happy to bring himself as well as others who would be valuable in meeting for the conversation.

**SENATOR AYALA**: Is this in the form of legislation?

**SENATOR CRAVEN**: Well, I think, before we get to that point, you want to understand what can be done and what may not be done by virtue of existing law. So, but believe me if he doesn't know, let's forget the whole thing. Because I've dealt with him for many years and he is one top notch fellow. OK? Thank you, Senator Dills. It is always a pleasure to be with you. And, John Tennyson. Thank you, ladies and gentlemen for being with us. We appreciate your presence.

The meeting is adjourned at 4:30 pm.



Mobile and Manufactured Home Sales:  
Disclosure to Buyers

April 9, 1996 Hearing

**Committee Summary and Conclusions**

A number of points can be summarized from the testimony at the hearing:

1) Protection from Strict Liability: Real estate brokers, who sell used mobilehomes, want to be exempted from strict liability under Health and Safety Code Section 18025 and subject instead to a civil duty to conduct a reasonably prudent inspection of the seller's (client's) mobilehome, tied to a transfer disclosure statement signed by the seller, which would help to protect the broker from liability.

2) Equal Treatment: Mobilehome dealers, who compete with real estate brokers as agents in the sale of used mobilehomes, want equal treatment with brokers, if brokers are to be exempted from strict liability and subject to civil liability backed by a seller's disclosure statement. Dealers also want all mobilehome owners to be subject to a resale disclosure requirement, whether they engage an agent to represent them in the sale or sell the home themselves.

3) Park Disclosure: Mobilehome owners want to be responsible only for disclosure of what they own and control - the home and accessories - and the space on which the home sits. They don't want to open themselves up to liability for failure to disclose park issues, such as inadequate park electrical amperage, defects in the common areas, or problems over which they have no ownership or control. The representative of the California Manufactured Housing Institute testified that park management should also disclose to potential buyers significant park problems which could affect the purchase of a home.

4) Stuck with Repairs & Costs: Mobilehome owners indicate they don't want to be required to fix defects or code violations, which are disclosed, as a condition of sale. If repairs have to be made, homeowners don't want to pay a commission to a broker or dealer computed on the selling price, but rather a commission based on the price, less the repairs. The representative of the Department of Housing also indicated that repairs should not be made a condition of sale.

5) Notice: If disclosure is mandated on all mobilehome sales, imposing a new burden on the seller, homeowners want sufficient advance notice so they will have time to become familiar with what is required, particularly where they sell the home privately, rather than through an agent.

6) The Devil is in the Details: There was a wide variation of comments on what should be disclosed and the amount of detail of that which is disclosed. Most agreed that a new

disclosure form tailored to mobilehomes, not the existing form used for real property, should be drafted. Whether such details as the age of each appliance, a record of inspection by a public agency of the space, or factors concerning the park common areas should be included in such a form have not been resolved.

In conclusion, although mobilehome disclosure would seem desirable and even inevitable, from both the standpoint of mobilehomes as a form of housing and as a matter of consumer protection, how disclosure is to be implemented and what is to be disclosed are sticky issues.

A civil liability standard seems more appropriate than the little enforced strict liability standard for selling a mobilehome with hidden code defects, of which neither the seller or the agent was aware at the time of sale. The Dawson case, an administrative hearing against a broker based on strict liability as agent in the sale of a mobilehome with such defects, is one of the few such cases known which has resulted in damages against the broker. A copy of the proposed decision in the case, which gave rise to the disclosure issue in the context of Assembly Bill 2221, can be found in the Appendix.

But mandating a seller's disclosure as a reaction to this case, and as part and parcel of a civil liability standard, also raises some questions. There are problems with disclosure, as practiced by some dealers and brokers representing mobilehome owners today, even without mandatory disclosure. Many agents have their own disclosure forms, which they require their clients to fill out and sign, as a condition of representing them. Many agents require a private inspector to inspect the home, and some pressure the homeowner to make repairs where defects are found.

In a recent case reported to the committee, a Sacramento dealer told his client, an elderly mobilehome owner, that she was required to have the repairs made by his repairman for over \$6200, even though she had solicited a lower bid by another contractor herself. After relenting to the \$6200 in repairs, in addition to the dealer's \$3,000 commission and sales costs, the homeowner cleared about \$11,000 on the \$21,500 sale.

Disclosure to the buyer is only part of the equation. Should there be disclosure to sellers as well? Perhaps homeowners required to sign a disclosure statement for buyers should also be made aware that, while they may choose to do so, they are not required by law to hire a private inspector and make repairs on defects disclosed as part of that inspection. Both homeowners and buyers should be aware that the repair of defects is not a condition of sale, but rather a matter of negotiation between the buyer and seller.

If the law is to require the mobilehome owner to be responsible for disclosing defects in the home and accessories over which he/she has ownership and control as well as, perhaps the park in general, how are homeowners to be made aware of this responsibility and familiar with what is required on a resale? Perhaps mobilehome owners should receive some advance notice prior to enactment of disclosure. How much advance notice would

be required, or how homeowners would be noticed - through HCD or publicity from their own voluntary organizations and associations - are some of the hurdles in this regard. Nevertheless, homeowners not aware of disclosure requirements will still be liable for failure to disclose that which the law requires, making it more difficult for them to sell their mobilehomes without hiring a broker or dealer.

Lastly, where a mobilehome and space have been inspected by HCD or a local agency, and there is a record of such an inspection, perhaps a copy of the written record, or at least reference to it, should be included in the disclosure report. Some system to tie in inspection reports already generated, through the 7 year inspection of parks and installations in the state, would seem useful to all parties in addressing disclosure and repair of code violations.

# # #



A P P E N D I X

(Related Materials and Information)

April 9, 1996



**CA CIVIL CODE - CURRENT BROKER DUTY TO  
PROSPECTIVE PURCHASERS**

**CIVIL CODE**

Article 2

**DUTY TO PROSPECTIVE PURCHASER OF RESIDENTIAL PROPERTY**

Section		Section	
2079.	Real estate brokers and salespersons; inspections and disclosures: standards of professional conduct.	2079.10.	<b>Home energy rating program; information booklet.</b>
2079.1.	Application of article; leases with options; ground leases; real property sales contracts.	2079.11.	<b>Earthquake guides in public domain; development and distribution costs; royalty fees.</b>
2079.2.	Real estate brokers: standard of care.	2079.12.	<b>Duty of care for real estate licensees; legislative findings and declarations.</b>
2079.3.	Scope of inspection.	2079.13.	<b>Definitions.</b>
2079.4.	Breach of duty; limitation of actions.	2079.14.	<b>Disclosure form; furnishing to buyer and seller; exceptions.</b>
2079.5.	Buyers or prospective buyers: duty of reasonable care.	2079.15.	<b>Acknowledgment of receipt; refusal to sign.</b>
2079.6.	Subdivision transfers subject to certain reporting requirements.	2079.16.	<b>Disclosure form.</b>
2079.7.	Environmental hazards: duty to disclose.	2079.17.	<b>Agency relationship; disclosure and confirmation.</b>
2079.8.	Delivery of homeowner's guide to earthquake safety to transferee of real property; effect on duty of sellers or brokers to disclose existence of known hazards.	2079.18.	<b>Listing agents; acting as agent for only buyer prohibited.</b>
2079.9.	Delivery of commercial property owner's guide to earthquake safety to transferee of real property; effect on duty of sellers and brokers to disclose existence of known hazards.	2079.19.	<b>Payment of compensation; effect on determination of agency relationship.</b>
		2079.20.	<b>Form of agency relationship; selection; condition of employment.</b>
		2079.21.	<b>Dual agents; disclosures prohibited.</b>
		2079.22.	<b>Listing agents; acting as selling agents.</b>
		2079.23.	<b>Agency contract; modification or alteration.</b>
		2079.24.	<b>Disclosure and fiduciary duties; effect of article.</b>

*Article 2 was added by Stats.1985, c. 223, § 2.*

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**CURRENT HEALTH & SAFETY CODE PROVISIONS**  
**RE: STRICT SALES LIABILITY**

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HSC18025

18025. (a) Except as provided in subdivision (b), it is unlawful for any person to sell, offer for sale, rent, or lease within this state, any manufactured home or any mobilehome, commercial coach, special purpose commercial coach, or recreational vehicle manufactured after September 1, 1958, containing structural, fire safety, plumbing, heat-producing, or electrical systems and equipment unless the systems and equipment meet the requirements of the department for those systems and equipment and the installation of them. The department may promulgate those rules and regulations which shall be reasonably consistent with recognized and accepted principles for structural, fire safety, plumbing, heat-producing, and electrical systems and equipment and installations, respectively, in order to protect the health and safety of the people of this state from dangers inherent in the use of substandard and unsafe structural, fire safety, plumbing, heat-producing, and electrical equipment and installations.

(b) All manufactured homes and mobilehomes manufactured on or after June 15, 1976, shall comply with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C., Sec. 5401 et seq.).

(Amended by Stats. 1985, Ch. 763, Sec. 6.)

Cross References

Professional liability insurance, real estate licensees, exclusions, see Insurance Code § 11589.5.

§ 2079. Real estate brokers and salespersons; inspections and disclosures; standards of professional conduct

(a) It is the duty of a real estate broker or salesperson, licensed under \* \* \* Division 4 (commencing with Section 10000) of the Business and Professions Code, to a prospective purchaser of residential real property comprising one to four dwelling units, including a manufactured home as defined in Section 18007 of the Health and Safety Code, to conduct a reasonably competent and diligent visual inspection of the property offered for sale and to disclose to that prospective purchaser all facts materially affecting the value or desirability of the property that such an investigation would reveal, if that broker has a written contract with the seller to find or obtain a buyer or is a broker who acts in cooperation with \* \* \* that broker to find and obtain a buyer.

(b) It is the duty of a real estate broker or salesperson licensed under Division 4 (commencing with Section 10000) of the Business and Professions Code to comply with this section and any regulations imposing standards of professional conduct adopted pursuant to Section 10080 of the Business and Professions Code with reference to Sections 10176 and 10177 of the Business and Professions Code.

(Added by Stats.1985, c. 223, § 2. Amended by Stats.1994, c. 339 (S.B.1509), § 1.)

Historical and Statutory Notes

1985 Legislation

Section 4 of Stats.1985, c. 223, provides:

"It is the intent of the Legislature that this act codify and make precise the holding in Easton v. Strassburger (152 Cal.App.3d 90). The Legislature finds that the imprecision of terms in the Easton case and the absence of a comprehensive declaration of duties, standards, and exceptions has caused insurers to modify professional liability coverage of real estate licensees and has caused confusion among real estate licensees as to the manner of performing the duty ascribed to them by the court, and that it is necessary to resolve and make precise these issues in an expeditious manner. The Legislature finds that it is desirable to facilitate the issuance of professional liability insurance as a resource for aggrieved members of the public, and declares that the provisions of this act are, and shall be interpreted as, a definition of the duty of care

found to exist by Easton v. Strassburger, and the manner of its discharge."

1994 Legislation

The 1994 amendment designated the existing paragraph as subd. (a); in subd. (a), inserted "or salesperson" following "real estate broker"; added subd. (b), relating to standards of professional conduct; and made nonsubstantive changes.

Section 3 of Stats.1994, c. 339 (S.B.1509), provides:

"This act is intended to clarify the obligations of real estate licensees and is not intended to change any existing duty of a broker or salesperson to disclose material facts within the knowledge of the licensee, including the existence of nuisances or other conditions of nearby properties that may affect the value or desirability of the property offered for sale."

Law Review Commentaries

Broker liability after Easton v. Strassburger: Let the buyer be aware. Comment. (1985) 25 Santa Clara L.Rev. 651.

Family farmer and a deficient definition: A search for analytic criteria to classify hybrid property in California

purchase money anti-deficiency cases. Gregory S. Gordon, 26 U.S.F.L.Rev. 93 (1991).

Review of selected 1994 California legislation. 26 Pac. L.J. 202 (1995).

Library References

Brokers ⇐94.  
C.J.S. Brokers §§ 47, 88 to 104.

Notes of Decisions

Commercial property 2  
Disclaimers 3  
Disclosure 1

facts materially affecting value or desirability of property that such investigation would reveal. Loken v. Century 21-Award Properties (App. 4 Dist. 1995) 42 Cal.Rptr.2d 683, 36 Cal.App.4th 263, review denied.

1. Disclosure

Duty of disclosure of real estate broker representing seller includes affirmative duty to conduct reasonably competent and diligent inspection of residential property listed for sale and to disclose to prospective purchasers all

Evidence in action for restoration of real estate agent's license supported conclusions that information about solutions and potential costs to deal with high groundwater and landslide problems were not material to house purchasers and that vendor's agent was not required to disclose the information discussed at meeting with county

Additions or changes indicated by underline; deletions by asterisks \* \* \*

§ 2079

Note 1

engineers; resolutions would require vote of majority of property owners to be successful, costs ranged from a few thousand dollars to millions of dollars, and purchasers bought property knowing high groundwater level and landslide risk. Vaill v. Edmonds (App. 2 Dist. 1991) 6 Cal.Rptr.2d 1, 4 Cal.App.4th 247.

Evidence in proceeding for restoration of real estate agent's license supported conclusions that dangers of high groundwater and landslides were conveyed to purchasers and that vendor's agent was not negligent or incompetent; purchasers were aware of water problems experienced by neighbors two lots down the street, high groundwater problems were confirmed in geological reports, vendor disclosed groundwater problem, and agent disclosed groundwater and landslide problems suffered by neighbors. Vaill v. Edmonds (App. 2 Dist. 1991) 6 Cal.Rptr.2d 1, 4 Cal.App.4th 247.

Purchasers stated fraud cause of action against broker-vendor by alleging that vendor represented that residential structure on property which he was offering for sale was in a sound condition and adequate repair, and that he knew that foundation under house on property was so defective that house could not legally or safely be occupied. Prichard v. Reitz (App. 2 Dist. 1986) 223 Cal.Rptr. 734, 178 Cal.App.3d 465.

2. Commercial property

Seller's agent did not breach seller-disclosure duties in real estate transactions, requiring reasonably competent and diligent visual inspection of property and disclosure to prospective purchaser of all material facts from investigation, by not discovering absence of steel reinforcements or "J" bolts connecting foundation with house, where only visually apparent problems with foundation were some cracks that were disclosed in termite repair report and through purchaser's repeated inspections of property.

§ 2079.1. Application of article; leases with options; ground leases; real property sales contracts

The provisions of this article relating sale transactions of residential real property comprising one to four dwelling units apply with equal force to leases of that property that include an option to purchase, ground leases of land on which one to four dwelling units have been constructed, or real property sales contracts, as defined in Section 2985, for that property.

(Added by Stats.1985, c. 223, § 2.)

§ 2079.2. Real estate brokers; standard of care

The standard of care owed by a broker under this article is the degree of care that a reasonably prudent real estate licensee would exercise and is measured by the degree of knowledge through education, experience, and examination, required to obtain a license under Division 4 (commencing with Section 10000) of the Business and Professions Code.

(Added by Stats.1985, c. 223, § 2.)

Library References

Brokers ⇐94.
C.J.S. Brokers §§ 47, 88 to 104.

§ 2079.3. Scope of inspection.

The inspection to be performed pursuant to this article does not include or involve an inspection of areas that are reasonably and normally inaccessible to such an inspection, nor an affirmative inspection of areas off the site of the subject property or public records or permits concerning the title or use of the property, and, if the property comprises a unit in a planned development as defined in Section 11003 of the Business and Professions Code, a condominium as defined in Section 783, or a stock cooperative as defined in Section 11003.2 of the Business and Professions Code, does not include an inspection of more than the unit offered for sale, if the seller or the broker complies with the provisions of Section 1368.

(Added by Stats.1985, c. 223, § 2. Amended by Stats.1994, c. 339 (S.B.1509), § 2.)

Additions or changes indicated by underline; deletions by asterisks \* \* \*

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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.

Real estate broker for seller of property containing residence and avocado groves had no duty to inspect that portion of property containing avocado groves in order to disclose to buyer facts that would affect value or desirability of property; even if property was purchased as residence, with agricultural income important only to keep up payments, defect which inspection would have disclosed affected only value of avocado grove, i.e., the commercial portion of the property. Smith v. Rickard (App. 2 Dist. 1988) 254 Cal.Rptr. 633, 205 Cal.App.3d 1354, review denied.

This section is applicable only to brokers selling residential properties of four or fewer dwellings, and not to commercial real estate transactions. Smith v. Rickard (App. 2 Dist. 1988) 254 Cal.Rptr. 633, 205 Cal.App.3d 1354, review denied.

3. Disclaimers

"As is" language in realty sales contract does not shield seller or its agent from liability for affirmative or negative fraud. 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.

"As is" language in realty sales contract did not bar purchasers' cause of action for "negative" fraud from seller's agent's alleged nondisclosure of fact materially affecting value or desirability of property; purchasers alleged that agent should have investigated neighbor's claim that house may have foundation defects, discovered defects, and disclosed them. 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.

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Historical and Statutory Notes

1994 Legislation

The 1994 amendment, inserted "or an affirmative inspection of areas off the site of the subject property or public records or permits concerning the title or use of the property,"; substituted "Section 11003" for "Section 11003.1" and "Section 1368" for "Section 1360".

Section 3 of Stats.1994, c. 339 (S.B.1509), provides:

"This act is intended to clarify the obligations of real estate licensees and is not intended to change any existing duty of a broker or salesperson to disclose material facts within the knowledge of the licensee, including the existence of nuisances or other conditions of nearby properties that may affect the value or desirability of the property offered for sale."

Law Review Commentaries

Review of selected 1994 California legislation. 26 Pac. L.J. 202 (1995).

Library References

Brokers §94.  
C.J.S. Brokers §§ 47, 88 to 104.

Notes of Decisions

In general 1

1. In general

Seller's agent did not breach seller-disclosure duties in real estate transactions, requiring reasonably competent and diligent visual inspection of property and disclosure to prospective purchaser of all material facts from investiga-

tion, by not discovering absence of steel reinforcements or "J" bolts connecting foundation with house, where only visually apparent problems with foundation were some cracks that were disclosed in termite repair report and through purchaser's repeated inspections of property. 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.

§ 2079.4. Breach of duty; limitation of actions

In no event shall the time for commencement of legal action for breach of duty imposed by this article exceed two years from the date of possession, which means the date of recordation, the date of close of escrow, or the date of occupancy, whichever occurs first.

(Added by Stats.1985, c. 223, § 2.)

Notes of Decisions

Defective disclosures 3

Indemnity 1

Relation to general statute of limitations 2

1. Indemnity

Home sellers' cross-complaint for indemnity against real estate brokers, in purchasers' action against sellers and brokers alleging breach of contract, fraud, and negligent misrepresentation, was not subject to two-year limitations statute for actions arising from brokers' duty to purchasers; sellers' claim was predicated on contract between brokers and sellers, not any duty to purchasers. West v. Superior Court (Willis M. Allen Co.) (App. 4 Dist. 1994) 34 Cal.Rptr.2d 409, 27 Cal.App.4th 1625, review denied.

2. Relation to general statute of limitations

Negligent misrepresentation claim arising out of real estate broker's alleged breach of his statutory obligation

to conduct reasonably diligent inspection and to disclose any defects in property was subject to special two-year statute of limitations on claims for real estate broker's breach of statutory duties, and not to general three-year statute of limitations on fraud claims. Loken v. Century 21-Award Properties (App. 4 Dist. 1995) 42 Cal.Rptr.2d 683, 36 Cal.App.4th 263, review denied.

3. Defective disclosures

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.

§ 2079.5. Buyers or prospective buyers; duty of reasonable care

Nothing in this article relieves a buyer or prospective buyer of the duty to exercise reasonable care to protect himself or herself, including those facts which are known to or within the diligent attention and observation of the buyer or prospective buyer.

(Added by Stats.1985, c. 223, § 2.)

§ 2079.6. Subdivision transfers subject to certain reporting requirements

This article does not apply to 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

Additions or changes indicated by underline; deletions by asterisks \* \* \*

Professions Code and transfers which can be made without a public report pursuant to Section 11010.4 of the Business and Professions Code, unless the property has been previously occupied.

(Added by Stats.1988, c. 274, § 1.)

**§ 2079.7. Environmental hazards; duty to disclose**

(a) If a consumer information booklet described in Section 10084.1 of the Business and Professions Code is delivered to a transferee in connection with the transfer of real property, including property specified in Section 1102 of the Civil Code, or manufactured housing, as defined in Section 18007 of the Health and Safety Code, a seller or broker is not required to provide additional information concerning, and the information shall be deemed to be adequate to inform the transferee regarding, common environmental hazards, as described in the booklet, that can affect real property.

(b) Notwithstanding subdivision (a), nothing in this section either increases or decreases the duties, if any, of sellers or brokers, including but not limited to, the duties of a seller or broker under this article, Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 4 of Division 2, or Section 25359.7 of the Health and Safety Code, or alters the duty of a seller or broker to disclose the existence of known environmental hazards on or affecting the real property.

(Added by Stats.1989, c. 969, § 2.)

**§ 2079.8. Delivery of homeowner's guide to earthquake safety to transferee of real property; effect on duty of sellers or brokers to disclose existence of known hazards**

(a) If a Homeowner's Guide to Earthquake Safety described in Section 10149 of the Business and Professions Code is delivered to a transferee in connection with the transfer of real property, including property specified in Section 1102 or under Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code, a seller or broker is not required to provide additional information concerning, and the information shall be deemed to be adequate to inform the transferee regarding, geologic and seismic hazards, in general, as described in the guide, that may affect real property and mitigating measures that the transferee or seller might consider.

(b) Notwithstanding subdivision (a), nothing in this section increases or decreases the duties, if any, of sellers or brokers, including, but not limited to, the duties of a seller or broker under this article, Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 4 of Division 2, or under Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code, or alters the duty of a seller or broker to disclose the existence of known hazards on or affecting the real property.

(Added by Stats.1990, c. 1499 (A.B.2959), § 2. Amended by Stats.1991, c. 550 (A.B.29), § 2.)

**Historical and Statutory Notes**

**1991 Legislation**

The 1991 amendment substituted "Safety" for "Preparedness" after "Homeowner's Guide to Earthquake".

**Law Review Commentaries**

Review of selected 1990 California legislation. 22 Pac. L.J. 686 (1991).

**§ 2079.9. Delivery of commercial property owner's guide to earthquake safety to transferee of real property; effect on duty of sellers and brokers to disclose existence of known hazards**

(a) If a Commercial Property Owner's Guide to Earthquake Safety described in Section 10147 of the Business and Professions Code is delivered to a transferee in connection with the transfer of real property, including property specified in Section 1102 or under Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code, a seller or broker is not required to provide additional information concerning, and the information shall be deemed to be adequate to inform the transferee regarding, geologic and seismic hazards, in general, as described in the guide, that may affect real property and mitigating measures that the transferee or seller might consider.

(b) Notwithstanding subdivision (a), nothing in this section increases or decreases the duties, if any, of sellers, their brokers or agents under this article or under Chapter 7.5 (commencing with Section 2621) or Chapter 7.8 (commencing with Section 2690) of Division 2 of the Public Resources Code, or alters the duty of a seller, agent, or broker to disclose the existence of known hazards on or affecting the real property.

(Added by Stats.1991, c. 859 (A.B.1968), § 2.)

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§ 2079.10. Home energy rating program; information booklet

(a) If the informational booklet published pursuant to Section 25402.9 of the Public Resources Code, concerning the statewide home energy rating program adopted pursuant to Section 25942 of the Public Resources Code, is delivered to a transferee in connection with the transfer of real property, including, but not limited to, property specified in Section 1102, manufactured homes as defined in Section 18007 of the Health and Safety Code, and property subject to Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code, the seller or broker is not required to provide information additional to that contained in the booklet concerning home energy ratings, and the information in the booklet shall be deemed to be adequate to inform the transferee about the existence of a statewide home energy rating program.

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(b) Notwithstanding subdivision (a), nothing in this section alters any existing duty of the seller or broker under any other law including, but not limited to, the duties of a seller or broker under this article, Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil Code, or Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code, to disclose information concerning the existence of a home energy rating program affecting the real property.

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(Added by Stats.1992, c. 769 (S.B.1207), § 2.)

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§ 2079.11. Earthquake guides in public domain; development and distribution costs; royalty fees

(a) Except as provided in subdivision (b), to the extent permitted by law, the consumer information publications referred to in this article, including, but not limited to, the information booklets described in Section 10084.1 of the Business and Professions Code and Section 25402.9 of the Public Resources Code, shall be in the public domain and freely available.

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(b) Notwithstanding subdivision (a), the Seismic Safety Commission may charge a royalty fee not to exceed twenty-five cents (\$0.25) per copy for the cost of developing, drafting, preparing, maintaining, updating, publishing, and disseminating the Homeowner's Guide to Earthquake Safety and the Commercial Property Owner's Guide to Earthquake Safety, until the commission has collected the actual cost thereof up to a total of three hundred seventy-five thousand dollars (\$375,000), or until December 31, 1995, whichever occurs first. After December 31, 1995, or the collection of three hundred seventy-five thousand dollars (\$375,000), whichever occurs first, the Homeowner's Guide to Earthquake Safety and the Commercial Property Owner's Guide to Earthquake Safety shall be in the public domain.

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(c) Fees collected pursuant to this section shall be deposited in the General Fund and, upon appropriation, shall be made available to the Seismic Safety Commission for reimbursement expenses.

(Added by Stats.1994, c. 66 (S.B.1229), § 1.)

§ 2079.12. Duty of care for real estate licensees; legislative findings and declarations

(a) The Legislature hereby finds and declares all of the following:

(1) That the imprecision of terms in the opinion rendered in *Easton v. Strassburger*, 152 Cal.App.3d 90, and the absence of a comprehensive declaration of duties, standards, and exceptions, has caused insurers to modify professional liability coverage of real estate licensees and has caused confusion among real estate licensees as to the manner of performing the duty ascribed to them by the court.

(2) That it is necessary to resolve and make precise these issues in an expeditious manner.

(3) That it is desirable to facilitate the issuance of professional liability insurance as a resource for aggrieved members of the public.

(4) That Section 2079 to 2079.6, inclusive, of this article should be construed as a definition of the duty of care found to exist by the holding of *Easton v. Strassburger*, 152 Cal.App.3d 90, and the manner of its discharge.

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(b) It is the intent of the Legislature to codify and make precise the holding of *Easton v. Strassburger*, 152 Cal.App.3d 90. It is not the intent of the Legislature to modify or restrict existing duties owed by real estate licensees.

(Added by Stats.1995, c. 428 (S.B.467), § 1.)

§ 2079.13. Definitions

As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(e) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3

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(commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained.

(b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee.

The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions.

(c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee.

(d) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction.

(e) "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer.

(f) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation.

(g) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent.

(h) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property.

(i) "Offer to purchase" means a written contract executed by a buyer acting through a selling agent which becomes the contract for the sale of the real property upon acceptance by the seller.

(j) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property which constitutes or is improved with one to four dwelling units, any leasehold in this type of property exceeding one year's duration, and mobilehomes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code.

(k) "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase.

(l) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration.

(m) "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor.

(n) "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller.

(o) "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

(Added by Stats.1995, c. 428 (S.B.467), § 2.)

**Historical and Statutory Notes**

Derivation: Former § 2373, added by Stats.1986, c. 785, § 2.

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§ 2079.14. Disclosure form; furnishing to buyer and seller; exceptions

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Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgment of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows:

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(a) The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement.

(b) The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a).

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(c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgment of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgment of receipt is required.

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(d) The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

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(Added by Stats.1995, c. 428 (S.B.467), § 3.)

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Derivation: Former § 2374, added by Stats.1986, c. 785, § 2.

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§ 2079.15. Acknowledgment of receipt; refusal to sign

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In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

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(Added by Stats.1995, c. 428 (S.B.467), § 4.)

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Derivation: Former § 2374.5, added by Stats.1986, c. 785, § 2.

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§ 2079.16. Disclosure form

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The disclosure form required by Section 2079.14 shall have this article, excluding this section, printed on the back, and on the front of the disclosure form the following shall appear:

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

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(As required by the Civil Code)

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

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SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller:

A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller.

To the Buyer and the Seller:

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

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

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

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An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer:

A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
(b) A duty of honest and fair dealing and good faith.
(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Seller or the Buyer.
(b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction.

This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on the reverse hereof. Read it carefully.

Table with 4 columns: Agent, Buyer/Seller (Signature), (date), and Buyer/Seller (Signature), (date). It contains two rows for signature and date fields.

(Added by Stats.1995, c. 428 (S.B.467), § 5.)

Historical and Statutory Notes

Derivation: Former § 2375, added by Stats.1986, c. 785, § 2, amended by Stats.1987, c. 56, § 20.

§ 2079.17. Agency relationship; disclosure and confirmation

(a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed

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in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively.

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(b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller.

(c) The confirmation required by subdivisions (a) and (b) shall be in the following form:

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(Name of Listing Agent)

- the seller exclusively; or
- both the buyer and seller.

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(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

(Added by Stats.1995, c. 428 (S.B.467), § 6.)

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**Derivation:** Former § 2375.5, added by Stats.1986, c. 785, § 2.

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**§ 2079.18. Listing agents; acting as agent for only buyer prohibited**

No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

(Added by Stats.1995, c. 428 (S.B.467), § 7.)

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**Historical and Statutory Notes**

**Derivation:** Former § 2376, added by Stats.1986, c. 785, § 2.

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**§ 2079.19. Payment of compensation; effect on determination of agency relationship**

The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

(Added by Stats.1995, c. 428 (S.B.467), § 8.)

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**Historical and Statutory Notes**

**Derivation:** Former § 2377, added by Stats.1986, c. 785, § 2.

**§ 2079.20. Form of agency relationship; selection; condition of employment**

Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

(Added by Stats.1995, c. 428 (S.B.467), § 9.)

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**Historical and Statutory Notes**

**Derivation:** Former § 2378, added by Stats.1986, c. 785, § 2.

**§ 2079.21. Dual agents; disclosures prohibited**

A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer.

This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

(Added by Stats.1995, c. 428 (S.B.467), § 10.)

**Historical and Statutory Notes**

**Derivation:** Former § 2379, added by Stats.1986, c. 785, § 2.

**§ 2079.22. Listing agents; acting as selling agents**

Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

(Added by Stats.1995, c. 428 (S.B.467), § 11.)

**Historical and Statutory Notes**

**Derivation:** Former § 2380, added by Stats.1986, c. 785, § 2.

**§ 2079.23. Agency contract; modification or alteration**

A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

(Added by Stats.1995, c. 428 (S.B.467), § 12.)

**Historical and Statutory Notes**

**Derivation:** Former § 2381, added by Stats.1986, c. 785, § 2.

**§ 2079.24. Disclosure and fiduciary duties; effect of article**

Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

(Added by Stats.1995, c. 428 (S.B.467), § 13.)

**Historical and Statutory Notes**

**Derivation:** Former § 2382, added by Stats.1986, c. 785, § 2.

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**CA CIVIL CODE - CURRENT DISCLOSURE  
REQUIREMENTS RE: REAL PROPERTY**

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.
1102.7.	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 ordinance locations; definition.

**§ 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) 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.*)

**§ 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 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.

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.*)

**§ 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, transfer 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 legal 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 Section 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.)

**§ 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.)

**§ 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.)

**§ 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.)

§ 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:

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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):

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Range                   | <input type="checkbox"/> Oven                | <input type="checkbox"/> Microwave                            |
| <input type="checkbox"/> Dishwasher              | <input type="checkbox"/> Trash Compactor     | <input type="checkbox"/> Garbage Disposal                     |
| <input type="checkbox"/> Washer/Dryer Hookups    | <input type="checkbox"/> Window Screens      | <input type="checkbox"/> Rain Gutters                         |
| <input type="checkbox"/> Burglar Alarms          | <input type="checkbox"/> Smoke Detector(s)   | <input type="checkbox"/> Fire Alarm                           |
| <input type="checkbox"/> T.V. Antenna            | <input type="checkbox"/> Satellite Dish      | <input type="checkbox"/> Intercom                             |
| <input type="checkbox"/> Central Heating         | <input type="checkbox"/> Central Air Cndtng. | <input type="checkbox"/> Evaporator Cooler(s)                 |
| <input type="checkbox"/> Wall/Window Air Cndtng. | <input type="checkbox"/> Sprinklers          | <input type="checkbox"/> Public Sewer System                  |
| <input type="checkbox"/> Septic Tank             | <input type="checkbox"/> Sump Pump           | <input type="checkbox"/> Water Softener                       |
| <input type="checkbox"/> Patio/Decking           | <input type="checkbox"/> Built-in Barbeque   | <input type="checkbox"/> Gazebo                               |
| <input type="checkbox"/> Sauna                   | <input type="checkbox"/> Pool                | <input type="checkbox"/> Spa <input type="checkbox"/> Hot Tub |

<input type="checkbox"/> Security Gate(s)	<input type="checkbox"/> Automatic Garage Door Opener(s)*	<input type="checkbox"/> Number Remote Controls
Garage: <input type="checkbox"/> Attached	<input type="checkbox"/> Not Attached	<input type="checkbox"/> Carport
Pool/Spa Heater: <input type="checkbox"/> Gas	<input type="checkbox"/> Solar	<input type="checkbox"/> Electric
Water Heater: <input type="checkbox"/> Gas		<input type="checkbox"/> Private Utility or Other _____
Water Supply: <input type="checkbox"/> City	<input type="checkbox"/> Well	
Gas Supply: <input type="checkbox"/> Utility	<input type="checkbox"/> 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.

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 co-owned 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 co-owned 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

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:

Horizontal lines for disclosure details.

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:

Horizontal lines for disclosure details.

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 1102.2 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.)*

**Cross References**

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

**§ 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.

§ 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 (Chap-

ter 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.*)

#### § 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.*)

#### § 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.*)

#### § 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 the provisions of Section 1102.2. (*Added by Stats.1985, c. 1574, § 2, operative Jan. 1, 1987.*)

#### § 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.*)

#### § 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.*)

#### § 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.*)

#### § 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.*)

#### § 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 ordinance locations; definition**

The seller of residential real property subject to this article who has actual knowledge of any former federal or state ordinance 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 ordinance 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.)*



**CURRENT DEALER LISTING INFORMATION DISCLOSURE STATEMENT**

**LISTING INFORMATION DISCLOSURE STATEMENT**

**THE MOBILE HOME BOARD STANDARD FORM**

**BUYER:** On \_\_\_\_\_, 19\_\_\_\_ the undersigned Agent, in conjunction with an inquiry of the Seller(s), conducted a reasonable visual inspection of the property commonly known as \_\_\_\_\_ other \_\_\_\_\_ in the (city) (county) of \_\_\_\_\_. The information contained herein is the result of that inquiry and inspection.

**THIS INFORMATION IS A DISCLOSURE OF THE CONDITION OF THE PROPERTY AS OF THE ABOVE DATE. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR THE AGENT(S) AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS THE BUYER MAY WISH TO OBTAIN.**

**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 such information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes the undersigned agent 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). THIS INFORMATION IS A DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY CONTRACT BETWEEN BUYER AND SELLER.**

Seller \_\_\_\_\_ is \_\_\_\_\_ is not occupying the property.

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

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Range            | <input type="checkbox"/> Oven               | <input type="checkbox"/> Microwave                            |
| <input type="checkbox"/> Dishwasher       | <input type="checkbox"/> Trash Compactor    | <input type="checkbox"/> Garbage Disposal                     |
| <input type="checkbox"/> Burglar Alarm    | <input type="checkbox"/> Window Screens     | <input type="checkbox"/> Washer/Dryer Hookups                 |
| <input type="checkbox"/> TV Antenna       | <input type="checkbox"/> Rain Gutters       | <input type="checkbox"/> Smoke Detectors                      |
| <input type="checkbox"/> Fire Alarm       | <input type="checkbox"/> Satellite Dish     | <input type="checkbox"/> Intercom                             |
| <input type="checkbox"/> Central Heating  | <input type="checkbox"/> Evaporator Cooler  | <input type="checkbox"/> Central Air Conditioning             |
| <input type="checkbox"/> Sprinklers       | <input type="checkbox"/> Public Sewers      | <input type="checkbox"/> Wall/Window Air Conditioning         |
| <input type="checkbox"/> Septic Tank      | <input type="checkbox"/> Sump Pump          | <input type="checkbox"/> Water Softener                       |
| <input type="checkbox"/> Patio/Decking    | <input type="checkbox"/> Built in Barbeque  | <input type="checkbox"/> Gazebo                               |
| <input type="checkbox"/> Sauna            | <input type="checkbox"/> Pool               | <input type="checkbox"/> Spa <input type="checkbox"/> Hot Tub |
| <input type="checkbox"/> Security Gate(s) | <input type="checkbox"/> Garage Door Opener | <input type="checkbox"/> Number of Remote Controls            |

- Garage:  Attached  Not Attached  Carport
- Pool/Spa Heater:  Gas  Solar  Electric
- Water Heater:  Gas  Solar  Electric
- Water Supply:  City  Well  Private Utility  Other

Exhaust Fan(s) in \_\_\_\_\_ 220 Volt Wiring in \_\_\_\_\_

Fireplace(s) in \_\_\_\_\_ Gas Hookup Insulation in \_\_\_\_\_

Roof 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 defects/malfunctions in any of the following that could affect the value or desirability of the property?

Yes  No If yes, check appropriate box(es) below.

- |   |   |                                    |   |
|---|---|------------------------------------|---|
| <input type="checkbox"/> Interior Walls     | <input type="checkbox"/> Ceilings               | <input type="checkbox"/> Floors    | <input type="checkbox"/> Exterior Walls |
| <input type="checkbox"/> Roof               | <input type="checkbox"/> Windows                | <input type="checkbox"/> Doors     | <input type="checkbox"/> Foundation     |
| <input type="checkbox"/> Slab(s)            | <input type="checkbox"/> Driveways              | <input type="checkbox"/> Sidewalks | <input type="checkbox"/> Walls/Fences   |
| <input type="checkbox"/> Electrical Systems | <input type="checkbox"/> Plumbing/Sewers/Septic |                                    |   |

Other Structural Components (Describe: \_\_\_\_\_)

If any of the above are checked, explain. (Attach additional sheets if necessary): \_\_\_\_\_

### LISTING INFORMATION DISCLOSURE STATEMENT

C. Are you (Seller) aware of any conditions that could affect the value or desirability of the property?

- |  |                              |                             |
|--|------------------------------|-----------------------------|
| 1. Common walls, fences and driveways that may have an effect on the subject property.                             | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Any encroachments, easements or similar matters that may affect your interest in the subject property.          | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 3. Room additions, structural modifications, or other alterations or repairs made without necessary permits.       | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 4. Room additions, structural modifications or other alterations or repairs not in compliance with building codes. | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 5. Landfill (compacted or otherwise) on the property or any portion thereof.                                       | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 6. Settling, slippage, sliding or other soil problems.   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 7. Flooding, drainage or grading problems.   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 8. Major damage to the property or of the structures from fire, earthquake, floods, slides etc.                    | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 9. Any zoning violations, non-conforming units, violations of "setback" requirements, etc.                         | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 10. Neighborhood noise problems or other nuisances.  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 11. Homeowner's Association obligations (dues, lawsuits, etc.).  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 12. Any "common area" problems.  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 13. Any notices of abatement or citations against the property.  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 14. Any lawsuits against the Seller threatening or affecting this personal property.                               | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 15. _____  |                              |                             |

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 Sellers knowledge and that the home complies to Health and Safety code 18025 as of the date signed by Seller.

Seller \_\_\_\_\_ Date \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_

II.  
**AGENT'S INSPECTION DISCLOSURE**

**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 ACCESSABLE AREAS OF THE PROPERTY BY THE UNDERSIGNED AGENT IN CONJUNCTION WITH THAT INQUIRY, AGENT STATES THE FOLLOWING (This section to be used by Agent to make Buyers(s) aware of the results. If any. of the Agent's visual inspection. Attach additional sheets if necessary.):**

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**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(S) AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTION/DEFECTS.**

Mobile Home Dealer \_\_\_\_\_ Listing Agent \_\_\_\_\_ Date \_\_\_\_\_

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

Seller \_\_\_\_\_ Date \_\_\_\_\_ Buyer \_\_\_\_\_ Date \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_ Buyer \_\_\_\_\_ Date \_\_\_\_\_

Mobile Home Dealer \_\_\_\_\_ Selling Agent \_\_\_\_\_ Date \_\_\_\_\_

Department of Housing Manufactured Dealer is the person qualified to advise on manufactured homes. If you desire legal advice consult your attorney.



AMENDED IN SENATE APRIL 8, 1996

SENATE BILL

No. 1704

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Introduced by Senator Craven

February 21, 1996

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An act to add Section 1102.17 to the Civil Code, relating to manufactured homes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1704, as amended, Craven. Manufactured homes: transfers.

Existing law provides for the disclosure of specified information upon the transfer of residential real property.

This bill would make these provisions applicable to the ~~transfer~~ resale of a manufactured home or mobilehome, as defined, on or after July 1, 1998. The bill would also require the Department of Housing and Community Development to *appoint an advisory committee, as specified, and to report its findings and recommendations* to the Legislature no later than ~~February~~ March 1, 1997; ~~as specified~~.

Note: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1102.17 is added to the Civil
- 2 Code, to read:
- 3 1102.17. (a) This article shall be applicable to the
- 4 ~~transfer~~ resale on or after July 1, 1998, of a manufactured
- 5 home, as defined in Section 18007 of the Health and Safety

1 Code, or a mobilehome, as defined in Section 18008 of the  
2 Health and Safety Code.

3 (b) The Department of Housing and Community  
4 ~~Development shall, no later than February 1, 1997, report~~  
5 ~~to the Legislature its findings and recommendations~~  
6 ~~regarding modifications or additions to this article,~~  
7 ~~including the disclosure form set forth in Section 1102.6,~~  
8 *Development shall review and propose modifications or*  
9 *additions to this article, including changes to the*  
10 *disclosure form set forth in Section 1102.6, which may be*  
11 *necessary to make this article fully applicable to*  
12 *manufactured homes or mobilehomes, which are not*  
13 *defined as real property.*

14 (c) *The department shall appoint an advisory*  
15 *committee composed of representatives of mobilehome*  
16 *owners, mobilehome park owners, mobilehome dealers,*  
17 *real estate brokers, and other organizations which the*  
18 *department deems relevant to assist it in developing*  
19 *findings and recommendations pursuant to subdivision*  
20 *(b).*

21 (d) *The department shall, no later than March 1, 1997,*  
22 *report to the Legislature its findings and*  
23 *recommendations pursuant to subdivision (b).*

SENATE HOUSING & LAND USE COMMITTEE  
Senator Byron D. Sher, Chairman

Amended: 4/8/96  
Set: First  
Hearing: 4/15/96  
Fiscal: Approp.  
Consultant: Yee

SB 1704 - Craven

#### MANUFACTURED HOUSING & SELLER'S DISCLOSURE

##### Background and Existing Law:

Most manufactured homes (mobilehomes) are placed in mobilehome parks and they are not subject to disclosure requirements when resold. Other manufactured homes are placed on permanent foundations on separate lots, and these homes are considered real property and subject to property taxes like conventional homes. These homes are subject to disclosure requirements when resold.

Before selling a manufactured home on real property or a conventional home, the seller must complete and provide the buyer with a real estate transfer disclosure statement (SB 1406, Petris, 1985). The disclosure statement provides the buyer with information about appliances, accessories, any known building defects or malfunctions, lawsuits, environmental hazards, easements, and other conditions of the property. The buyer has the opportunity to rescind the agreement to purchase the home.

Whether manufactured homes are placed on permanent foundations on individual lots or in mobilehome parks, they are built the same. The author wants the Legislature to extend the real estate disclosure laws to the resale of all manufactured homes.

##### Proposed Law:

Starting July 1, 1998, Senate Bill 1708 requires a manufactured home (mobilehome) seller to provide a buyer with a real estate transfer disclosure statement before closing escrow. SB 1708 requires the State Department of Housing and Community Development (HCD) to review and propose modifications or additions to the real estate transfer disclosure statement and report its findings and recommendations to the Legislature by March 1, 1997. The

bill also requires HCD to convene an advisory committee consisting of mobilehome owners, mobilehome park owners, mobilehome dealers, real estate brokers, and other relevant representatives to assist in developing findings and recommendations to the disclosure statement.

Argument in Favor:

Consumer protection. When purchasing new manufactured homes or mobilehomes, the dealer provides a one-year warranty for appliances and any construction defects. The resale of manufactured homes on real property are subject to disclosure requirements like a conventional home. All other manufactured homes (located in mobilehome parks) are resold on an as is basis. Some buyers have found sinking floors, leaking roofs, improperly installed accessories, and various code violations. When purchasing these homes, buyers are unaware of these problems and they have little recourse after escrow closes. SB 1704 requires the seller of a manufactured home to disclose to the buyer the physical condition of the home before finalizing the purchase.

Argument Against:

To the best of my knowledge. SB 1704 requires all manufactured home sellers to complete and provide the buyer with a real estate transfer disclosure statement before closing escrow. The seller must certify that the information is true and correct to the best of the seller's knowledge. The disclosure statement may be helpful in providing general information on appliances and defects known to the seller, but it will not provide information on whether the home complies with zoning and building code requirements and other state and local laws. To obtain a complete inspection of a home, a contractor or building inspector should be hired. The Committee may wish to consider whether SB 1704 would give the manufactured home buyer the illusion that a home is sound and meets building code requirements. Will the disclosure statement provide adequate consumer protection to the buyer?

Other Comment:

A related bill. Assembly Bill 2221 (Murray) requires real estate brokers and agents who sell manufactured homes to conduct a reasonably competent and diligent visual inspection of a manufactured home (mobilehome). Any facts or findings that may affect the value of the home must be disclosed to prospective buyers. The Assembly Housing and Community Development Committee will hear AB 2221 on April 10.

Support and Opposition: (4/10/96)

Support: Unknown.

Opposition: Unknown.



AMENDED IN ASSEMBLY MARCH 21, 1996

CALIFORNIA LEGISLATURE—1995-96 REGULAR SESSION

ASSEMBLY BILL

No. 2221

Introduced by Assembly Member Kevin Murray

February 9, 1996

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An act to ~~add Section 18063.1~~ to amend Section 10177.2 of the Business and Professions Code, to add Section 1103 to the Civil Code, to amend Section 18025 of, and to add Sections 18046 and 18046.1 to, the Health and Safety Code, relating to mobilehomes and manufactured housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2221, as amended, K. Murray. Mobilehomes and manufactured housing: consumer protection.

*Under existing law, the Real Estate Commissioner may suspend or revoke a real estate license where the licensee, in connection with the sale of a mobilehome, commits certain specified acts, including the violation of prescribed provisions of the Health and Safety Code relating to mobilehomes and manufactured housing, the Revenue and Taxation Code, relating to vehicle license fees, and the Civil Code relating to the Automobile Sales Finance Act.*

*This bill would delete the references to the above provisions as grounds for the revocation or suspension of a real estate license.*

*Existing law requires specified written disclosures to be made to prospective transferees of real property in certain transactions.*

*This bill would add to those provisions a requirement that a seller of a manufactured home complete and deliver to a prospective buyer a written statement about the manufactured home as required by those provisions.*

*Under existing law it is unlawful to sell, offer for sale, rent, or lease a manufactured home or mobilehome containing specified equipment or systems unless those systems meet requirements established by the Department of Housing and Community Development, with specified exceptions.*

*This bill would except the sale of used manufactured homes and mobilehomes from these provisions and would make those sales subject to other provisions added by this bill relating to the duty of a dealer of a used manufactured home to inspect and make specified disclosures relating to the condition of the home to a prospective purchaser.*

*This bill also would define the standard of care owed by a dealer of manufactured homes and mobilehomes to a purchaser to be that which a reasonably prudent dealer would exercise measured by the degree of knowledge through education, experience, and examination required to obtain a license pursuant to existing law.*

*Because this bill would amend existing law for which criminal penalties are prescribed and would add provisions the violation of which would be subject to criminal penalties, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

**Existing law defines the duties of dealers of mobilehomes and manufactured homes in connection with sales and related activities.**

**This bill would add provisions to require real estate licensees that sell, offer for sale, rent, or lease manufactured homes and mobilehomes to comply with prescribed provisions of law that set forth the duty of care required of all real estate licensees.**

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~ yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section ~~18063.4~~ is added to the Health  
2 and Safety Code, to read:

3 ~~18063.4. Notwithstanding any other provision of this~~  
4 ~~part, real estate licensees that sell, offer for sale, rent, or~~  
5 ~~lease manufactured homes or mobilehomes shall comply~~  
6 ~~with Article 2 (commencing with Section 2079) of~~  
7 ~~Chapter 3 of Title 6 of Part 4 of Division 3 of the Civil~~  
8 ~~Code.~~

9 SECTION 1. Section 10177.2 of the Business and  
10 Professions Code is amended to read:

11 10177.2. The commissioner may, upon his own  
12 motion, and shall, upon the verified complaint in writing  
13 of any person, investigate the actions of any licensee, and  
14 he may suspend or revoke a real estate license at any time  
15 where the licensee in performing or attempting to  
16 perform any of the acts within the scope of Section  
17 10131.6 has been guilty of any of the following acts:

18 (a) Has used a false or fictitious name, knowingly  
19 made any false statement, or knowingly concealed any  
20 material fact, in any application for the registration of a  
21 mobilehome, or otherwise committed a fraud in such  
22 application.

23 (b) Failed to provide for the delivery of a properly  
24 endorsed certificate of ownership or certificate of title of  
25 a mobilehome from the seller to the buyer thereof.

26 (c) Has knowingly participated in the purchase, sale,  
27 or other acquisition or disposal of a stolen mobilehome.

28 (d) ~~Has violated one or more of the terms and~~  
29 ~~provisions of Part 2 (commencing with Section 18000) of~~  
30 ~~Division 13 of the Health and Safety Code, or Part 5~~  
31 ~~(commencing with Section 10701) of Division 2 of the~~  
32 ~~Revenue and Taxation Code, or Chapter 2b~~  
33 ~~(commencing with Section 2981) of Title 14 of Part 4 of~~  
34 ~~Division 3 of the Civil Code, or a rule or regulation~~  
35 ~~adopted pursuant thereto.~~

1 (e) Has submitted a check, draft, or money order to  
2 the Department of Housing and Community  
3 Development for any obligation or fee due the state and  
4 it is thereafter dishonored or refused payment upon  
5 presentation.

6 *SEC. 2. Section 1103 is added to the Civil Code, to*  
7 *read:*

8 *1103. A seller of a manufactured home shall complete*  
9 *and deliver to a prospective buyer the written statement*  
10 *about the manufactured home required by this article.*

11 *SEC. 3. Section 18025 of the Health and Safety Code*  
12 *is amended to read:*

13 18025. (a) Except as provided in ~~subdivision~~  
14 *subdivisions (b) and (c)*, it is unlawful for any person to  
15 sell, offer for sale, rent, or lease within this state, any  
16 manufactured home or any mobilehome, commercial  
17 coach, special purpose commercial coach, or recreational  
18 vehicle manufactured after September 1, 1958,  
19 containing structural, fire safety, plumbing,  
20 heat-producing, or electrical systems and equipment  
21 unless the systems and equipment meet the  
22 requirements of the department for those systems and  
23 equipment and the installation of them. The department  
24 may promulgate those rules and regulations which shall  
25 be reasonably consistent with recognized and accepted  
26 principles for structural, fire safety, plumbing,  
27 heat-producing, and electrical systems and equipment  
28 and installations, respectively, in order to protect the  
29 health and safety of the people of this state from dangers  
30 inherent in the use of substandard and unsafe structural,  
31 fire safety, plumbing, heat-producing, and electrical  
32 equipment and installations.

33 (b) All manufactured homes and mobilehomes  
34 manufactured on or after June 15, 1976, shall comply with  
35 the National Manufactured Housing Construction and  
36 Safety Standards Act of 1974 (42 U.S.C., Sec. 5401 et seq.).

37 (c) *The sale of used manufactured homes and*  
38 *mobilehomes by a dealer licensed pursuant to this part*  
39 *shall be subject to Section 18046.*

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1     *SEC. 4. Section 18046 is added to the Health and*  
2     *Safety Code, to read:*  
3     *18046. It is the duty of a dealer licensed under this*  
4     *chapter to a prospective purchaser of a used*  
5     *manufactured home to conduct a reasonably competent*  
6     *and diligent visual inspection of the home offered for sale*  
7     *and to disclose to that prospective purchaser all facts*  
8     *materially affecting the value or desirability of the home*  
9     *that an investigation would reveal, if that dealer has a*  
10    *written contract with the seller to find or obtain a*  
11    *purchaser or is a dealer who acts in cooperation with*  
12    *others to find and obtain a purchaser. A dealer may*  
13    *discharge this duty by completing the dealer's portion of*  
14    *the transfer disclosure statement that a seller prepares*  
15    *and delivers to a purchaser pursuant to Section 1103 of the*  
16    *Civil Code.*  
17    *SEC. 5. Section 18046.1 is added to the Health and*  
18    *Safety Code, to read:*  
19    *18046.1. The standard of care owed by a dealer to a*  
20    *purchaser under this article is the degree of care that a*  
21    *reasonably prudent dealer would exercise and is*  
22    *measured by the degree of knowledge through*  
23    *education, experience, and examination required to*  
24    *obtain a license under this chapter.*  
25    *SEC. 6. No reimbursement is required by this act*  
26    *pursuant to Section 6 of Article XIII B of the California*  
27    *Constitution because the only costs that may be incurred*  
28    *by a local agency or school district will be incurred*  
29    *because this act creates a new crime or infraction,*  
30    *eliminates a crime or infraction, or changes the penalty*  
31    *for a crime or infraction, within the meaning of Section*  
32    *17556 of the Government Code, or changes the definition*  
33    *of a crime within the meaning of Section 6 of Article*  
34    *XIII B of the California Constitution.*  
35    *Notwithstanding Section 17580 of the Government*  
36    *Code, unless otherwise specified, the provisions of this act*  
37    *shall become operative on the same date that the act*  
38    *takes effect pursuant to the California Constitution.*

O

## Assembly Bill 2221

### Important Facts and Talking Points

#### Current Law

- Manufactured homes are real property if affixed to a foundation and personal property if not affixed to a foundation.
- Two different agents can sell used mobile homes - real estate licensees regulated by the Department of Real Estate (DRE) and mobile home dealers licensed by the Department of Housing and Community Development (HCD).
- Unlawful for owners and HCD agents to sell new or used mobile home which don't meet strict safety standards.
- Strict compliance standard may not apply to DRE licensees.
- Requires sellers of used **real** property mobile homes to complete a statutory Transfer Disclosure Statement (TDS) for prospective buyers
- Does not require sellers of used **personal** property mobile home to complete and deliver a TDS.
- Requires real estate agents to inspect **real** property mobile homes and disclose what their inspection reveals.
- Does not require any agent (HCD or DRE) to inspect **personal** property mobile homes.

#### Problems

- Sellers of equivalent property have different standards and responsibilities.
- Agents of buyers and sellers of equivalent property have different standards and responsibilities.
- Use of criminal sanctions to enforce strict compliance standard for used mobile home sales is inappropriate and unenforceable.
- Due to enforcement problems and confused law sellers and agents who comply with one law may violate another.
- Buyers of mobile homes are not protected by strict compliance and may not be provided adequate disclosure of material facts about the property

#### What AB2221 Does

- Requires sellers of all mobile homes to disclose known material facts to prospective purchasers.
- Will create a statutory disclosure form for sellers and agents to complete in all used mobile home sales transactions.
- Requires all agents in used mobile home sales to conduct a diligent inspection of the property and disclose what they find.
- Preserves strict compliance standards for sales of new mobile homes. Requires full disclosure of known material facts and property conditions for all sales of used mobile homes.

## **Section by Section Explanation of the bill:**

Section 1 - Repeals Business and Professions Code Section 10177.2 (d).

Repeal of this subsection is necessary to exempt real estate licensees from Health and Safety Code Section 18025 (as amended in Section 3 of the bill) regarding sales of new mobile homes which real estate licensees may not sell. According to both HCD and DRE the Revenue and Tax Code and Civil Code references in 10177.2 (d) are outdated references related to motor vehicle sales.

Section 2 - Adds Civil Code Section 1103.

Requires sellers of used mobile homes to complete a disclosure statement about the property which reveals all known material facts to prospective buyers. This burden is already imposed on all sellers of residential real estate of one to four units, including manufactured homes which are real property (affixed to a foundation). The section also serves as a placeholder to which will be added a Sellers Transfer Disclosure Statement (TDS) for manufactured homes once the work group agrees upon the structure and content of the document. This manufactured housing TDS will be tailored after the existing TDS for real property.

Section 3 - Amends Health and Safety Code Section 18025.

This section changes the strict compliance standard in the used mobile home setting to an inspection and disclosure standard for all sellers and their agents. This amendment implements the major policy change of the bill, that sellers be required to disclose all known material facts and that agents (DRE and HCD) conduct diligent inspections and disclose what they find and what they know.

Section 4 - Adds Health and Safety Code Section 18046.

This section creates a duty for dealers of manufactured homes to conduct a diligent visual inspection of a used mobile home and to disclose to prospective buyers all material facts revealed by the inspection. This section replicates the duties of real estate brokers established years ago by Civil Code Section 2079.

Section 5 - Adds Health and Safety Code Section 18046.1

This section establishes the standard of care which manufactured home dealers must meet in complying with their new inspection and disclosure burdens. This section is also patterned after provisions in the Civil Code for real estate licensees.

Section 6 - Crimes and infractions mandate disclaimer.

The Health and Safety Code provides for criminal sanctions for some violations. The bill, therefore, needs a crimes and infractions mandate waiver to avoid an appropriation.

Date of Hearing: April 23, 1996  
Consultant: John V. De Rosa

ASSEMBLY COMMITTEE ON CONSUMER PROTECTION,  
GOVERNMENTAL EFFICIENCY, AND ECONOMIC DEVELOPMENT  
Jim Morrissey, Chair

AB 2221 (K. Murray) - As Amended: March 21, 1996

SUBJECT: Mobilehomes and manufactured housing: consumer protection.

SPONSOR: California Association of Realtors

SUMMARY: Imposes certain disclosure requirement on sellers of manufactured homes. Defines the standard of care owed by dealers of manufactured homes and mobilehomes to prospective purchasers. Eliminates specified acts as grounds for disciplinary action against real estate licensees.

Specifically, this bill:

- 1) Requires sellers of manufactured homes to complete and deliver to prospective buyers various disclosure statements, as specified.
- 2) Requires dealers selling used manufactured homes to conduct a reasonably competent and diligent visual inspection of the home and to disclose to prospective buyers all facts materially affecting the value or desirability of the home that an investigation would reveal. Specifies that dealers may discharge this duty by completing a transfer disclosure statement, as specified.
- 3) Defines the standard of care owed by a dealer to a prospective purchaser as the degree of care that a reasonably prudent dealer would exercise and is measured by the degree of knowledge through education, experience, and examination required to obtain a dealer's license.
- 4) Repeals existing law which provides that certain violations of the Mobilehomes-Manufactured Housing Act, the Automobile Sales Finance Act, or the Vehicle License Fee Law are grounds for disciplinary action against real estate licensees.

FISCAL EFFECT: None, according to the Assembly Committee on Housing and Community Development. State-mandated local program; contains a crime and infractions disclaimer.

EXISTING LAW:

- 1) Authorizes dealers of manufactured homes to sell new and used manufactured homes to potential buyers.
- 2) Requires sellers of residential real property containing one to four dwelling units to provide potential buyers with certain

disclosure statements, as specified.

- 3) Requires real estate licensees to conduct a reasonably competent and diligent visual inspection of residential real property of one to four dwelling units, including manufactured homes, and to disclose all facts materially affecting the value or desirability of a manufactured home to prospective buyers.
- 4) Prohibits the sale of a manufactured home or mobilehome manufactured after September 1, 1958, which contains specified defects. Prohibits the sale of manufactured homes which were manufactured after June 15, 1976 and which do not meet specified federal standards, as specified. Provides that a violation of these provisions is a misdemeanor offense punishable by a fine of up to \$2,000 and imprisonment for a period not to exceed 30 days.
- 5) Sets forth various grounds for disciplinary action against real estate licensees who are engaged in selling manufactured homes. Includes among those grounds violations of the following laws: (i) the Mobilehomes- Manufactured Housing Act, which regulates the sale of manufactured homes by dealers; (ii) the Automobile Sales Finance Act, which regulates the use of conditional sales contracts by automobile dealers; and (iii) the Vehicle License Fee Law relating to the collection of license fees due on manufactured homes annually registered with the Department of Housing and Community Development.

BACKGROUND: This bill is sponsored by the California Association of Realtors. The sponsor has been meeting with other affected interest groups to negotiate the provisions of this bill. These interest groups include: (i) the Department of Real Estate; (ii) the Department of Housing and Community Development; (iii) the Golden State Mobilehome Owners League; and (iv) the California Manufactured Housing Institute. The sponsor and interest groups are developing a disclosure form for manufactured homes which will be similar, but not identical to, the disclosure form currently used for real property sales transactions.

According to the sponsor, the prohibition against selling any manufactured home with defects is obsolete and more analogous to the requirements imposed on car dealers than on real estate agents selling homes. The sponsor states that this provision was developed in 1957 to protect consumers from buying a new manufactured home with defective or absent plumbing, electrical or heating components, or other defects which place the home's occupants at risk.

In 1985, the Legislature enacted comprehensive real estate disclosure provisions in order to codify and clarify court rulings pertaining to the duty of a real estate broker or a seller to disclose material facts concerning dwellings offered for sale.

The codified requirements specifically apply to residential dwellings of one to four units and manufactured homes. The sponsor argues that the specificity of this section expresses the

Legislature's intent to require disclosure of defects rather than to prohibit the sale of the manufactured home which may have some defects.

Related Legislation: SB 1704 (Craven), which was introduced this year, would require the Department of Housing and Community Development to report to the Legislature its recommendations for modifications or additions to current real property disclosure requirements for manufactured homes which are deemed to be personal property.

COMMENTS:

Penalty for Duty to Inspect or Disclose. This bill specifies, among other things, that it is the duty of a manufactured home/mobilehome dealer to conduct a reasonably competent and diligent visual inspection of the home offered for sale and to make certain disclosures to the prospective purchaser concerning the value or desirability of the home. As an existing provision in the Health and Safety Code makes it unlawful for an individual to wilfully violate any law regarding the sale of manufactured homes or mobilehomes, a dealer who fails to conduct the visual inspection of the home or who fails to make the specified disclosures required by this bill would be potentially subjected to criminal sanctions. As the sponsor of this bill has indicated to the committee that this result is unintended, the author should consider proposing an amendment that would avoid this problem.

ARGUMENTS IN SUPPORT: Supporters argue that this bill will clarify the legal obligations of sellers of manufactured homes and will provide prospective buyers with the opportunity to make fully informed decisions regarding the purchase of manufactured housing.

ARGUMENTS IN OPPOSITION: None on file

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Realtors

Opposition

None on file

Analysis prepared by: John V. De Rosa / aconpro / 324-7440

REALTOR PROPOSED TRANSFER DISCLOSURE STATEMENT

MANUFACTURED HOUSING TRANSFER DISCLOSURE STATEMENT
(CALIFORNIA CIVIL CODE 1103, ET SEQ.)

THIS DISCLOSURE STATEMENT CONCERNS THE MANUFACTURED HOUSE (HEREAFTER "PROPERTY") SITUATED IN THE CITY OF \_\_\_\_\_ STATE OF CALIFORNIA, COUNTY OF \_\_\_\_\_ DESCRIBED AS \_\_\_\_\_ THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH SECTION 1103 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.

NO TRANSFER OF REAL PROPERTY IS INVOLVED IN THIS TRANSACTION. IF THE PROPERTY HAS BEEN CONVERTED TO REAL PROPERTY PURSUANT TO HEALTH AND SAFETY CODE SECTION 18555 ET SEQ SELLERS MUST USE THE REAL ESTATE TRANSFER DISCLOSURE STATEMENT DESCRIBED IN SECTION 1102.8 OF THE CIVIL CODE.

THE OWNER OR AGENT OF THE OWNER OF THE REAL PROPERTY UPON WHICH THE MOBILEHOME IS SITUATED IS: \_\_\_\_\_ AND CAN BE CONTACTED AT: \_\_\_\_\_

COORDINATION WITH OTHER DISCLOSURE FORMS

This Manufactured Housing/Mobilehome Transfer Disclosure Statement is made pursuant to Section 1103 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular transaction.

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

- Inspect on reports completed pursuant to the contract of sale or receipt for deposit.
Additional inspection reports or disclosures:

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

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 not occupying the property

A. The subject property contains or has available to it the items checked below (read across):

- Range, Dishwasher, Washer/Dryer Hookups, Burglar Alarm, T.V. Antenna, Central Heating, Well/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, Exhaust Fan(s) in, Fireplace(s) in, Type: \_\_\_\_\_, Age: \_\_\_\_\_ (approx.)

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 sheet if necessary): \_\_\_\_\_

**B. Are you (Seller) aware of any significant defects/mafunctions 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  Stairways  Walk/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 (\_\_\_\_)(\_\_\_\_)

**MANUFACTURED HOUSING TRANSFER DISCLOSURE STATEMENT (TDS-14 PAGE 1 OF 2)**

**C. Are you (Seller) aware of any of the following regarding the subject property and/or appurtenant structures:**

- 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 in or on the subject property  Yes  No
- 2. Room additions, structural modifications, or other alterations or repairs made without necessary permits  Yes  No
- 3. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes  Yes  No

Subject Property Address: \_\_\_\_\_, 13 \_\_\_\_\_

- 4. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides.....  Yes  No
- 5. Any zoning violations, nonconforming use, violation of "setback" requirements .....  Yes  No
- 6. CC&R's or other deed restrictions or obligations.....  Yes  No
- 7. Homeowner's Association which has any authority over the subject property.....  Yes  No
- 8. Any notices of abatement or citations against the property .....  Yes  No
- 9. Any lawsuits by or against the seller threatening to or affecting this property .....  Yes  No

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

**D. Are you (Seller) aware of any of the following regarding the specific site on which the property is situated or the park in which the site is located:**

- 1. Features of the site shared in common with adjoining owners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property ....  Yes  No
- 2. Any encroachments, easements or similar matters that may affect your interest in the site..  Yes  No
- 3. Fill (compacted or otherwise) on the site or any portion thereof.....  Yes  No
- 4. Any settling from any cause, or slippage, sliding, or other soil problems .....  Yes  No
- 5. Flooding, drainage or grading problems.....  Yes  No
- 6. Neighborhood noise problems or other nuisances.....  Yes  No
- 7. Any "common areas" (facilities such as pools, tennis courts, walkways, or other areas available to the property).....  Yes  No
- 8. Any lawsuits by or against the seller threatening to or affecting this property, including any lawsuits alleging a defect or deficiency in this property or "common areas" (facilities such as pools, tennis courts, walkways, or other areas available to the subject property) .....  Yes  No
- 9. 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

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

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, Dealer) Representing Seller: (Please Print) By (Associate Licensee, Broker, Dealer-Signature) Date

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, Dealer) obtaining the Offer: (Please Print) By (Associate Licensee, Broker, Dealer-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
Agent (Broker, Dealer) Representing Seller: (Please Print) By (Associate Licensee, Broker, Dealer-Signature) Date
Agent (Broker, Dealer) obtaining the Offer: (Please Print) By (Associate Licensee, Broker, Dealer-Signature) Date

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 THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.



PROPOSED DECISION

Accusation against Richard Randall Dawson, et. al.  
(Administrative Hearing which gave rise to AB 2221.

**FILED**  
MAY 21 1996

DEPARTMENT OF REAL ESTATE

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

By Kathleen Centenas

\* \* \*

In the Matter of the Accusation of )  
 )  
RICHARD RANDALL DAWSON, )  
ROSEMARY M. ZRELAK, )  
R E SOURCE MANAGEMENT GROUP, )  
INC., )  
BRADLEY C. HANKS, and )  
IDA JEFFIE SUETTA, )  
 )  
Respondents. )  
\_\_\_\_\_ )

NO. H-3093 SAC

OAH NO. N-9503016

DECISION

The Proposed Decision dated May 1, 1996, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on June 11, 1996.

IT IS SO ORDERED 5/14, 1996.

JIM ANTT, JR.  
Real Estate Commissioner

Jm Antt Jr



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation	)	
Against:	)	No. H-3093 SAC
	)	
RICHARD RANDALL DAWSON,	)	OAH No. N-9503016
ROSEMARY M. ZRELAK,	)	
R E SOURCE MANAGEMENT GROUP, INC.,	)	
BRADLEY C. HANKS, and	)	
IDA JEFFIE SUETTA,	)	
	)	
	)	
Respondents.	)	
<hr/>		

PROPOSED DECISION

On April 10, 1996, in Sacramento, California, Catherine B. Frink, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

David B. Seals, Counsel, represented the complainant.

Respondents Richard Randall Dawson and Rosemary M. Zrelak were present and were represented by Jeffrey M. Starsky, Attorney at Law, Nossaman, Guthner, Knox & Elliott, 915 L Street, Suite 1000, Sacramento, California 95814.

Respondents R E Source Management Group, Inc. and Bradley C. Hanks were present and were represented by Edward R. MacDonald, Attorney at Law, 1140 Pitt School Road, Suite B, Dixon, California 95620.

Respondent Ida Jeffie Suetta was present and was represented by Louise A. Judkins, Attorney at Law, 5524 Assembly Court, Suite 47, Sacramento, California 95823.

Evidence was received, and the parties entered into a stipulation to resolve the matter as set forth below. Thereupon, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

The parties stipulated to the following Findings of Fact:

A. The complainant, Charles W. Koenig, a Deputy Real Estate Commissioner of the State of California, filed the Accusation in his official capacity.

B. The Accusation was amended at hearing as follows:

1. Paragraph XI, page 4, line 23: insert "(d)" after "Section 10177.2".
2. Paragraph XI, page 4, lines 24-25: delete "and/or Section 10177(g) and/or Section 10177(h) of the Code".

C. Respondents are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, as follows:

1. R E Source Management Group, Inc. ("respondent R E Source") as a corporate real estate broker, through Bradley C. Hanks ("respondent Hanks") as designated officer.
2. Respondent Hanks as a real estate broker and as the designated officer for respondent R E Source.
3. Richard Randall Dawson ("respondent Dawson") as a real estate broker dba Realty World-Camelot Realty ("Camelot").
4. Rosemary M. Zrelak ("respondent Zrelak") as a real estate salesperson.
5. Ida Jeffie Suetta ("respondent Suetta") as a real estate salesperson.

D. At all times mentioned herein, as the designated officer of respondent R E Source, respondent Hanks was responsible for the supervision and control of the activities conducted on behalf of respondent R E Source by its officers and employees as necessary to secure full compliance with the provisions of the Real Estate Law.

E. Whenever reference is made herein to an act or omission of respondent R E Source, such reference shall be deemed

to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with respondent R E Source committed such act or omissions while engaged in furtherance of the business or operation of respondent R E Source and while acting within the course and scope of their corporate authority and employment.

F. At all times herein mentioned, respondent R E Source and respondent Hanks, and both of them, engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers in the State of California within the meaning of Business and Professions Code section 10131.6 for or in expectation of compensation.

G. On or about July 15, 1993, William H. Long ("seller") listed for sale with respondent Dawson dba Camelot through respondent Zrelak, a mobile home (containing plumbing, heat-producing, or electrical equipment) owned by Seller located at 46 Bel Air Circle, Fairfield ("the mobile home").

H. On or about July 23, 1993, Richard and Shirley Walter ("buyers") executed a Mobile Home Purchase Contract and Receipt for Deposit prepared by respondent Suetta with the knowledge and consent of her employer respondent R E Source. The offer was accepted by the seller on or about July 24, 1993.

I. On or about October 5, 1993, the escrow closed on the purchase of the mobile home.

J. Prior to and on the date escrow closed on the purchase of the mobile home, the mobile home contained plumbing, heat-producing, or electrical equipment which did not meet the requirements of the Department of Housing and Community Development.

K. All respondents, Richard Randall Dawson, Rosemary M. Zrelak, R E Source Management Group, Inc., Bradley C. Hanks, and Ida Jeffie Suetta, performed acts in furtherance of the sale or offer for sale of the mobile home and were all aware of the transaction described above between the seller and the buyers. However, all respondents failed to insure that the mobile home did not contain plumbing, heat-producing, or electrical equipment which did not meet the requirements of the Department of Housing and Community Development prior to selling or offering to sell the mobile home, in violation of Health and Safety Code section 18025.

L. The acts and/or omissions of respondents, and each of them, as set forth above constitute violations of Business and Professions Code section 10177.2(d).

## DETERMINATION OF ISSUES

### I

The parties stipulated to the following Determination of Issues:

A. By reason of the facts set forth above, the evidence established that respondent Richard Randall Dawson violated Business and Professions Code section 10177.2(d). However, no discipline is imposed.

B. By reason of the facts set forth above, the evidence established that respondent Rosemary M. Zrelak violated Business and Professions Code section 10177.2(d). However, no discipline is imposed.

C. By reason of the facts set forth above, the evidence established that respondent R E Source Management Group, Inc. violated Business and Professions Code section 10177.2(d). However, no discipline is imposed.

D. By reason of the facts set forth above, the evidence established that respondent Bradley C. Hanks violated Business and Professions Code section 10177.2(d). However, no discipline is imposed.

E. By reason of the facts set forth above, the evidence established that respondent Ida Jeffie Suetta violated Business and Professions Code section 10177.2(d). However, no discipline is imposed.

### ORDER

The parties stipulated to the following Order:

A. Respondent Richard Randall Dawson shall pay \$4,000 to Richard Walter and Shirley Walter no later than the effective date of the Decision herein. Respondent Dawson shall submit payment, in the form of a cashiers check, in the names of Richard Walter, Shirley Walter and Anthony M. Miranda, Attorney at Law, to the Department of Real Estate, P.O. Box 187000, Sacramento, California 95818-7000, attention: David B. Seals, Counsel. The Department of Real Estate shall forward the check to Anthony M. Miranda, counsel for Richard and Shirley Walter, at the following address: 690 East Tabor Avenue, Suite A2, Fairfield, California 94533. If payment in full is not made by respondent Dawson by the effective date of the Decision herein, all licenses and license rights of respondent Dawson shall be automatically suspended until payment is made as set forth above.

B. Respondent Rosemary M. Zrelak shall pay \$4,000 to Richard Walter and Shirley Walter no later than the effective date of the Decision herein. Respondent Zrelak shall submit payment, in the form of a cashiers check, in the names of Richard Walter, Shirley Walter and Anthony M. Miranda, Attorney at Law, to the Department of Real Estate, P.O. Box 187000, Sacramento, California 95818-7000, attention: David B. Seals, Counsel. The Department of Real Estate shall forward the check to Anthony M. Miranda, counsel for Richard and Shirley Walter, at the following address: 690 East Tabor Avenue, Suite A2, Fairfield, California 94533. If payment in full is not made by respondent Zrelak by the effective date of the Decision herein, all licenses and license rights of respondent Zrelak shall be automatically suspended until payment is made as set forth above.

C. With respect to payments by respondents Richard Randall Dawson and Rosemary M. Zrelak, in lieu of the cashiers checks set forth in Paragraphs A. and B. above, CNA Insurance Company shall be permitted to pay, by means of a standard business check, \$8,000 on behalf of respondents Dawson and Zrelak, made out in the names of Richard Walter, Shirley Walter and Anthony M. Miranda, Attorney at Law, submitted no later than the effective date of the Decision herein, to the Department of Real Estate, P.O. Box 187000, Sacramento, California 95818-7000, attention: David B. Seals, Counsel. The Department of Real Estate shall forward the check to Anthony M. Miranda, counsel for Richard and Shirley Walter, at the following address: 690 East Tabor Avenue, Suite A2, Fairfield, California 94533.

D. Respondent Bradley C. Hanks shall pay \$4,000 to Richard Walter and Shirley Walter no later than the effective date of the Decision herein. Respondent Hanks shall submit payment, in the form of a cashiers check, in the names of Richard Walter, Shirley Walter and Anthony M. Miranda, Attorney at Law, to the Department of Real Estate, P.O. Box 187000, Sacramento, California 95818-7000, attention: David B. Seals, Counsel. The Department of Real Estate shall forward the check to Anthony M. Miranda, counsel for Richard and Shirley Walter, at the following address: 690 East Tabor Avenue, Suite A2, Fairfield, California 94533. If payment in full is not made by respondent Hanks by the effective date of the Decision herein, all licenses and license rights of respondent Hanks shall be automatically suspended until payment is made as set forth above.

E. Respondent Ida Jeffie Suetta shall pay \$4,000 to Richard Walter and Shirley Walter no later than the effective date of the Decision herein. Respondent Suetta shall submit payment, in the form of a cashiers check, in the names of Richard Walter, Shirley Walter and Anthony M. Miranda, Attorney at Law, to the Department of Real Estate, P.O. Box 187000, Sacramento, California 95818-7000, attention: David B. Seals, Counsel. The Department of Real Estate shall forward the check to Anthony M.

Miranda, counsel for Richard and Shirley Walter, at the following address: 690 East Tabor Avenue, Suite A2, Fairfield, California 94533. If payment in full is not made by respondent Suetta by the effective date of the Decision herein, all licenses and license rights of respondent Suetta shall be automatically suspended until payment is made as set forth above.

Dated: May 1, 1996

Catherine B. Frink  
CATHERINE B. FRINK  
Administrative Law Judge  
Office of Administrative Hearings

**858-S**

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