# CALIFORNIA LEGISLATURE

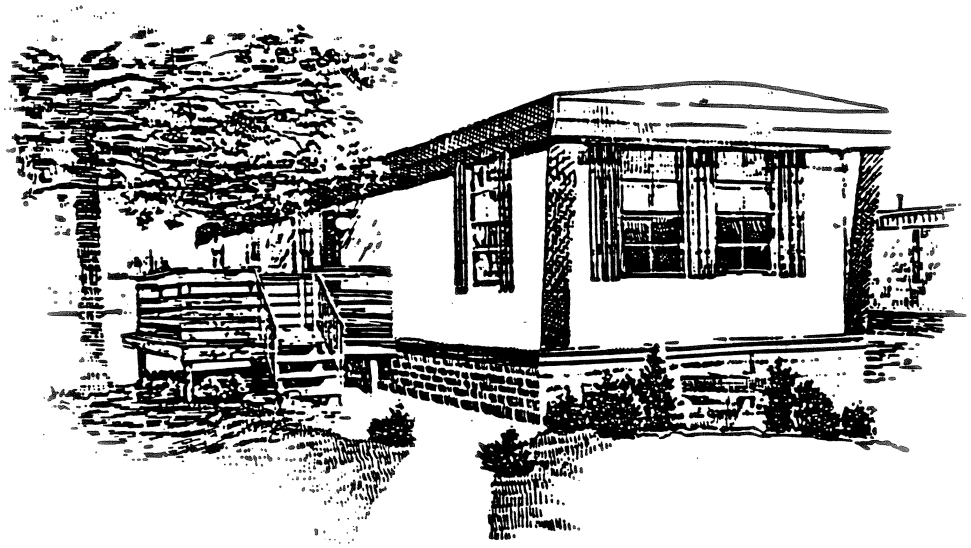
## LEGISLATIVE TASK FORCE

on

## MANUFACTURED HOME & MOBILEHOME RESALE DISCLOSURE

Senator William A. Craven
Chairman

**TRANSCRIPT AND REPORT**



STATE CAPITOL
SACRAMENTO, CALIFORNIA

JANUARY 5, 1998

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# BACKGROUND PAPER

January 5, 1998

# BACKGROUND PAPER

## The Development of Mobilehomes as Housing

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.

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. Although some manufactured homes are secured to permanent foundations on private parcels, most have been installed on non-permanent pier structures or cinder blocks in mobilehome parks, where the homeowner rents or leases a space from the park owner. According to the state Department of Housing and Community Development (HCD), there are 5,070 such mobilehome parks in California.

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),which, among other duties, oversees code compliance in the manufacture of homes sold in California, licensure and regulation of mobilehome dealers, licensing and titling of mobilehomes and manufactured homes, licensing of mobilehome parks, and inspection of mobilehome parks and manufactured home 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

manufactured 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 home is personal property, despite the fact it is subject to property taxation.

## Mobilehome Park 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 mobile and manufactured homes 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 in about 70% of the parks.

Many of the code violations which have been discovered as a result of these inspections involve home 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 homeowners, 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 home 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 also authorized to sell used mobilehomes. Licensed dealers may sell new manufactured homes, which are covered by a 1 year manufacturer's warranty on electrical, plumbing, heating, cooling, fire safety and structural systems and appliances. Dealers are licensed by HCD. Real estate brokers and agents are licensed by the Department of Real Estate (DRE).

## 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 Civil Code Section 1102.6 - Appendix)

Disclosure serves two purposes by 1) alerting prospective buyers 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 mobile or manufactured homes unless they have the status of real property by virtue of being permanently affixed to the land.

## Legislation

Concerns on the part of real estate brokers about liability as well as consumer complaints led to a special hearing of the Senate Select Committee on Mobile and Manufactured Homes on April 9, 1996, and two pieces of legislation , AB 2221(Kevin Murray) Chapter 812, Statutes of 1996, and SB 1704 (Craven) Chapter 677, Statutes of 1996, both of which addressed disclosure for mobile and manufactured homes.

AB 2221, sponsored by the California Association of Realtors, clarified that real estate brokers and mobilehome dealers who sell mobile and manufactured homes must comply with provisions of existing law which prescribe one standard - "duty of care" - to prospective purchasers to disclose defects and other conditions of the home and affecting its sale, rather than a strict liability criminal standard for selling mobile and manufactured homes which don't meet code.

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 previous two years from buyers and owners of mobilehomes. The measure provided that mobilehomes and manufactured homes will be subject to disclosure on January 1, 1999, with enactment of the format for a transfer disclosure statement for mobile and manufactured homes subject to recommendations of a Task Force established by the Legislature in 1997. SB 384 (Craven), Chapter 71 of the Statutes of 1997, was an urgency measure which gave the Task Force until January 1, 1998 to make the recommendations to the Legislature.

## The Task Force

Senate Bill 1704 provided that the Assembly and Senate establish a joint Task Force in 1997 comprised of representatives of organizations of mobilehome owners, mobilehome park owners, mobile and manufactured housing dealers, real estate brokers, the Department of Housing and Community Development and other persons knowledgeable about manufactured housing to develop a new Transfer Disclosure Statement (TDS) for mobilehomes and manufactured homes and make it recommendations to the Legislature for enactment in 1998.

Nine members and seven alternates were chosen and approved by the Senate Rules Committee and the Assembly Speakers Office. In addition to a representative from the Senate and a representative from the Assembly, others chosen represented the Golden State Mobilhome Owners League (homeowners), the California Mobilehome Resource and Action Association (homeowners), the Western Mobilehome Association (park owners), the California Multiple Listing (dealer-brokers), the California Manufactured Housing Institute (dealers-brokers), the California Association of Realtors (real estate brokers), and the Department of Housing and Community Development (state regulatory agency). (See names of members listed in this report.)

Three meetings of the Task Force were held in Sacramento at the State Capitol, August 27, October 28, and December 4, 1997. The proposed draft legislation included in this report constitutes the product of those meetings and the recommendations of the Task Force.

# MEMBERS AND ALTERNATES

# OF THE

# TASK FORCE

January 5, 1998

## MEMBERS AND ALTERNATES OF THE TASK FORCE

**SENATOR WILLIAM A. CRAVEN**
Chairman

**JOHN G. TENNYSON**
Senate Select Committee on Mobile and Manufactured Homes - Alternate

**ELIZABETH WEST**
Assembly Housing and Community Development Committee

**TRAVIS PITTS**
State Department of Housing and Community Development (HCD)

**PAUL DEIRO**
State Department of Housing and Community Development (HCD) - Alternate

**JERI MC LEES**
Western Mobilehome Park Owners Association (WMA)

**TAMI MILLER**
Western Mobilehome Park Owners Association (WMA) - Alternate

**PAUL HENNING**
Golden State Mobilhome Owners League (GSMOL)

**JIM SAMS**
Golden State Mobilhome Owners League (GSMOL) - Alternate

**DAVE HENNESSY**
California Mobilehome Resources & Action Association (CMRAA)

**BRUCE STANTON**
California Mobilehome Resources & Action Association (CMRAA) - Alternate

**OTIS ORSBURN**
California Manufactured Housing Institute (CMHI)

**MEMBER OF THE TASK FORCE** (continued)

**SAM SILVERMAN**
California Manufactured Housing Institute (CMHI) - Alternate

**RICHARD WEINER**
California Multiple Listing (CML)

**RON KINGSTON**
California Association of Realtors (CAR)

**BURT MC CHESNEY**
California Association of Realtors (CAR) - Alternate

# SUMMARY OF

# TRANSCRIPT AND ISSUES

JANUARY 5, 1998

## SUMMARY OF TRANSCRIPT & ISSUES

The ground rules established for conducting the meetings called for members to first take up issues which could be more easily resolved, while setting aside issues on which they disagreed for later. Several Task Force members submitted drafts of suggested TDS forms and forms currently in use by dealers or real estate brokers to use as a guideline. Members were then able to proceed through these forms as a guide - top to bottom - dispensing with issues on which Task Force members could agree, so that by the last meeting, the basic format for the new manufactured home/mobilehome TDS created by the Task Force was in place, and the work was narrowed to addressing two or three unresolved but key issues.

Much of the discussion was technical in nature, with members seeking to raise fine points on which agreement was not difficult to achieve. The following were the major issues which elicited the most debate and disagreement:

1) Should homeowners be liable for disclosure of, or failure to disclose, park conditions?
Whether homeowners should be exempt from liability for disclosure of conditions of the park property was an issue that took up a major part of the second, October 28th meeting, as well as part of the December 4th meeting. Homeowners representatives do not want to be liable for disclosure of or failure to disclose conditions of park common areas, over which they have no ownership and control. Western Mobilehome Association (park owners) representatives also do not want selling homeowners to be responsible for disclosing conditions of park common areas, about which homeowners may not be familiar and may not accurately disclose. Representatives of the California Mobilehome Resource and Action Association (CMRAA) ventured that park owners should be directly responsible to prospective buyers to disclose park common area conditions or problems, including the existence of local rent control. The representatives of the California Association of Realtors indicated they would object to disclosure of rent control, but pointed out that owners of conventional real property are already required to disclose conditions regarding both the house and property, as are homeowners in condominium developments regarding disclosure of common areas, as conditions of the property may affect the value of the home. Ultimately, the Task Force voted to approve wording for the new TDS which provides that the homeowner is not liable for disclosure of or failure to disclose park common area conditions and that prospective buyers be referred to the park owner or management concerning those issues. The vote was 7 - 0 with the Realtor representative abstaining and the CMRAA representative absent.

2) Should homeowners be liable for park common areas?
Representatives of the Golden State Mobilhome Owners League (GSMOL) sought language to hold homeowners harmless from liability for the park common area or lot conditions. The Western Mobilehome Association opposed the GSMOL approach, but

came up with their own version of the GSMOL language which held homeowners harmless from liability only for conditions on the property the homeowners did not create. Strong objections to either version of this language being included in the TDS were raised by the representative of the California Association of Realtors and others. At the last meeting, both versions were sidetracked by the Task Force, which recommended that such language be taken up as separate legislation, not in the TDS developed by the Task Force, if GSMOL wished to pursue the issue. The vote on the recommendation to sidetrack the language was 8 - 1, with the GSMOL representative voting "no."

3) Should specific park related items be included in Section II for disclosure?
Section II (B & C) of the current real estate TDS includes specific items or conditions for disclosure, such as code violations, room additions, drainage problems, environmental hazards, and the like. Whether some of these items should be included or not in the new TDS for manufactured homes and mobilehomes was discussed at length and took the best part of two meetings. The park owner and mobilehome owner representatives did not want to include items which were part and parcel of the real or park property as contrasted with the home itself, such as zoning violations, setback requirements, easements, roads, driveways, and common area facilities. Although, as related to issue # 1 (above), the representative of the Realtors expressed some reservations about restricting the list of disclosure items to those relating to the home, other Task Force members agreed to the pared down list in B & C (as contrasted with the list found in the real estate TDS) - restricted mostly to those items which are part of the manufactured home or mobilehome, not those owned by the mobilehome park.

4) Should mobilehome owners have a three day right of rescission?
The current real estate TDS provides that a buyer has the right to rescind a purchase contract for the property for three days after delivery of the disclosure statement, if delivery of the statement occurs after he/she has signed the contract.
Currently, there is no such 3 day rescission for dealer sales. Representatives of the California Association of Realtors insisted that this language be carried over to the new TDS for mobile and manufactured homes, but dealer representatives were opposed. This issue, more than any, threatened to blow up the Task Force's work in the final weeks, when most of the other issues had been resolved. The parties were requested to negotiate by telephone, and just prior to the first of the year, dealer and multiple listing representatives agreed to a three day right of rescission, but rewritten in a new code section, 1102.3a of the Civil Code, and tailored to manufactured homes and referenced in the TDS.

Much of the proposed draft TDS for manufactured homes and mobilehomes recommended by the Task Force is a compromise. Organizations selected to serve on the Task Force represent interests - such as mobilehome park owners and mobilehome owners, or dealers and real estate brokers - that are in conflict. The resolution of the main issues was, in most cases, either a matter of negotiation (give or take) or simply, as in issue number 2, above, not addressed in the recommended draft.

Details of the discussions on these issues and lessor ones may be garnered from the transcript of the three meetings. Most of the major issues were discussed in length and decided at the October and December meetings.

# DRAFT OF PROPOSED

# TASK FORCE LEGISLATION

California Legislature

Senate Select Committee
on
Mobile and Manufactured Homes

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CHAIRMAN

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COMMITTEE CONSULTANT

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# TASK FORCE RECOMMENDATION FOR PROPOSED DRAFT BILL FOR MANUFACTURED HOME/MOBILEHOME DISCLOSURE FORM & RELATED STATUTES

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SECTION 1. Section 1102.1 of the Civil Code is amended to read:

1102.1. In enacting Chapter 817 of the Statutes of 1994 and Chapter 677 of the Statutes of 1996, 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, and the manufactured home/mobilehome transfer disclosure statement, as required by Section 1102(b). The Legislature intended the statements to be used by transferors making disclosures required under this article and by agents making disclosures required by Section 2079 on the agent's portion of the real estate disclosure statement and as required by Health and Safety Code Section 18046 on the dealer's portion of the

manufactured home/mobilehome transfer disclosure statement, in transfers subject to this article. In transfers not subject to this article, agents may make required disclosures in a separate writing. The Legislature did not intend to affect the existing obligations of the parties to a real estate contract, or their agents, to disclose any fact materially affecting the value and desirability of the property, including, but not limited to, the physical conditions of the property and previously received reports of physical inspections noted on the disclosure form set forth in Section 1102.6 or 1102.6a or to affect the existing obligations of the parties to a manufactured home/mobilehome purchase contract, and that nothing in this article shall be construed to change the duty of a real estate broker or salesperson pursuant to Section 2079 or the duty of a manufactured home/mobilehome dealer or salesperson pursuant to Health and Safety Code Section 18046. 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.

SECTION 2. Section 1102.2 of the Civil Code is amended to read:

1102.2 This article does not apply to the following:

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

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

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

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

(e) Transfers from one co-owner to one or more other co-owners.
(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.

SECTION 3. Section 1102.3a is added to the Civil Code to read:

1102.3a. (a) The transferor of any manufactured home/mobilehome, subject to this article, shall deliver to the prospective transferee the written statement required by this article, as follows:
(1) In the case of a sale, or a lease, together with an option to purchase of a manufactured home/mobilehome, involving an agent, as defined in Health and Safety Code Section 18046, as soon as practicable, but no later than the close of escrow for the purchase of the manufactured home/mobilehome.
(2) In the case of a sale or lease, together with an option to purchase of a manufactured home/mobilehome, not involving an agent, as defined in Health and Safety Code Section 18046, at the time of execution of any document by the prospective transferee with the transferor indicating the purchase of the manufactured home/mobilehome.
(b) With respect to any transfer subject to this subdivision, the transferor shall indicate compliance with this article either on the transfer disclosure statement, any addendum thereto, or on a separate document.
(c) 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/her offer by delivery of a written notice of termination to the transferor.

SEC. 4. Section 1102.6d is added to the Civil Code to read:

1102.6d. Except for manufactured homes and mobilehomes located in common interest developments governed by Title 6 of this Part (commencing with Section 1351), the disclosures required by Section 1102(b) relating to the proposed resale of manufactured homes and mobilehomes classified as personal property are set forth in, and shall be made on a copy of, the following disclosure form:

# MANUFACTURED HOME/ MOBILEHOME TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE MANUFACTURED HOME/ MOBILEHOME (HEREAFTER REFERRED TO AS "HOME") LOCATED AT _____ IN THE CITY OF _____, COUNTY OF _____ STATE OF CALIFORNIA, DESCRIBED AS

| _____ | _____ | _____ | _____ |
|---|---|---|---|
| YEAR | MAKE | SERIAL #(s) | HCD Decal # or Equivalent |

THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED HOME IN COMPLIANCE WITH SECTION 1102(b) OF THE CIVIL CODE AND SECTIONS 18025 AND 18046 OF THE HEALTH AND SAFETY CODE AS OF _____.
DATE

IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S), AS DEFINED IN SECTION 18046 OF THE HEALTH AND SAFETY CODE, 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. IF THE HOME IS OR WILL BE LOCATED IN A PARK, AS DEFINED IN SECTION 798.6 OF THE CIVIL CODE, ANY INQUIRIES REGARDING THE CONDITION OF THE PARK PROPERTY INCLUDING THE CONDITION OF THE LOT, AS DEFINED IN SECTION 18210 OF THE HEALTH AND SAFETY CODE, AND CONDITIONS OF TENANCY SHALL BE DIRECTED TO THE PARK MANAGEMENT. THE SELLER OR HIS OR HER AGENT SHALL NOT BE REQUIRED TO DISCLOSE OR BE LIABLE FOR FAILURE TO DISCLOSE TO THE PROSPECTIVE BUYER(S) CONDITIONS OF THE PARK PROPERTY INCLUDING THE CONDITION OF THE LOT.

## I

## COORDINATION WITH OTHER DISCLOSURES & INFORMATION

This Manufactured Home/ Mobilehome Transfer Disclosure Statement is made pursuant to Section 1102(b) of the Civil Code. Other statutes require disclosures, or other information may be important to the prospective buyer, depending upon the details of the particular transaction (including, but not limited, to disclosures required or information provided by the Mobilehome Residency Law, Civil Code Section 798 et. seq.; the mobilehome park rental agreement or lease; the mobilehome park rules and regulations; and park and/ or lot inspection reports, if any, completed by the state or a local enforcement agency).

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

☐ Home inspection reports completed pursuant to the contract of sale or receipt for deposit.

☐ Additional inspection reports or disclosures: _____

_____

II

## SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective buyers may rely on this information in deciding whether, and on what terms, to purchase the subject Home. Seller hereby authorizes any agent(s), as defined in Section 18046 of the Health and Safety Code, 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 Home.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY, AS DEFINED IN SECTION 18046 OF THE HEALTH AND SAFETY CODE. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND THE SELLER.

Seller _____ is _____ is not occupying the Home.

**A. The subject Home includes the items checked below which are being sold with the home (read across):**

| | | |
|---|---|---|
| __Range | __ Oven | __ Microwave |
| __ Dishwasher | __Trash Compactor | __ Garbage Disposal |
| __ Burglar Alarm | __ Smoke Detectors | __ Fire Alarm |
| __ TV Antenna | __ Satellite Dish | __ Intercom |
| __ Central Heating | __ Central Air Conditioning | __ Wall/Window Air Conditioning |
| __ Evaporative Cooler(s) | __ Sump Pump | __ Water Softener |
| __ Porch Decking | __ Porch Awning | __ Gazebo |
| __ Private Sauna | __ Private Spa | __ Spa Locking Safety Cover* |
| __ Private Hot Tub | __ HotTub Locking Cover* | __ Gas/Spa Heater |
| __ Solar/Spa Heater | __ Gas Water Heater | __ Solar Water Heater |
| __Electric Water Heater | __ Water Heater Anchored, Braced or Strapped* | __ Bottled Propane |
| __ Carport Awning | __ Attached Garage | __Detached Garage |
| __ Automatic Garage Door Opener(s)* | __ # Remote Controls | __ Window screens |
| __ Window Secure Bars | __ Bedroom Window Quick Release Mechanism* | |
| __ Earthquake Resistant Bracing System | __ Washer/Dryer Hookups | __ Rain Gutters |

Exhaust Fan(s) in _____ 220 Volt Wiring in _____
Fireplace(s) in_____ Gas Starter(s) _____
Roof (s) and type(s)_____ Roof age (Approximate)_____
Other _____

* If there is a automatic garage door opener or safety cover listed above, it 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, or with the pool safety standards of Article 2.5(commencing with Section 115920) of Chapter 5 of Part 10 of Division 104 of the Health and Safety Code. The water heater may not be anchored, braced, strapped or secured in accordance with Section 19211 of the Health & Safety Codes. Window security bars may not have quick-release mechanisms in compliance with the 1995 Edition of the California Building Standards Code.

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 (the Seller) aware of any significant defects / malfunctions in any of the following in connection with the Home? _____ Yes _____ No If Yes, check the appropriate space(s) below:**

___ Interior walls, ____ Ceilings, ____ Floors, ____ Exterior Walls, ____ Insulation, ____ Roof (s)
___ Windows ____ Doors, ____ Home Electrical Systems, ____ Plumbing, ____ Porch or Deck ,
___ Porch Steps & Railings, ____ Other Steps & Railings, ____Porch Awning, ____ Carport Awning,
___ Other Awnings, ____ Skirting, ____ Home Foundation or Support System,
___ Other Structural Components (describe:_____

_____)

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

_____

_____

**C. Are you (the 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, or chemical storage tanks on the subject Home interior or exterior ..... **__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 applicable codes..... **__Yes __No**
4. Any settling from slippage, sliding or problems with leveling of the home or the foundation or support system..... **__Yes __No**
5. Drainage or grading problems with the home, space or lot ..... **__Yes __No**
6. Damage to the home or accessory structures being sold with the home from fire, flood, earthquake, or landslides ..... **__Yes __No**
7. Any notices of abatement or citations against the home or accessory structures being sold with the home..... **__Yes __No**
8. Any lawsuits by or against the seller threatening to or affecting the home or the accessory structures being sold with the home, including any lawsuits alleging any defect or deficiency in the home or accessories sold with the home..... **__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 HOME AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE HOME IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure

☐ Agent notes the following items:

_____

_____

_____

_____

Agent Representing Seller_____ By_____Date_____
(Please Print) (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 HOME, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure

☐ Agent notes the following items:

_____

_____

_____

_____

Agent Representing Seller_____ By_____Date_____
(Please Print) (Signature)

V

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND / OR INSPECTIONS OF THE HOME AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THE 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 Representing Seller_____ By_____Date_____
(Please Print) (Signature)

VI

SECTION 1102.3a OF THE CIVIL CODE PROVIDES A PROSPECTIVE BUYER WITH THE RIGHT TO RESCIND THE PURCHASE OF THE MANUFACTURED HOME / MOBILEHOME FOR AT LEAST THREE DAYS AFTER 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 MANUFACTURED HOME / MOBILEHOME DEALER OR A REAL ESTATE BROKER IS QUALIFIED TO PROVIDE ADVICE ON THE SALE OF A MANUFACTURED HOME / MOBILEHOME. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

SECTION 5. Section 1102.9 of the Civil Code is amended to read:

1102.9. Any disclosure made pursuant to this article may be amended in writing by the transferor or his or her agent, but the amendment shall be subject to Section 1102.3 or Section 1102.3a.

SECTION 6. Section 18025 of the Health and Safety Code is amended to read:

18025. (a) Except as provided in subdivisions (b), and (c), ~~and (d),~~ 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.).

(c) The sale of used manufactured homes and mobilehomes by ~~a dealer licensed pursuant to this part~~ an agent shall be subject to Section 18046.

~~(d) The sale of used manufactured homes and mobilehomes by a real estate broker or salesperson licensed under Division 4 (commencing with Section 10000) of the Business and Professions Code shall be subject to Section 2079 of the Civil Code.~~

SECTION 7. Section 18046 of the Health and Safety Code is amended to read:

18046. (a) An "agent" for the purposes of this Section, Section 18025 and Section 1102(b) of the Civil Code means either a dealer or salesperson licensed pursuant to this part, or a real estate broker or salesperson licensed pursuant to Division 4 (commencing with Section 10000) of the Business and Professions Code.

(b) A "seller" for the purposes of this Section, Section 18025, and Section 1102(b) of the Civil Code means the lawful owner of the manufactured home or mobilehome offering the home for sale. For purposes of this Section,

Section 18025, and Section 1102(b) of the Civil Code, the exemptions enumerated by Section 1102.2 of the Civil Code shall be applicable to the transfer of a manufactured home or mobilehome.

(c) The sale of used manufactured homes or mobilehomes by a real estate broker or salesperson licensed under Division 4 (commencing with Section 10000) of the Business and Professions Code shall be subject to Section 2079 of the Civil Code.

(d) It is the duty of a dealer or salesperson, licensed under this chapter, to a prospective ~~purchaser~~ buyer of a used manufactured home or mobilehome, subject to registration pursuant to this part, to conduct a reasonably competent and diligent visual inspection of the home offered for sale and to disclose to that prospective ~~purchaser~~ buyer all facts materially affecting the value or desirability of the home that an investigation would reveal, if that dealer or salesperson has a written contract with the seller to find or obtain a ~~purchaser~~ buyer or is a dealer or salesperson who acts in cooperation with others to find and obtain a ~~purchaser~~ buyer. Where a transfer disclosure statement is required pursuant to Civil Code Section 1102(b), ~~A~~ a dealer or salesperson shall ~~may~~ discharge ~~this~~ that duty by completing the agent's portion of the transfer disclosure statement that a seller prepares and delivers to a ~~purchaser~~ prospective buyer pursuant to Section 1102(b) of the Civil Code. If no transfer disclosure statement is required, but the transaction is not exempt under Civil Code Section 1102.2, a dealer shall discharge that duty by completing and delivering to the prospective buyer an exact reproduction of Sections III, IV and V of the transfer disclosure statement required pursuant to Section 1102(b) of the Civil Code.

# TRANSCRIPT OF THE

# THREE TASK FORCE MEETINGS

JANUARY 5, 1998

## TASK FORCE MEETINGS

## TRANSCRIPTS

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# California Legislature

## Senate Select Committee on Mobile and Manufactured Homes

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SENATOR WILLIAM A. CRAVEN
CHAIRMAN

Mobilehome Resale Disclosure Form Task Force
Wednesday, August 27, 1997 Meeting
Room 115
State Capitol, Sacramento
1:30 pm

**AGENDA**

I. Introductory remarks - Senator William A. Craven.

II. Introduction of and brief introductory comments by task force members.

III. Discussion of information to be included in a Mobilehome Disclosure Form.

A. Appliances, amenities, physical features, and code violations or citations relating to the mobile/manufactured home;

B. Features, amenities, conditions and code violations or citations relating to the space or lot on which the mobile/manufactured home is installed;

C. Features, physical facilities, conditions and code violations or citations relating to the mobilehome park or manufactured housing community;

D. Other disclosure issues.

IV. 10 minute recess.

V. Adoption of disclosure information which is agreed upon.

VI. Establishment of a date or dates for a second and subsequent meetings, if necessary.

VII. Adjournment - by no later than 4 pm

Note: Proceedings of the task force will be tape recorded

# LEGISLATIVE TASK FORCE ON MANUFACTURED HOME & MOBILEHOME RESALE DISCLOSURE TRANSCRIPT

State Capitol, Room 115
August 27, 1997

JOHN TENNYSON: We have handed out some materials to everyone who is a member of the Task Force and to the alternates and other interested parties on the side. Several of our members are not here yet so we'll just start, basically, with the introductions and the preliminary information. First of all, I'm John Tennyson, for those of you who don't know me. I think most of you do. I'm the consultant to the Senate Select Committee on Mobilehomes and have been for about thirteen years. I'm also a consultant to the Senate Committee on Local Government, and to my right is Louise Cherry, secretary to the Select Committee on Mobilehomes. The Select Committee has been designated by the Senate Rules Committee to handle or coordinate the Task Force, which has been approved by both the Assembly and the Senate to come up with a recommendation as to what should be included in the a resale disclosure form for mobilehomes pursuant to Senate Bill 1704, Craven, which was enacted last year to become effective on January 1, 1999.

Senator Craven, who was designated by the Senate Rules Committee, in agreement with the Assembly, to chair this committee, is ill. He is suffering from complications from diabetes and had a little relapse in the last week, so, unfortunately, he is not able to be with us today. I have spoken with him on the phone a couple of times in the last few days and of course, as well as in the past, with regard to the Task Force, and the way he views it, as you can see by his letter, is that he feels you should keep this simple and straight forward.

Originally, the Rules Committee suggested that we run the Task Force like a committee, like a legislative committee, using parliamentary procedure, but in view of the fact that Senator Craven is not here and I am really not chairman, per se, but am simply coordinating the meeting, if it is OK with the members, we'll do this on

JOHN TENNYSON:

an informal basis, with one exception. The members of the Task Force are the ones who will set the ground rules, I'm simply making some suggestions. I'm suggesting that we keep it informal, but that we are tape recording the meeting for later transcription, and to make the tape understandable and the transcription possible, we would appreciate that instead of everyone talking at once, particularly if we get to a point where there is some heated discussion, please raise your hand and direct yourself through the coordinator, myself, so that we can have some logical understanding of the issues and not have everyone talking at once.

That would be one of the suggestions. So, we'll try to keep it informal. The second thing the Senator has suggested is that when we get to the discussion stage, that we start with the points on which we think we can agree. If I recall correctly, some of you were involved in these discussions a year and a half ago, or so, when SB 1704 and other legislation was being considered, and there was some disagreement with regard to how inclusive the disclosure form for mobilehomes should be. I don't recall that there was too much discussion or disagreement as to what would be included, vis-à-vis, the mobilehome itself. The controversy seemed to extend to whether park issues should be included in a mobilehome disclosure form. So, if it is OK with everyone, following the Senator's suggestion, we'll agree to agree, as Henry Kissinger used to say, on the points on which we can agree and then we'll narrow it down to the points on which we cannot agree.

Whether we'll need to have another meeting or not will basically depend on what we do here today, and hopefully some of you, or all of you, brought your calendars, so that come 3:30 or so if it looks like we are going to have to have another meeting in September or October, we can figure out what date or dates will be workable for that. So, I hope, I've covered all the ground rules or possible ground rules. I might, also add, administratively, that as far as these oaths are concerned, don't ask me about them. I don't know why Rules Committee insists on that, but hopefully you have turned them in. If you haven't or you haven't had them notarized, you can have someone in Legislative Counsel do that, and you can give them to Louise and we will get them to Rules Committee later this afternoon.

So, with that, I would like to go around the table and have everyone who is a member of the Task Force and then the alternates and other interested parties introduce themselves, and then we'll entertain questions with regard to what we've discussed in terms of the ground rules and what have you. So, Paul, why don't we start with you.

PAUL HENNING: I'm Paul Henning, and I'm representing the Golden State Mobilhome Owners League. I was appointed by Jim Sams, who is the chairperson for our legislation.

ELIZABETH WEST: I'm Elizabeth West from the Assembly Committee on Housing and Community Development.

TRAVIS PITTS: Travis Pitts, Department of Housing and Community Development, Division of Codes and Standards.

RICHARD WEINER: Richard Weiner. I'm an attorney from Los Angeles representing California Multiple Listing.

JERI McLEES: I'm Jeri McLees. I'm replacing Ray Baumer as the representative from the Western Mobilehome Association, and it's nice to be back in the Capitol. It's been a while.

DAVE HENNESSY: Dave Hennessy. I'm the president of CMRAA.

OTIS ORSBURN: Otis Orsburn, a representative from the California Manufactured Housing Institute.

RON KINGSTON: Ron Kingston with the California Association of Realtors.

JOHN TENNYSON: OK. Looks like we have everybody. And, alternates and other interested parties, why don't you introduce yourselves?

JIM SAMS: I'm Jim Sams. I'm northern vice president for the Golden State Mobilhome Owners League and the state legislative chairman, and I'm happy to be a part of this Task Force.

DENISE DELMATIER: I'm Denise Delmatier, a legislative advocate for GSMOL.

TAMI MILLER: Tami Miller, legislative advocate for WMA.

PAT LEATHERS: Pat Leathers. I'm an attorney with Advocation, here on behalf of the California Mobilehome Park Owners Alliance.

BRUCE STANTON: Bruce Stanton, corporate counsel and alternate for CMRAA.

JOHN TENNYSON: Thank you very much. Do you have any questions or preliminary comments before we move on to the meat of the meeting? Does anyone have anything to say or any questions concerning the ground rules? OK. What I think, perhaps, we should do then is begin with the consideration of what should be included in a prospective disclosure form on January 1, 1999 as it applies to the mobilehome. And, those of you who are members have received a copy of the existing law as stated in the Civil Code for real property as well, as a form which the California Multiple Listing has provided us that is used by many dealers, as well as some suggestions and modifications of the dealer form that GSMOL has made. So, why don't we start, perhaps..., Dick, why don't you lead us off, if you don't mind, concerning the form you submitted to us. It seems very simple in its present...

RICHARD WEINER: We tried to make it simple. I don't know if we talked to Senator Craven or ...

JOHN TENNYSON: All of you should have received a copy of this in the mail. Alternates and other parties, if you want to pick up one from the center of the table.

RICHARD WEINER: I did note, by the way, in looking at the other form that was presented by GSMOL, that there are probably some things I would like to add, since it was my understanding, and I guess maybe that was one of the areas that we should make sure that we agree or don't agree on, that we are talking about a disclosure statement with regard to the manufactured home itself, and not with regard to the park. The GSMOL write up which appears a little before ours has a couple of suggestions about making sure that the form says that we are speaking only about the ...There should be some wording on that, it seems to me, on the form itself, if that's the agreement, that we're only talking about the home and not about the park, that should be, I think, specified and perhaps more than what we had on the form that we presented.

The form itself, that we have presented, was one that was worked over a couple of times. It had probably two or three things that we had in mind. Number one was to try to conform with the legislation because the legislation, although I think that the copy we have in the packet you sent doesn't have the current form of Section 1102. That, in fact, is in the small bill, which talks about the application of 1102 to manufactured housing. It seems to me that there really isn't anything that says that it should be different than what the disclosures are or are not for conventional real estate, and therefore, although the Department of Housing had made a suggestion regarding the agent's inspection disclosure, which appears on the second page, we felt it was important to have the form tie in with Section 1102 in having in effect, two agent's disclosures. That was one item.

RICHARD WEINER:

Item two was that the list of things that are to be checked on the form itself were ones that were discussed by several dealers and it is their list. Now, there may be other things that should be added. It starts out with the walls, ceilings, floors. It was a list of things not taken from the code form which is the real estate form, but rather things that were specifically in manufactured homes. Now, as I said, there may be other things that should be added, but this is what the list is.

The third thing that makes it a little more complicated is when we talked about registered owners/sellers. Unfortunately, that appears in a number of places in the form -- agents/dealers. That has made the form more complicated. But, the reason that we did that was because this, unlike conventional real estate, we are talking about the registered owner/seller, and we wanted to be clear to everybody that this is the person that we are talking about, the person who owned the home before. The registered owner, the current owner, is selling the home. He is really a registered owner/seller. So there isn't any confusion who it is, we put both the words "registered owner/seller." It makes the thing a little more complicated and perhaps we can do something about defining it somewhere else so that we wouldn't have to have that term appear everywhere, but on the form itself that's the way it is set out. Otherwise, the form does go, in fact, through Section 1102 and the disclosure statement that's part of the law now for real estate, and we felt that it was important to try to keep it as close as possible to that form and at the same time cover the differences between manufactured homes and real estate.

I did note one thing that is not on our form and perhaps -- I'm not sure whether it should be on there or not -- the real estate form at the very bottom, if you look at what John sent us, the end of the form says Section 1102.2 of the Civil Code. By the way, some of these code section numbers have been changed. Even the real estate form, itself, is not accurate. The form as it's used now by Realtors is not accurate unless they have changed it because the code sections have been changed, the numbers of the code sections have been changed.

RON KINGSTON: We changed that last year, and the year before and even the form that was circulated is part...the code reference is slightly different. So is the reference in Paragraph A, there is some new changes.

RICHARD WEINER: One of the things it says at the very end, it says Section 1102.2 of the Civil Code provides the buyer with the right to rescind a purchase contract for at least 3 days and that's not the code section. I think it's 1103 at this point, or something like that. But, anyway, we have not added that. One of the reasons that we didn't add it is I'm not quite sure whether it is applicable to the manufactured housing situation or not. Maybe it is and maybe it is not. If we

RICHARD WEINER:

think it is, it probably is a good idea to add it. And, of course, the statement "real estate broker" which should say "real estate broker/mobilehome dealer", add both, "is qualified to advise on manufactured housing. If you desire legal advice, consult your attorney," which I should always put in every form that I do. But, anyway, I forgot to put that in there.

Otherwise, that's how we devised the form. It was done really by a combination of attorney and resale dealers in Southern California. So, it has their input and their ideas of what things should be in the form, and then my ideas of what I think legally should be in the form.

JOHN TENNYSON: Ron.

RON KINGSTON: I just have a couple of questions. I'm not sure, John, how you want to proceed about this. Do you use that as a format, current law? Before I ask some questions about your form, how do you want us to start? Do you want us to focus in on ...

JOHN TENNYSON: It doesn't make any difference to me. We just need to have a starting point somewhere, so I guess it is just a matter of what should be included in terms of the home itself, at this point. We haven't come to the park issue yet.

RON KINGSTON: Stay away from the "park issue." I think it would be really helpful for us to stay with the current format and content of the 1102 layout and certainly we should point out that where it says agent we have to make that very needed change. But, for example, when you ask a question about does it have interior walls or appliances, it would be far more comfortable to deal with the seller. The seller, for the most part should be a pretty unsophisticated party, to have a list, much like what 1102 has where it says, " the subject property has got (check below) oven, range, dishwasher," and surely those are appliances and to the degree that it specifies, it not only facilitates the sale it helps minimize confusion between the purchaser and the seller, as well as, I think, we stay with a model that seemingly has worked since 1985.

RICHARD WEINER: I don't have any problem with devising a list that works. I think that is necessary. Some of the things on the standard real estate contract, however, I think, are not necessarily applicable. Some of them were crossed off of the GSMOL list they have. As an example, septic tank. But, anyway, I have no problem with that concept. I think that's fine. Whatever the list is, it can be in the format that 1102 has now, and that's perfect. No problem with that.

JOHN TENNYSON: Yes, Mr. Orsburn.

OTIS ORSBURN: If I may, I am a retailer on the board of directors for the California Manufactured Housing Institute so I have been involved in resales and used home sales and in the industry for about 29 years. And, we have used a number of different forms. We've also had some dealers within our division, in the retailers division, come up with a more recent form that does have the applicable Code provisions that are shown here. I brought it today. I didn't get it off the press quick enough, and I would like to share that with everybody, too. I think it will bring some light on what you are talking about and what you wanted to add to your form. I have 13 copies.

JOHN TENNYSON: While she is distributing them, why don't you go ahead?

OTIS ORSBURN: This particular form we have taken from the real estate form and plagiarized it as much as we could, just adding where we need to change to a manufactured home, and it is very current and I think that everybody, when they have had a chance to review it, there will only be minor revisions that are going to apply to at least meeting the requirements for giving an adequate disclosure because it follows almost parallel with the real estate form.

ELIZABETH WEST: And, also the one Mr. Henning submitted.

OTIS ORSBURN: That, actually... we've had access and we were members of the Guardians in the Bay Area which has that multiple listing form, and we have taken that form and applied it into this one, also. So, we've taken a number of different forms used by other people and just tried to make the best of the best.

RICHARD WEINER: Otis, the only thing that I have a problem with, which I noticed was in the GSMOL form as well, is Part C - "are you aware of any of the following?" Because, there are definitely things in that section that are, that get to this question of whether we're talking about the park or the home or both, and a number of these things are talking about the park and really have to be eliminated as I understand the purpose of the legislation.

OTIS ORSBURN: Yes, we should create the specific direction on what we're going to ask for and maybe it will take a few more words to specify it or limit it to, let's say, the homesite versus the entire park without saying that that is going to be part of it, at this point.

JOHN TENNYSON: Well, why don't we address ourselves to your handout and what should be included in "A" and "B" before we get into some of these, perhaps,

JOHN TENNYSON:

less agreeable items. I would certainly think we would be able to reach consensus on this check list of items.

RON KINGSTON: Is it fair to say that the lead in all the way to "A" is as closely as possible to the bottom? the current statute or any...

RICHARD WEINER: There was one other thing that I wanted to add, too, which I think is an important bit and that is on the question of registered owner. Since the code section, and I know HCD itself considers the dealer to be the seller in many situations, in fact, in all situations, I think it has to be clear that it isn't the seller in that sense that is making the disclosure, and I think that's an important part of this, which is not, which we tried to do on our form, which is not done on this form. If the seller is in fact the dealer, then I think we are in trouble in terms of the forms. That's why, I think it's got to say registered owner except in a situation where there isn't a registered owner who is actually selling it. I'm, perhaps Travis can amplify on that. That certainly has been HCD's position, that the dealer is the seller in a situation where the typical resale of manufactured homes which is why we have differences between how real estate has sold these things and how dealers have sold them.

JOHN TENNYSON: Mr. Pitts, do you have a comment on that?

TRAVIS PITTS: Well, I believe that we could take care of it relatively easily by an amendment to 18046, that says "with respect to this section seller means..."

JERI McLEES: And, John, wouldn't we want to make sure... when I'm thinking about the seller situation, we do have one especially in this area where the seller is an heir, is not the registered owner of the home, the seller is the bank, because, are we expecting the bank to do the disclosures as well as if they are the one's selling the home?

TRAVIS PITTS: By the definition I believe you could provide...

JERI McLEES: Provide that? OK, maybe that is what we address in...

RICHARD WEINER: Well, they are probably excluded in the way the law itself reads on conventional housing. I think the same exclusions apply to situations where you have an heir situation or a foreclosure. There's probably no disclosure that's applicable.

JERI McLEES: Yeah, but the foreclosure is one thing with the bank having the disclosure, but I think with the heir...

RON KINGSTON: There are specific exemptions that following that, it's only a very limited set of exceptions and following that there were two well celebrated court cases which did not totally relieve a lender from disclosing material facts that of which they know. And, those two court cases -- I know the court cases pretty well -- and the question will be, do you want to model the list of exceptions for, like, a lender...under this as it is ... to real property, that is the question that .....

OTIS ORSBURN: What are the requirements for real estate transactions?

RON KINGSTON: Generally speaking, if it is a ..., let me tell you what generally happens in these cases. Theory one is that under 1102 there are specific steps for exceptions where disclosure doesn't happen -- a divorce decree, a foreclosure sale, under a quit claim deed, things of this nature. There is a whole list of particular items, about a dozen specific items. But following that, in the last couple of years there have been some really interesting court cases that banks have actually fought and have lost the two significant court cases because the court is the observer. Common law can't be thrown out. They have the duty to disclose that which truly effects the desirability of your property. Now, in these two cases, it was the test of conveyance of real property, not personal. And it clearly observed that the bank or anybody had a duty to disclose that which they know. The bank should not be excused from any disclosure obligations. And, I would think that probably everybody here, not that I know everybody, but would not want to excuse the lenders from making disclosure obligations. At one point in time, we will all be purchasers and will all want to know the material facts that they have.

JOHN TENNYSON: Question. Are heirs under current law excluded?

RON KINGSTON: Yes.

JERI McLEES: They're excluded or included?

RON KINGSTON: Excluded from the duty to disclose.

RICHARD WEINER: But, probably not excluded if they know there is a known defect. They are probably not excluded any more than banks are if they in fact know...

RON KINGSTON: No, I'm talking about heir, one heir... you know, if it is, like for example, ... say, Jeri, for example, inherits Travis' property. Jeri now either occupies, or whatever... and is now ready to sell to Liz, the piece of property.

RON KINGSTON:

She has the duty to disclose, but in conveyance of one heir to another a duty to disclose does not exist.

JERI McLEES: And, I think that's acceptable because what I am concerned about is especially in today's environment where we have an awful lot of homes which are becoming inherited and the heir should disclose the information.

JOHN TENNYSON: I'm not sure that other than, perhaps, this issue with regard to defining a seller for purposes of 18046 in context of the dealer that we want to start getting into all these particular exemptions just because it's mobilehomes. I would think that that could be treated the same way as it pertains to real property.

TRAVIS PITTS: I support that because what you said initially about simplicity and keeping this as closely in parallel with what people are used to using today is going to be the test of whether this is successful or a failure. The more that we modify it and try to make it something different, I think the more chance we have for something that doesn't work. So, I support your comment.

JERI McLEES: And then we just refer to person as a seller, which is a...

TRAVIS PITTS: If that's the only problem, then we cross-reference seller for the purposes of this section means the registered owner, but otherwise stay as close to 1102 and the format that people are used to using.

JOHN TENNYSON: OK. Paul.

PAUL HENNING: Maybe we should just go ahead and go through the amenity listing of what should be there and what should not be there.

JOHN TENNYSON: That's fine with me. The problem is which amenity list shall we start with?

JERI McLEES: Why don't we start with Otis'? It looks like it's close to ...

JOHN TENNYSON: Is that agreeable with everybody?

RICHARD WEINER: I have no pride of ownership. I'm glad that Otis has provided the forms. Looks good.

JOHN TENNYSON: OK.

PAUL HENNING: I have the California Multiple Listing if you want.

JOHN TENNYSON: No, I think what they are talking about, Paul, is that we will start with this list here. You can correlate some of your other lists with this one because this is closest to current law, the one that Otis handed out. Did you get a copy of that?

PAUL HENNING: Yes.

JOHN TENNYSON: OK, does everyone have a copy of that?

RICHARD WEINER: By the way, the reason that in our form interior walls and ceiling were put in there was because the dealers felt that this sometimes is a problem that purchasers and sellers have, that there are problems with those things and maybe they should be included.

RON KINGSTON: I think, just reading the first paragraph about where it is located in paragraph 1. Now if you compare that to the current 1102, that first paragraph has some pretty good information about it. The theory behind that is, it just says, "This disclosure form is being made pursuant to the code section." Just as important to that, it tells the purchaser and the person, the seller, whose completing this form, informing them that there may be other disclosure requirements that may be required in connection with this transaction and it may be, therefore, that they, a party shouldn't necessarily just rely on this as the only disclosure statement list. I think could really be helpful to address that.

JERI McLEES: Ron, you like the language as it is, though, right? Is that what you're saying?

RON KINGSTON: Well, I'm just looking at the current 1102.

JERI McLEES: Because it looks like it is awfully close to what Otis proposed.

RON KINGSTON: See where it says under 1102, "Coordination with other disclosure forms," which we don't have so titled here. Then under 1102 it says, "Real Estate transfer disclosure form is made" pursuant to a certain code section. Then it says, "Other statutes require disclosures..."

RICHARD WEINER: Which paragraph are you looking at?

JOHN TENNYSON: It's under sub one, first paragraph.

RON KINGSTON: That language should be included for everybody concerned.

OTIS ORSBURN: What other disclosures are we talking about? That one real estate disclosure form is gone. We have no other ....

RICHARD WEINER: You have lead-based paint...

JERI McLEES: Lead-based paint...

RON KINGSTON: The problem is, I don't think you want to get into a legal battle saying. "Gee, this was all I was required to give John." If I relied on that,...you just don't want to get into that trap.

JERI McLEES: Doesn't this also assist in the park problem we're trying not to talk about right now in saying that other statutes require disclosures, and we know in the Mobilehome Residency Law we, as park owners, must make certain disclosures on zoning and conditional use permits, etc. That gives a warning to the buyer, per se, that they should seek and make sure that they have all the other disclosures, that may or may not be the responsibility of the seller or the agent?

OTIS ORSBURN: OK, so here we would just say to transfer disclosure, we'd pull out the real estate section.

RICHARD WEINER: Yeah, I think you have to make a number of changes in that if using that particular paragraph, Roman Numeral I, from the real estate one.

RON KINGSTON: John, is it possible... somewhere that paragraph modification needs to be made. Is it fair to request of you to take a cut at that?

JOHN TENNYSON: Sure, we can say something to the effect that the mobilehome resale disclosure statement is made pursuant to whatever section it is. Other statutes require disclosures depending upon the details of the particular transaction. And then we'll put in some...

RON KINGSTON: ...disclosures ..

JOHN TENNYSON: Mobilehome Residency Law disclosures... name the owner of the park or ...

RON KINGSTON: It doesn't have to be exhaustive, but ...

RICHARD WEINER: Which it should also say that it includes but is not limited to... We shouldn't try to name everyone because there may be a dozen.

JERI McLEES: And, they also change.

JOHN TENNYSON: OK. Is everybody on board so far? Is everybody with us? Know where we are? Are there any problems so far? Yes, Paul.

PAUL HENNING: John, I'd like to see a, ...on the multiple listing. I would like to see the one on top of... the year, the make, the serial number and label numbers.

RICHARD WEINER: Good. Right. That's in our form which is not in the...

JERI McLEES: That's how I would use a description. I don't think we have any problem with that because it is really kind of how we describe them anyway, be it 1982, whatever.

RICHARD WEINER: Just use the top. The CML form has that year, make, serial number, HCD/HUD label number. We'll just substitute that in as, so we know what we're talking about.

JOHN TENNYSON: Above paragraph number 1?

JERI McLEES: It would be line 4 of Otis' where it says, "As," John, and then it gives a line. I think what Paul is suggesting is we insure that the year, make, serial number, and HCD/HUD label number are on there. Isn't that what you are saying, Paul?

PAUL HENNING: Yes.

JERI McLEES: And, I think that's very appropriate. We agree.

JOHN TENNYSON: Where do you want to put it, again?

JERI McLEES: On the very top of the disclosure, put it right at the County, the next line says, "As." We're looking at the one that Otis provided.

RICHARD WEINER: And then, just take it from the CML form where it has year, make, serial number... that has the description of it.

JERI McLEES: Because that really is, I think, how we all, generally..., but, we often times use the decal number, as well.

RICHARD WEINER: Yes. OK. We should add it.

JERI McLEES: And add the decal number. That's how we go to HCD for ours.

OTIS ORSBURN: So, what we're doing is identifying...

RICHARD WEINER: HCD Decal/HUD label.

TRAVIS PITTS: This is the equivalent of identifying the real property in "as."

OTIS ORSBURN: So, we are identifying it not only by where it is located but by the unit.

JOHN TENNYSON: By the serial number...

JERI McLEES: By the home, itself, that's being disclosed.

JOHN TENNYSON: OK, is everybody on board? So then we are adding this modified form number 1, that brings us down to...

RON KINGSTON: Then, the second paragraph of the current form...

RICHARD WEINER: What are you looking at?

RON KINGSTON: The current law....substituted disclosures -- the following disclosures have or will be made in connection with - in this case it would just be "transfer" intending to satisfy the disclosure obligations of this form. That probably should be added.

JERI McLEES: Is that kind of like the termite report, Ron, or the...we have a health and safety inspection. Is that what...?

RON KINGSTON: Health and safety or lots of other inspections. This just seems to fit.

JOHN TENNYSON: Yes, Paul.

PAUL HENNING: I think this other disclosure should be in there, too, where we shouldn't interfere with property regulations and ... and some type of disclosure to that.

JERI McLEES: Where is it?

RICHARD WEINER: Which paragraph are we looking at?

JOHN TENNYSON: We're talking about the second paragraph of the multiple listing handout where it says, "This disclosure is in no way meant amend or replace the park operator's/manager's information, rules and regulations or the California Mobilehome Residency Act (or law), which relate to the mobile home park. This

JOHN TENNYSON:

disclosure relates only to the specific manufactured home/mobilehome described herein."

RICHARD WEINER: That was our attempt to try to limit where it was applicable.

RON KINGSTON: I think I would like to reserve this discussion until we get involved in the mobilehome versus the park.

JOHN TENNYSON: Shall we set that aside, then, for the time being and we'll come back to it? Denise.

DENISE DELMATIER: Is there any reservation regarding the application of the Mobilehome Residency Act? Regardless of whether we're talking about disclosure of the park or of the home itself?

RON KINGSTON: Well, I guess the question is what's the intent of the form. Is the form to disclose the condition of the property? Let's kind of go back to ... It is a case involving red flags on a piece of property. And, did you properly disclose the red flags, the physical condition of the property? Because if you look at this, you look at the correct law, they ask the question, are there problems with dishwasher, the range, the disposal, the security gates? They ask questions about, are there any leaks through water, gas, etc.? Now, and it also asks about whether you have any environmental hazard problems. If you get involved in much more, I think you really expand the original theory behind, the whole theory behind 1102. Point one. And, the second point, I guess I would suggest, is by referencing one of these initial paragraphs like you were all talking about, saying there may be other disclosures out there that may be required, but just don't the seller and buyer rely on this form as the one and only disclosure that you are going to get. That kind of puts the parties on notice saying that there are other things that you need to be looking at when you are evaluating the property. But, this more of the physical characteristics disclosure form.

RICHARD WEINER: If you added the words to the number of things we were talking about, the California Mobilehome Residency Act, I think that would cover it. Add rules and regulations of the park, just add to the number of possible disclosure statements rather than having a separate paragraph. I think that probably would take care of it.

DENISE DELMATIER: Well, I guess we would, GSMOL, feel quite strongly that the regulations need to be disclosed because obviously...and one of the

DENISE DELMATIER:

principles here that we need to acknowledge is that it requires disclosure from the outset. And so, while we ... we want to have this disclosure form for convenience sake, and ... as close to the existing form as possible, I think we all need to recognize that mobilehomes are somewhat different and unique ... the subject of your form. So, we need to acknowledge and incorporate where applicable and necessary those cross references to what governs mobilehomes and so, to ignore the body of law that governs mobilehomes, I think, would be somewhat misleading.

JOHN TENNYSON: OK, well, if you don't mind, if we could set that aside we will come back to it. There are certain other disclosure issues that have been brought to our committee's attention before this meeting, such as earthquake bracing systems, which are probably going to be controversial, HCD inspection records, in regard to the O'Connell inspection program, these kinds of things. So, perhaps we could come back to those and march through and get as much done as we can on things you do agree with and then we'll have to come back to these issues, hopefully, in the second hour. So, that brings us down to using the current form. Down to where it says, "The following are representations made by the sellers and are not representations of the manufactured home dealer/agent,..." so forth.

JERI McLEES: I assume, John, that as we go through this those things we were talking about, and the one we are looking at right now, when they talk about the dealer, we're going to all encompass it so it is going to be the real estate agent/ broker. We may be able to define that in 18046 that the agent means... does that affect real estate people?

RICHARD WEINER: That's why on our form we put down agents rather than just putting down dealers.

TRAVIS PITTS: I think we could do an agent with a cross reference to...

JERI McLEES: And, I think that's another thing is that the innocent buyer recognizes what an agent is. He doesn't understand what the difference between a dealer is and a broker.

JOHN TENNYSON: So, Travis, you are proposing that an agent be defined in the same code section?

TRAVIS PITTS: For the purposes of this section, agent means either the DRE licensee or the HCD licensee.

OTIS ORSBURN: Does that expand to lenders in this case?

TRAVIS PITTS: Well, normally the lender is not acting as an agent.

OTIS ORSBURN: I mean as the forecloser.

TRAVIS PITTS: Yes, but they are acting from a position of ownership. They have possessory...

OTIS ORSBURN: That's true.

JERI McLEES: I think we get into that when we define seller.

RICHARD WEINER: Well, I think it certainly is a way to get this whole thing defeated, if we end up having the banks feel that something is being imposed on them that is beyond what they're liability is in conventional housing. Whatever the wording is, I don't think it should be beyond that.

JOHN TENNYSON: Travis.

TRAVIS PITTS: If I may, John, I would like to see that definition of agent perhaps in 18046 certainly include the DRE licensee, the HCD licensee or the individual owner selling the home without the benefit of a license because without this form they still come under the criminal penalties so the agent could be even a seller who isn't represented.

RON KINGSTON: Except to make sure that sure that we don't go crosswise with it, and I don't inherit more liability for our guys than...

TRAVIS PITTS: That certainly isn't my intent. Right now, as you are aware, one of the reasons that you've been supportive of disclosure is to get away from the criminal liability. And, we are moving in that direction. I would just like to move on down to Paul who wants to sell his home without the benefit of an agent, that by fully disclosing he would also be exempt from the criminal penalty, if he used this form. Doesn't have any effect on you.

RON KINGSTON: Well, OK, ...all this time we're just talking here, today, but we reserve the right to re-examine the language.

JOHN TENNYSON: Well, if I may stop the proceeding a moment on that point to say that what we'll do is based upon the transcriptions and my notes and so forth, we'll put together a rough draft of our understanding of what we've

JOHN TENNYSON:

agreed to and then we'll disseminate that to all the Task Force members and people who are in the audience, the alternates and interested parties. And, if there is a problem, I am sure we'll hear about it.

JOHN TENNYSON: OK, where are we now? Haven't quite gotten to the list, yet.

JERI McLEES: We're at the list, John, I think. We can argue the seller's...

RON KINGSTON: To the seller's information, I mean the current law... The seller's information would probably still be similarly titled. Otis, in your form where it says, "Sales Person, Dealers, representing the principals," would be changed pursuant to the...

RICHARD WEINER: Which paragraph are you talking about?

RON KINGSTON: OK, I'm reading Otis' paragraph here, under number one, the second sentence, which says, "Seller hereby authorizes sales persons, dealers, representing .....

TRAVIS PITTS: Inserting the word "agent" that we have defined as meaning either, we just need agent.

RON KINGSTON: Why don't you just simplify it by saying seller hereby authorizes agent?

JERI McLEES: That's just what he said, or his suggestion. And then, in 18046 we define agent.

JOHN TENNYSON: Do we have agreement on that?

RICHARD WEINER: And it would follow through then, that within the next sentence, too, where it says, "The following are representations made by the sellers and not the representations of the agent."

OTIS ORSBURN: Just find and replace throughout the document.

JOHN TENNYSON: "This information is a disclosure and is not intended to be a part of any contract between the buyer and seller."

RICHARD WEINER: That's the way the code section reads.

JOHN TENNYSON: "Seller is or is not occupying the property. Is or is not buying the manufactured home/mobilehome. A. Subject manufactured home/mobilehome has the items checked below."

TRAVIS PITTS: Now, you can't avoid the question because of references to public sewers, pools, water supplies. We have to address the question we have been avoiding.

JOHN TENNYSON: Do we want to just go down through these things then?

DENISE DELMATIER: John, on the ... previous paragraph, we were going to wait till we got to that question, and since we are now at that question, it would be my recommendation that ...these aren't recommendations by the manufactured mobilehome dealers, and I would add in, "or park owners."

TRAVIS PITTS: Park owner isn't the principal here. I'd like to keep them out.

JERI McLEES: And, I think that just confuses the... Why not, John, for the purposes of maybe deferring the question a little bit longer, if we go through this list and those items which we believe are part of the real property not the home itself and not an accessory structure, we kind of take them out of the list to begin with, because some of them are very, very obvious. And then, we can address that when we get to the other. Does that make sense?

JOHN TENNYSON: Why don't we just go down the list? If someone has a problem, speak up.

RON KINGSTON: Is it down or reading across?

JOHN TENNYSON: Or across.

RICHARD WEINER: That's probably why the real estate form says, "read across."

JOHN TENNYSON: OK. "Range, oven, microwave, dishwasher, trash compactor, garbage disposal, washer/dryer hook-ups." Am I reading the wrong form? We'll stick with Otis' form. "Burglar alarm, window screens, washer/dryer hook ups, TV antenna, rain gutters, smoke detectors, fire alarm, satellite dish, intercom, central heating, ..."

RON KINGSTON: My only comment, so far, would be is if we can keep things in the same columns, because, I think,...

JOHN TENNYSON: What do you mean?

JERI McLEES: Like all of the kitchen stuff in the kitchen, kind of, Ron, isn't that what you're saying?

DAVE HENNESSY: We're really making this simple, aren't we?

ELIZABETH WEST: Would you alphabetize your ...

JOHN TENNYSON: "Central heating. Evaporative cooler, central air, wall/window air, lawn sprinklers..."

RICHARD WEINER: Bingo.

PAUL HENNING: I have a lawn sprinkler.

JERI McLEES: Let's just set it aside for now.

PAUL HENNING: Well, these are just items that are there. You just go through and check whether it's on your mobilehome or not, right?

JERI McLEES: But, the question, Paul, is whether it should be included because it's on the real property, the sprinkler itself. So, we're just setting it aside. We aren't saying that we aren't going to put it in. We're just setting it aside for now.

JOHN TENNYSON: What about sewer?

GROUP: No.

JOHN TENNYSON: Septic tank?

GROUP: No.

JOHN TENNYSON: Sump pump?

TRAVIS PITTS: Yes, we have many manufactured homes that are dug in that the sump pump is a part of the home.

JERI McLEES: Yeah, part of the home. Right. I concur with that.

RON KINGSTON: Where would the sump pump be?

TRAVIS PITTS: The sump pump is underneath the home where you have one. They call them sub-terrainean or dug in sets where it's below grade and you can't get any drainage, so, the sump pump is put in by the home owner to keep the underside of the home dry and we argue that belongs to the home owner, not the park.

JOHN TENNYSON: You've never spoken to our dear lady from Riverside. She claims she has enough water under her home to fill Hoover Dam.

"Water softener. Patio decking. Patio awning. Gazebo. Sauna."

TRAVIS PITTS: Gazebo may even expand into accessory structures, so... You know, storage sheds, and other things.

RICHARD WEINER: Accessory structures should be included, I would think.

JERI McLEES: As part of the sale.

TRAVIS PITTS: But, you wouldn't necessarily have to say gazebo if you just said accessory structures, the definition of which covers all accessory structures.

JOHN TENNYSON: Many people don't know what an accessory structure is.

JERI McLEES: I think it is too all encompassing. We know, but I don't think the buyer is going to know.

RICHARD WEINER: Because this is, the manufactured home has the following things. So, just saying accessory structures wouldn't be sufficient. That's the question, whether or not...

PAUL HENNING: Would there be a sauna? Does anyone have saunas in their home?

TRAVIS PITTS: We do have a few homes with saunas.

RON KINGSTON: There is one mobilehome park in Folsom that I've seen.

RICHARD WEINER: Pool is out, I assume.

JOHN TENNYSON: "Pool?"

GROUP: Out.

JOHN TENNYSON: "Spa?"

RICHARD WEINER: What does that mean?

PAUL HENNING: Some have spas.

TRAVIS PITTS: We have homes with spas.

RICHARD WEINER: No, no the question is it one in the park?

RON KINGSTON: There is one issue here where we get into the spa, the hot tub. Last year a bill was passed, and it has not shown up on any of these forms yet. It asks the question, do you have a locking cover?

JOHN TENNYSON: Is that a Vasco bill?

RON KINGSTON: It's a Jackie Spier bill. And, I think we need to include that in here. It seems to make sense. ...the Jackie Spier bill.

JOHN TENNYSON: How do you do this? Spa with locking cover?

RON KINGSTON: Just take a look at what she did...

JERI McLEES: Or could you put private spa? Maybe something like that? You know, when we have a spa on our properties and it's open to all of our residents, we're governed by the regulations that cover public swimming pools, public spas. If you have a private spa in your yard, which there are residents that do, then, that's when they have to have a locking cover, or whatever, and it's governed by completely...

RON KINGSTON: Actually, locking covers apply to everybody, public and private. A public pool is owned by a personal or private ... by five or more people, is the way the law reads. So, Jackie Spier's bill didn't distinguish the difference. It just said everybody...

RICHARD WEINER: The idea of using the word private is important, I think, because you aren't talking about the park's spa.

JERI McLEES: If somebody has a hot tub on their homesite that is an accessory to their home, whether you call it a spa or a hot tub, that is probably being sold as

JERI McLEES;

part of the home itself. What I don't want you to disclose is that there is a spa that is part of the common area, which is open to my residents.

JOHN TENNYSON: Homeowners spa, or something like that?

DAVE HENNING: Private's not bad.

RON KINGSTON: Well, for now we can ...

JERI McLEES: Yes, the concept is private. We can use a different word. I don't have my Thesaurus in front of me.

OTIS ORSBURN: A suggestion I would make is that when we do the bold "A" that we add to it, "check below that is being sold with the home."

JERI McLEES: Instead of calling it accessories. I like that.

OTIS ORSBURN: Because now it's a private...

DAVE HENNESSY: Instead of calling it what?

RICHARD WEINER: He added the words, "which are being sold."... which are being sold with the home.

JERI McLEES: Something along those lines. I think that may work.

OTIS ORSBURN: That would clear up a lot of these other points.

JOHN TENNYSON: Paul.

PAUL HENNING: ...on top of the heading it says ... manufactured or mobilehome has the items checked below.

JERI McLEES: But, the mobilehome does not have a spa, because the spa is separate. It doesn't have a gazebo because the gazebo is not attached to the home. But, you're selling it as a accessory, in essence.

RICHARD WEINER: It clarifies it, too, that their being sold. Just because somebody says they have it doesn't mean... somebody ... would say, "I wasn't

RICHARD WEINER:

selling it." You ask me what I have. Now, this says which are being sold with the home. It is clear that that's what being sold.

JERI McLEES: .... my drapes are not being sold or my chandelier.

RON KINGSTON: ...drapes...are real property. .....in court cases...the rule being, attached.

JERI McLEES: Right, the drapes is a wrong correlation, but if I say, you know, I'm not selling my...

RICHARD WEINER: It could be attached to the personal property with a manufactured home.

RON KINGSTON: If it's attached. Try removing drapes and dishwashers and ovens when you are selling your mobilehome, to let's say Liz and see what Liz's response will be.

JERI McLEES: But, I like Otis' suggestion. And, you can clean it up, John, in your way, but this is what's included in the sale of the home and whatever those accessories may be.

JOHN TENNYSON: Where are we here? "Hot tub? Security gate?"

GROUP: No.

JOHN TENNYSON: "Gas pool, spa/heater?"

TRAVIS PITTS: Strike pool.

JOHN TENNYSON: "Solar pool, spa/heater?"

GROUP: Strike pool.

JOHN TENNYSON: "Gas water heater?"

JERI McLEES: Yeah.

JOHN TENNYSON: "Solar water heater? Electric water...?"

DAVE HENNESSY: That all pertains to pools.

GROUP: No.

JOHN TENNYSON: No, it's the home water heater.

RICHARD WEINER: It's describing what it is. How about the city water supply? I like that one.

JOHN TENNYSON: OK, "gas water heater, solar water heater, electric water heater. City water supply?"

GROUP: No.

RON KINGSTON: Here's the question in that. I think what the intent was is how are you getting your water to the residence, whether it is a mobilehome or what not. So, how is...do you have your own water supply? Is it being furnished by the city? That's the purpose of that question. Versus the well water supply. Do you have your own well? How...

JERI McLEES: But, it's the park's well, Ron, and I would bet you that a lot of residents have no idea if I'm providing the water, not out of nastiness, but what kind of water their getting, whether it's from the city, or the county or the Nevada Irrigation District, or whomever it may be. All they care about is, you know, that they are getting their water and it's pure and clean.

TRAVIS PITTS: It's on Otis' lot and it's not connected to...

JOHN TENNYSON: Well, let's clarify. Up at the top you wanted us to put in items which are being sold with the home. You're not selling city water supply. We'll come back to that. The question here is what are the list of things that are being sold with the home to be checked. At least that's my understanding.

RICHARD WEINER: I would think that city water supply and well water supply should not included. Or any other water supply.

JOHN TENNYSON: "Utility gas supply?"

GROUP: No.

JOHN TENNYSON: "Bottled propane?"

JERI McLEES: That probably should stay.

JOHN TENNYSON: "Carport awning, attached garage, detached garage, garage door opener, remote controls."

RICHARD WEINER: One thing that we added on our form because... we just added the word "other" and had a line to specify if there is anything else that's being added, which is probably a good idea anyway as a means of promoting the sale of the home. If there is something else that is being added, there should be some way to add something else.

TAMI MILLER: Isn't that down here under roofs? Other?

RICHARD WEINER: Or you have something else?

JERI McLEES: He does have another...

RICHARD WEINER: OK.

TRAVIS PITTS: Earthquake resistant bracing system.

JERI McLEES: As one of the check lists.

JOHN TENNYSON: Do you want to take up earthquake resistant bracing systems at this time?

TRAVIS PITTS: To me, it's very much a part of the other amenities that are being sold with the home. It is certainly a part of the home and I believe this is the place to disclose whether or not one is on the home.

OTIS ORSBURN: There are probably two. Also, the engineered tie down systems. Both of those should be items added to this.

JOHN TENNYSON: Or should you put down concrete blocks or pier systems?

DAVE HENNESSY: Or railroad ties, if you are going to get...

JOHN TENNYSON: Or wheels and axles.

TRAVIS PITTS: Wheels and axles? Maybe. At this point, however, the earthquake resistant bracing system is a very popular item. It is out there. The tie down system is affected by date of sale, so I don't think that would be necessary, or date of installation to the home. I don't know if it is necessary that it be elaborated here, since most people would certainly not know. DRE licensees wouldn't know what it was and if it was installed before the 20th of September

TRAVIS PITTS:

1994 or after. I'm not sure that's relevant, but I believe earthquake resistant bracing system is.

JOHN TENNYSON: Comments.

DAVE HENNESSY: Yes, it should be on there.

OTIS ORSBURN: That establishes that it is a legal earthquake resistant bracing system whereas if they did put railroad ties and they called it a earthquake resistant bracing system it wouldn't qualify.

JERI McLEES: You want to call it an approved earthquake resistant bracing system then?

OTIS ORSBURN: I think just the definition of the name...

JERI McLEES: Would be sufficient?

RON KINGSTON: If you put the word "approved" then it takes a whole series of questions: who approved it, when was it approved, ...

ELIZABETH WEST: What constitutes approval?

RON KINGSTON: No, I don't think you want to go there.

TRAVIS PITTS: No, I'm not suggesting it.

OTIS ORSBURN: Understanding what it's going to bring up to the prospective buyer who has not bought one of these before,... oh, it doesn't have an earthquake resistant bracing system, and may signal them to ask for it as one of the items they want in the house. So, as homeowners they are willing to say that's OK.

JOHN TENNYSON: Well, we've already received complaints from people out in the field who are apparently running around telling some of the widows and others that as of '99 they are going to be required to put in earthquake resistant bracing systems upon resale because of the disclosure law. That is in San Diego County, specifically, that we had these complaints. In fact, the Senator received them directly at a meeting he attended a few months ago.

JERI McLEES: They told my managers in Grass Valley that about a week ago.

OTIS ORSBURN: And, they have been selling ...

TRAVIS PITTS: That's been going on since the '80's and its every year, whether it's '87 or '88 or '89. Now, they have a bill to blame it on, but that's something we face everyday, as the scam artists go through the park.

JERI McLEES: Could you put kind of, addressing Otis' issue, could we say, "Does it have an earthquake..." Kind of like seller is or is not occupying the home. It does or does not have an earthquake bracing system, therefore, it's not really saying it's something you must have. I don't know if that would soften it a little bit from your standpoint, Otis.

OTIS ORSBURN: My thoughts are that if it is in here, it just becomes a line item. You don't make it any more...

JERI McLEES: OK, OK that's fine. Then, let's just do that.

JOHN TENNYSON: Paul.

PAUL HENNING: I think probably it should be disclosed. I think it is a selling point, probably, also, you know.

TRAVIS PITTS: It certainly could be if you had one, but ...

PAUL HENNING: But, it's not compulsory and the space is there to mark it.

DAVE HENNESSY: John, that's a good point. He came up with this. We have to hit this anyway, so, this is the proper place for it. No need to put asterisks or anything around it.

JOHN TENNYSON: All right, moving on, then. "Exhaust fans. Blank 220 volt wiring, blank fireplaces and blank gas starters, blank roofs and pipes, blank approximate age." And then, "other." Anything else?

RICHARD WEINER: One of the things on this approximate age, since we were going to add this year, make, serial number, and HCD/HUD label to the top, I don't think you have to put approximate age.

DAVE HENNESSY: Talking about the roof...

RICHARD WEINER: Oh, you're talking about the roof?

JOHN TENNYSON: You may have replaced it.

TRAVIS PITTS: For the purist, could I make a point? There are no approved gas starters for use in a manufactured home. However, I wouldn't oppose having it on here because this disclosure is in lieu of violating the law, so it's OK to have it on here, but for the purist, they need to know there is no such thing.

RON KINGSTON: Actually, I was in a mobilehome with a gas burner.

TRAVIS PITTS: They exist.

RON KINGSTON: I know they exist.

TRAVIS PITTS: They exist, and we can't police them so this, as far as I know, if it's disclosed that they have one of these devices, then it's OK. But, just for the purist who would look at this and say, "Oh, my god, you can't do that." I mean that's already being done, so disclose it. It's there, legal or not.

JOHN TENNYSON: OK. That brings us down to...

RICHARD WEINER: We'd better check that sentence whether that's OK. "Are there to the best of your seller's knowledge any of the above that are not in operable condition?" It might be defective or malfunctioning as opposed to whether it is operable. That may not define everything.

JERI McLEES: And, on Ron's list, it's the significant defects/malfunction.

JOHN TENNYSON: Under other, there is a statement that says, "are there...to your knowledge any of the above in inoperable condition. If so, describe."

RICHARD WEINER: My only question is whether we shouldn't just say add defective or malfunctioning or something to that effect, because operable may not be applicable to many things...a roof is not operable.

JERI McLEES: That's under B. Drop down a little bit. Right there.

RICHARD WIENER: OK, right, I've got you.

RON KINGSTON: See, there's a difference between operating and defects.

JOHN TENNYSON: Maybe we could say "operating condition" instead of "operable."

RON KINGSTON: Well, yes, that gets into the issue, I guess. Travis, could I back up a little? Just talking about earthquake bracing systems. If you're considering to insert whether or not it has an earthquake bracing system, should we ask the question what other type of foundation system that it may have as an alternative? Because, clearly, there are a lot of mobilehomes that do.

TRAVIS PITTS: I don't think that would be a disadvantage for dealers as much as it would be for your folks as to try and figure out what kind of a support system was under that home.

RON KINGSTON: Well, I was just asking to the best of their knowledge. This is a seller's section to complete, not an agent's.

TRAVIS PITTS: They would be even less likely to know.

JERI McLEES: They would have no idea. That's why I don't want to get into wheels and axles, either.

RON KINGSTON: It just begs the question.

JOHN TENNYSON: There is another problem that we might as well bring up at this point, and that is, what is an ERBS? What is an earthquake resistant bracing system? One that is certified or one that somebody claims is an ERBS. We have people out there that think, or are claiming that tie downs are ERBS. This is a complaint we have received. Obviously, they are not, but some may think or have been told by the installer that it was, and so they'll check it even though it's not the certified HCD system.

TRAVIS PITTS: Perhaps if there was enough room on the back of the form, we can put some explanation, but...

JOHN TENNYSON: What is their liability if they checked and it turns out it is not a certified...

TRAVIS PITTS: Well, if it is not an earthquake resistant bracing system because if you have, in fact, a home that incorporates the post September 20, 1994 tie down system, you have no use for an earthquake resistant bracing system.

OTIS ORSBURN: The definition could expand beyond the HCD definition, too, because someone may have invented an earthquake resistant bracing system that's totally adequate, but it may not have been certified and then, if there was a discrepancy at that point, then it would be tested in court on whether it was, in fact, an earthquake resistant bracing system, whether it was certified or not.

TRAVIS PITTS: And, that's only part of the problem. Prior to HCD certification of earthquake resistant bracing systems they were rampant. They were used all over. They were not prohibited by law. It is not unlawful to have one of those pre-HCD certification earthquake resistant bracing systems, including the stack of railroad ties. So, you get into a major can of worms. I think whether or not it was an adequate earthquake resistant bracing system would be something that would be litigated down the line.

DAVE HENNESSY: And, that isn't anything we want to put in there.

JERI McLEES: And, if I don't know whether it's a tie-down or earthquake bracing system, I don't have to say it has one. Really, the instance when you know there is one for sure, you would check that, maybe. I think let's leave that be.

JOHN TENNYSON: OK. Where are we now? Operable conditions.

JERI McLEES: Operating condition. We're on B.

JOHN TENNYSON: "Are you, the seller, aware of these significant defects or malfunctions in any of the following? Yes or no. If yes, check appropriate spaces below. Interior walls. Ceilings. Floors. Exterior walls. Insulation. Roofs. Windows. Doors. Foundation. Slab."

GROUP: No.

JOHN TENNYSON: "Driveways."

GROUP: No.

JOHN TENNYSON: "Sidewalks."

GROUP: No.

JOHN TENNYSON: "Walls and fences."

GROUP: No.

JOHN TENNYSON: "Electrical system." I assume they mean the home electrical system.

DAVE HENNESSY: Instead of assuming, you could put the home there if you wanted to.

RON KINGSTON: Well, this is too...

DAVE HENNESSY: Well, it couldn't be anything else. I don't think it can be interpreted as the park's electrical system.

JOHN TENNYSON: Well, you could say at the top ..... the following in the mobile/manufactured home.

RON KINGSTON: For now, till we deal with "the question."

JOHN TENNYSON: "Plumbing, sewer, septic."

GROUP: Strike sewer and septic.

JOHN TENNYSON: "Other structural components. Attach additional sheets, if necessary." Travis?

TRAVIS PITTS: After foundation could, just as a suggestion, could we put foundation/support system? There are many older homes that are not on any of the above.

JOHN TENNYSON: OK. Anything else that should be added to this as it pertains to the mobile/manufactured home itself?

RICHARD WEINER: That .. on the bottom, if there was a electric garage door opener listed above. Is there a necessity for having that in there?

OTIS ORSBURN: Yes, there is. On the newer ones they are requiring an automatic reversing safety mechanism on it so that if it comes down on somebody, it goes right back up.

RICHARD WEINER: No, I know, I just wondered if it's necessary to have it in the disclosure form.

JERI McLEES: How many mobilehomes have garages, I guess is your question because...

RICHARD WEINER: No, it's really as to whether or not there aren't a lot of other things that we can talk about, also. I guess that's the only question I had. As to whether or not..., why are we singling out that one as opposed to something else.

OTIS ORSBURN: It's a requirement for a separate disclosure, and it's just being incorporated into this one so that we don't have an additional form for the garage door opener.

JERI McLEES: But, couldn't we do that with the asbestos?

JOHN TENNYSON: Travis, do you have a question?

TRAVIS PITTS: Along the same line, and this is not terribly relevant, I don't want to take up the time, but we would do some cross referencing in the bill that if this disclosure was filled out with respect to smoke detectors, we can eliminate another horrendous provision of law for us, and that is having to go to everybody to get a separate certification on a smoke detector. So, if we can do...

RON KINGSTON: You have to get a separate certification upon conveyance?

TRAVIS PITTS: Yes, required by law. We collect them under penalty of perjury. And, all I'm saying is that this form could eliminate that provision of law when this form is used.

JOHN TENNYSON: So, you put it in here where the garage door opener is?

TRAVIS PITTS: Well, I don't even know it's necessary, but it just rung the bell that we should modify the other requirement for smoke detectors to where this form could supplant or replace.

JOHN TENNYSON: Where do you want to put it in?

TRAVIS PITTS: I'm sorry, it would not go on this form. It wouldn't have to be in this form. It's just that you raised the issue that this addresses another requirement of law, and I just happen to think that we, also, can address smoke detectors with this form without modifying anything except the smoke detector certification requirement in a separate body...

JOHN TENNYSON: ...is that what you're talking about?

TRAVIS PITTS: Yes, we would amend it to say that when this form is used there's no separate requirement for disclosure on the smoke detector.

RICHARD WIENER: In real estate, at least in Southern California, in escrows, there's a separate portion of the escrow, it's not included in the disclosure form, that the smoke detector certification..., I'm wondering if that's going to be sufficient that we put it in here.

TRAVIS PITTS: It stands alone, today, as a separate requirement of law, and I'm arguing it could be replaced by this form. We would need to amend that section.

RON KINGSTON: Speaking of unique things, immediately following this code section, there is a local transfer disclosure statement, a local TDS. ... something you may want to find out about. It authorizes local governments to adopt their own local transfer disclosure statements for unique conditions. So, you may want to think about it. ... and here's the reason why. A few years ago, we faced a number of bills in the legislature which were going to amend the TDS to say, are you located near an agricultural area, or are you located near ordinance locations? And, while ag might apply in Fresno, it surely doesn't apply in downtown San Francisco. And, so, the thought was, is to say the local government wants to require additional disclosures, whether it be real property or....

JOHN TENNYSON: Well, that brings up the question as to whether local government should be pre-empted, perhaps, on mobilehome disclosure. We're talking about mobilehomes and mobile home parks where you have state, basically state code standards and the locals don't really have any control over what goes on in these parks, anyway, other than the initial land use or zoning ...

RON KINGSTON: Here's part of what we face, for an example. You live right next to a farm and they spray, chemically spray. Should the buyer be aware that chemical sprays are being applied and some local governments firmly believe that whoever is going to live nearby, in whatever form of housing, should know that. Or, if they have a cattle farm, they should know that there are horse flies or cow flies or whatever. But, there have been numerous law suits and numbers of cities have been wanting to do this and it was answered by a local transfer disclosure statement. It's something to think about. I know it is kind of a can of worms, but...

RICHARD WIENER: I would be reluctant to do that in this form. It seems me that that would be an obligation of the park. If it's an obligation of anybody, it should be the obligation of the park as opposed to the individual home owner.

JOHN TENNYSON: I think Paul was next here. He had a question.

PAUL HENNING: I think what Travis was trying to say in lieu of a qualified statement about a smoke detector, that it is disclosed that you have a qualified statement certificate. I think.....somewhere along the line ...make other...

JOHN TENNYSON: As to the local government issue, I don't know ...
Jim Sams.

JIM SAMS: After you finished with this one, I thought you were finished with that. There are a couple other items here that I think should be included.

JOHN TENNYSON: OK. Let's hold off on that and finish this.

TRAVIS PITTS: HCD votes for pre-emption.

JERI McLEES: WMA votes for pre-emption.

TRAVIS PITTS: This is a personal property not a real property transaction, and I would very much like to keep it as confined as possible, at least in the beginning.

JOHN TENNYSON: How many cities, Ron, have local TDS?

RON KINGSTON: If you knew the history behind that court case, you would... I want to say about 2 dozen. Once you become aware of a TDS being required, you start getting involved in those types of discussions. Now, .... if there is a pre-emption done, and it says, this shall pre-empt, I need turn around and say that local government then says, "Fine, we are pre-empted from obligating the seller and now we are obligating the mobile home park owner upon conveyance they shall make that type of disclosure to the buyer, prior to transfer..."

JERI McLEES: Upon conveyance of the home? I don't think they can do it because I think it's pre-empted.

RON KINGSTON: What I'm saying is, if language in this bill says this shall occupy the field concerning a seller or agent's disclosure, that most government's response would be, "OK, it's pre-empted from obligating Paul to sell his house with ..... and now we're going to obligate you as the park owner to make a series of disclosures." It is something WMA might want to think about. If you want a preemption, you will want a total preemption, which means it occupies the field for seller, agent and park owner.

JERI McLEES: I think, when I said I voted for preemption, and I hope I'm not putting words into Travis' mouth, but I don't think we were going to put in specific legislative intent as it relates to preemption. It was more that we did not want to give the local governments the statutory authority in writing. It's my opinion that HCD has already pre-empted for the most part and for me to tell local government that they have the right to come in and require some sort of disclosure, I think is opening Pandora's box.

RON KINGSTON: I think what I am saying is as soon as this comes about, local governments are going to want, based on a buyer's complaints or complaint that

RON KINGSTON:
something was not being disclosed, that's what precipitated the local TDS. In a sense you are opening Pandora's box as soon as it becomes legislation, as soon as the cities and counties look at this. So, I guess what I'm suggesting to you is once this happens, you should be prepared to respond to it now or defend against it later.

RICHARD WIENER: I would agree. In looking at the 1102.68 it sounds as though just putting our form into the code section is probably going to subject it and everything about it to 1102.68 anyway. So, I think if we are going to say it's not, and I would agree that it shouldn't be, that local government should not have that option. It seems to me we ought to eliminate their right to do it, otherwise, they are, in fact, going to do it.

RON KINGSTON: You've got to get to this question, as far as I'm concerned,...

RICHARD WIENER: I think then we ought to say that it is exempt. That they don't have that right, at least as to this disclosure form.

JERI McLEES: Do we destroy the bill with the city and county issue?

RON KINGSTON: I don't think you necessarily endanger it. I mean, you really have two approaches. One, of which is..., three approaches. Stay silent. Wait till you see what local government does; two, you say that this is intended to occupy the field for seller and agent's disclosure only, or three, we'll create a local TDS for unique situations and not occupying field. That's the easiest of them all. You may want to just look at the local TDS. It is actually a pretty easy thing to do.

JOHN TENNYSON: Well, maybe we're at a stage where we are anticipating too many problems here. Maybe we should address it only when it becomes a problem. Try to anticipate it, if possible, when it might happen.

RICHARD WEINER: The only problem is that I think we are faced with it in looking at the way the code section reads, that local governments may decide they are going to do it anyway.

TRAVIS PITTS: But, we should take affirmative steps to eliminate that provision with respect to this...

RON KINGSTON: I really think we need to answer this question.

JOHN TENNYSON: Let's set it aside. We'll make it one of these set aside questions. All right, where is that page?

RICHARD WEINER: It's the second page.

JOHN TENNYSON: Do we need to add anything to "B" ? Jim Sams has some comments.

JIM SAMS: I was noticing from the other form that there are some things that we are over looking unless you intend to put that under "other structural components." You've got porch, front steps and rear steps. Things which are matters of code, and that should, also, be shown if there are defects in those areas. I believe that should be added to "B," should it not?

DAVE HENNESSY: It ought to be in "A." We should add those things.

JIM SAMS: Of course, you have a porch and you have rear steps and you have front steps. You're asking if there are any defects in "B." So, it shouldn't be in "A" it should be in "B." You are asking if there are defects in the porch, the steps, and so forth.

JOHN TENNYSON: OK, so front and rear steps.

JIM SAMS: And, porch.

OTIS ORSBURN: Just steps, because there could be from one to six sets of stairs.

JIM SAMS: Why would you not say porch?

OTIS ORSBURN: You would say porch, also, I'm just saying rather than identifying...

RICHARD WEINER: Porch, and then steps.

JERI McLEES: And, then, you should add skirting, because there a number of homes that don't have skirting.

JIM SAMS: Well, isn't skirting self evident? I mean, if I walk up to a mobilehome, it takes me about 2 minutes to see if there is something wrong with the skirting. Why should we include that?

RICHARD WEINER: Because the registered owner should disclose it if there is something wrong with it.

JOHN TENNYSON: Maybe it's got wood rot.

JERI McLEES: Which happens a lot. Or that Styrofoam stuff that everybody was buying and is horrible.

RICHARD WIENER: I think you are right. You should add porches, steps, and skirting into "B."

JOHN TENNYSON: OK. Anything else? Paul.

PAUL HENNING: Awning.

GROUP: It's on there.

ELIZABETH WEST: You have patio awning here.

GROUP: Discussion.

RICHARD WEINER: Unfortunately, I think we got stuck when were talking about this, that why is there a distinction between the things in "A" and "B"?

RON KINGSTON: One is operable and the other one is a defect. Let's talk about a window. A window that ... is it a defect just because it doesn't open? It's closed, so it's locked ... That's the debate that we had, remember, in SB 485 when we wrote the TDS ...

JOHN TENNYSON: It looks to me like the difference between "A" and "B" is that in "A" you are talking about things that are on the home, that are more akin to accessories or appliances, things that, perhaps, you don't want to replace, but may be more easily replaced, whereas things in "B" are more substantial, physical parts of the home, walls, ceiling, and so forth.

RICHARD WEINER: Well, maybe as an example, carport awning is on "A." Maybe that should be part of "B" rather than "A" then. Or, patio awning, or patio decking, which are also big items.

JERI McLEES: Because they aren't operable, but they could have defects.

JOHN TENNYSON: Well, just put awning general then, in "B." We can add awning under "B"...

OTIS ORSBURN: You know, it is just trying to jog in that seller's mind the different things so that they can answer them because if you say, "awning," "Well, no, I don't think anything is wrong." "Well, how about your patio awning?" "Oh,

OTIS ORSBURN:

yeah, I've got a dented column." "How about the carport?" "Oh, yeah, I've got a dented column there, too." Just jogging their minds, essentially.

ELIZABETH WEST: Well, in "A" you are really trying to demonstrate that that's a feature that goes with the home, right, whereas in "B" you are trying to show whether it's structurally sound or operable or in good condition.

JOHN TENNYSON: Is there anything else for "B?" OK. I think at this point we will take a 5 minute break. It looks to me at the rate we're going we're going to have to have at least one more meeting. So, while you're on your 5 minute break, consider the following dates: It won't be during this .... session in the next couple of weeks. But, September 29th or 30th, October 1st or 2nd, October 7th or 8th, October 21st or 22nd are some possible dates.

(BREAK)

JOHN TENNYSON: OK. What is the pleasure of the Task Force in terms of as where we go? Do we want to continue with this form and all these things on the backside, or do you want to engage some of these issues we set aside as they affect the space or the park? Dick.

RICHARD WEINER: Can I just say two general things? I am going to have to leave early, so I'm not sure how long the meeting is going to last. I think it's a problem in this form, this back side of the page, I don't think it should be something we should tackle or put in the form. It's nice to have it and it's maybe what the law is, maybe it isn't what the law is, and it could be included or excluded, but I think it bites off more than we should be doing.

JOHN TENNYSON: Any comments? Mr. Henning.

PAUL HENNING: I don't want to bring it up here, but when we look at "A" I can see a change that we could possibly make there. It says, "In case of a sale, disclosure to the buyer should be made as soon as practical before the transfer is settled." I think, "as soon as practical" should be crossed out of there. I think it should be mandatory to get it before the final sale.

RICHARD WEINER: I don't think we have to put the whole body of law into a form, and that's what you are doing, here.

RON KINGSTON: There are really two issues. One, Mr. Henning, I think, let me talk about the term, "as soon as practical" ... the term ... is to say, "as soon as you

RON KINGSTON:

enter into that contract I, as the seller, am to deliver these documents to you." I am not to dilly dally, and waste time and not get them to you, so I give them to you two seconds before the transfer occurs, and I am to affirmatively undertake my duty to complete this form and hand it to you right now. That .... so that you, as the buyer, now are equipped with this really very informative information as soon as you enter the contract. If you fail to say that, many times the seller has found that, yeah, they'll get around to it. I know I need to do it. Yeah, I know I need to do it before I finish... So, that's the notion as soon as practical. My response to the new ..... is, gee, it gets into some legal problem in that you open up a very serious mine field.

TRAVIS PITTS: HCD would not like to see this included for fear that it was not all inclusive, and therefore, subject to challenge. You don't have this on yours, do you?

RICHARD WEINER: It's not in the real estate disclosure form.

TRAVIS PITTS: It would be a failure to maintain simplicity to include something this voluminous that isn't ...

RON KINGSTON: And, beyond that purchasers complain if they get a two inch set of documents today.

PAUL HENNING: Would this stand as law as it is now, if we don't change any of this here?

RICHARD WEINER: There's a lot of it that's law.

PAUL HENNING: Would it stand as law or will it all be wiped out?

TRAVIS PITTS: It has no effect on the system.

JOHN TENNYSON: This is just a description of what these various sections require...

OTIS ORSBURN: We aren't establishing law with this disclosure, all we are doing is identifying ...

PAUL HENNING: This here will stay as law so that you can give the disclosure any time you want. That's what it says.

DENISE DELMATIER: Well, let me ask you. Well, now I forget how we are going to proceed with the form. Are we going to enact this form...

JOHN TENNYSON: Yes, and we have to do it before 1999.

DENISE DELMATIER: Well, then, it seems to me that this might prove inappropriate within a bill because this is merely an interpretation under existing court cases, etc. of existing law and...

JOHN TENNYSON: Mr. Hennessy. Dave.

DAVE HENNESSY: When Travis came out stating that HCD would be between a rock and a hard place ... run that by me, again, Travis.

TRAVIS PITTS: Well, there are statements here on the back of this form with which we may not agree.

DAVE HENNESSY: But, they're law.

TRAVIS PITTS: No, they are interpretations of law. But, they are not law. And, at the bottom, to make it even more bazaar, "By initials on the reverse side of this document it is confirmed that the seller and buyer have read and understand the above laws." Let's don't do this.

JOHN TENNYSON: Otis, do you have any comments concerning the use of this?

OTIS ORSBURN: Save about a buck fifty a disclosure.

ELIZABETH WEST: Why was it in there? Have you had any problems with it?

OTIS ORSBURN: No, we're talking disclosure. And, so, we felt that disclosure was helping people to understand what substituted disclosure was, what timing was necessary based on what we interpreted to be timing, that they don't know.

ELIZABETH WEST: So, it was informational was the purpose of it. So, have you had any problems with it?

OTIS ORSBURN: In the short time that we've used it, we haven't, but it has been tested.

TRAVIS PITTS: Ron Kingston, from the Realtors, said that you don't use anything like this. You have been using this form since 1986. Have you ever come up with a need for anything like this?

RON KINGSTON: We have actually fought against it.

TRAVIS PITTS: And, I parallel that concern. I am very concerned about having this particular provision that it may or may not represent the interpretations of the law that are cited by the enforcement agencies, that it may or may not be all inclusive and particular the bottom statement which is ludicrous that anybody has read and understood all these laws.

JOHN TENNYSON: Well, can we, then, reach some kind of consensus?

RICHARD WEINER: X it out.

JOHN TENNYSON: Mr. Henning, do you agree that it is just as well to leave it out?

PAUL HENNING: Right.

JOHN TENNYSON: All right, that brings us to "C" unless you want to go back and pick up some of the things we set aside or unless you want to pick up some of the things we set aside in the context of whether the homeowner should be responsible for disclosing things and material in regard to the space or lot on which the home sits. Jeri.

JERI McLEES: John, I think maybe it may be the time that we address the bigger issue that we are circumventing because a great deal of "C" involves that and as we have gone through the discussion we've chatted about those things, I think we have all come into agreement which portions are park related, community related, and which are relating to the home or the accessory structures involved in the sale, before we start going through "C." We can go through "C" and I think that list all of a sudden becomes only about four items that relate to the home. I'd like, if we have the time, ...you have about one half an hour?

RICHARD WEINER: We don't have that long.

JERI McLEES: Five minutes, so I can just move that we'd like to ...

JOHN TENNYSON: Dick, any comments before she...

RICHARD WEINER: No, I agree. I think that's the major issue because most of the things are gone.

JERI McLEES: Yeah, then, if we do that then I think our next meeting will be more of a clean-up meeting situation.

JOHN TENNYSON: There are still some major issues on which to meet.

RON KINGSTON: Well, we can make our opening statements...

JERI McLEES: We can make our opening statements, OK. I, of course, was not privy to the meetings in the past that I think WMA and Ray and Tami, etc. have made their position very clear that anything that relates to disclosure of the park or anything in which we have control should not be in this disclosure form in anyway. We are mandated by law to keep everything in good working order and condition. We are required to disclose certain information. That's state of law. And, we are not a party to this sale. And, I just think it's an inappropriate place, I'm looking down here where it says, "flooding, drainage, or grading problems with the home, space or lot." What does that have to do...the flooding may flood in 1976 and they are going to look at that and say who is responsible for that flooding? Who is responsible for the drainage? That's an HCD argument with park owners all the time. Who converted the drainage?

TRAVIS PITTS: It's perfectly clear to us that you're responsible.

JERI McLEES: Well, no, now Mr. Pitts, not when somebody else has modified, you know that. So, anyway, that's a major concern of ours that anything in the disclosure only relates to that which the seller has control over, which is his home and the accessory structures and which the buyer is buying.

JOHN TENNYSON: Mr. Sams.

JIM SAMS: I think there has to be an exception here because if you buy a home and you are buying this home, and all these disclosures are met, but you are buying a home that is subject to these problems that you are talking about which could cause damage to the home you're buying, that is something that is in relation to the quality and to the continuing ability for you to live in that home, so I think anything that would cause significant damage or danger to your investment, I think that could very possibly be something that should be revealed.

JOHN TENNYSON: Ron.

RON KINGSTON: If you're going to buy Mr. Hennessy's home or Henning's, and in this situation you will get it and you look at the park and you look at the mobilehome. You determine that what he is asking seems reasonable. What do you base that on? Do you base that on just the mobilehome, or the mobilehome and the site, or the condition of the whole area?

JIM SAMS: Well, it depends on whether I'm an old time buyer of a mobilehome or a new time buyer. I happen to have been a new time buyer. I looked at only the mobilehome, but if I was the person who came from a park where my mobilehome nearly floated every year, I would ask about this question that I am talking about right here. Do you have a problem with that? Because it affects, it's like buying your home on top of a volcano. OK? You have no control of what's under it, but I'm going to buy a home that's going to be in jeopardy after I put my money into it, why should it not be that that should be revealed, if I know that there is a problem there? That's a dishonest sale if I don't reveal the fact that there is flooding there that is going to harm the interest of the party who is buying.

PAUL HENNING: I agree with Jim. If Jim sold me the home one week and the next week we had a storm and the poor drainage that would not help the supports, and I had to relevel everything again, then that affects the home, so I think we should ...

RON KINGSTON: So, if you knew there was something wrong in the park, if this is an issue, we should tell you or vice versa?

PAUL HENNING: Right.

RON KINGSTON: Because, everybody is going to be a buyer at some time or other and everybody is going to be a seller.

OTIS ORSBURN: That's one sentence that I added there which says, "Any liability to the park owner that will affect this mobilehome ...the civil code or Title 25 ...

JIM SAMS: Why should a mobilehome that you are purchasing be any different than an automobile? If you have an automobile that is going to blow up next week, and you sell it to someone, that's a dishonest sale. If you are a seller and you don't tell the person that his mobilehome is going to float down the river because of a continuing problem there, now a one time deal, I could understand, but where you have a continual problem, instead of jeopardizing the investment, I really feel that in all honesty you would have to reveal that, that you would have to tell them that there is a problem there.

JOHN TENNYSON: Jeri.

JERI McLEES: Given Jim's correlation right then, if I'm buying an automobile from you in Podunk, are you going to disclose to me that there are a lot of potholes in the streets between where I'm buying it and,... because the streets are not within your control. The concern that we have, I made the mistake of

JERI McLEES:

selecting flooding instead of some other things that might relate to the property. The problem that we have is you are -- you are not, of course -- but an angry seller, and your going to sell the home, if you are an angry seller and you are going to say, "Yes, this floods, this doesn't flood." You are speaking about things that you may or may not really be knowledgeable of. No, again, not you, Jim. But remember, this is going to be used throughout the state. Are you not putting yourself as the seller into some sort of jeopardy? It's a can of worms. You aren't selling my property.

JIM SAMS: But if you are relating the property that I'm speaking of to an automobile, I can negotiate the puddles with no damage to my car. OK?

JERI McLEES: Maybe.

JIM SAMS: Well, a pretty big puddle if I can't. So, what I'm saying is, and I specified this to the gentleman, that if it is going to have an adverse affect on the purchaser, then the seller should reveal that.

JOHN TENNYSON: OK. Mr. Stanton, you were next.

BRUCE STANTON: I can only speak from my own experience that on the issue that WMA brings up, we're not the principal of the transaction. I'm mindful that you should appropriately bring up..., we don't want to be burdened with too much disclosure requirements. I'm wondering, however, and I would point out the example that we just read about in the paper. The woman buys the mobilehome with central air conditioning which, if you had this TDS, you would check this is included. What she doesn't know is that the park is not wired at her space to accommodate the central air. So, lo and behold, the park owner has now turned off the air. Now, she brought the mobilehome equipped with air. She believes, "I've got central air. Must be I can use it." She doesn't know what the amperage load is. The seller doesn't know. The park does know. OK? Now, if the park doesn't have duty of disclosure somewhere along the line then we have a problem. The agent, in that case, is certainly going to be facing potential liability. Another situation would be what if there is a pending HCD citation against the park owner for that drainage problem that Travis has spoken of and the parties of the transaction know nothing about this,...

RON KINGSTON: I think it's important. One thing, the question asked is the seller aware? It is not requiring affirmative duty to disclose so lets not confuse what the law is and what the proposal is. The proposal is what determines the market value of a home for a buyer and a seller, and what is the duty to disclose

RON KINGSTON:

that of which you know. If you keep on those two planes, then that helps guide, I think the discussion a little bit in terms of what should be disclosed concerning this issue.

JOHN TENNYSON: Dick.

RICHARD WEINER: I do think that it is a very important part of any purchase of a manufactured home as to what the condition of the park is and all the environment, but I don't think we can tackle that, nor do I think we should, nor do I think the Legislature intended that we try to tackle that. It seems to me better to state somewhere in the legislation that we are limiting it specifically to the manufactured home and that any inquiry with regard to the park or the surrounding area, should be made to the park. At least this way the purchaser, perhaps, will be put on some kind of notice but it doesn't open to me...you can say OK, yeah it's fine that there is a drainage ditch here that is no good, maybe sitting right next to the home, maybe that's ok, but, how about a field that's being sprayed six miles away? I think we can get into any endless list of things that would create problems for us in trying to draft this form and for both the seller and the purchaser. I would rather limit it, say we are limiting it. We acknowledge we're not covering the whole field, but this is what we are limiting it to. If you want to make inquiry, then you have to make it to the park or local government or some other place.

JOHN TENNYSON: I think Mr. Hennessy was next and then Mr. Henning.

DAVE HENNESSY: What I was trying to get at, John, is what Bruce is trying to explain. We are all here to get a disclosure form. When he was trying to explain what the requirements are when a park owner has obligations, he kept bringing us back to the other thing. What I meant by it is, this is the disclosure form. What you are speaking of is taking everything out of the responsibility of the park. The park owner has responsibility. And, what you are saying is, you are taking everything away from them putting anything into the disclosure form.

JOHN TENNYSON: Mr. Henning.

PAUL HENNING: Since we have some attorneys here I would like to ask a question. If I knew that it flooded underneath my home and I had to have it releveled, and everything and I didn't disclose this, and then two weeks later a storm comes again, and the buyer finds out that I knew about it, could he come back on me. Would it jeopardize me for not disclosing it?

RICHARD WEINER: I think the answer's yes.

BRUCE STANTON: Absolutely.

DAVE HENNESSY: It's fraud.

RICHARD WEINER: I'm not sure it's fraud, but, I still don't think it should be part of this form.

BRUCE STANTON: I think your comment is a good one about directing the intention of where somebody can go to get the information. That's my main concern. I do agree with Mr. Kingston's comments about seller aware. We need to have at least that notification so that a well-informed buyer who wants to be informed knows where to go to get that information.

JOHN TENNYSON: I think Mr. Sams has a question.

JIM SAMS: No, I was going to say in considering it with my advisor here, could we amend this so that it would indicate that the responsibility for notification as part of the disclosure form would be the park owner? In other words, the park owner, having the problem on their land that would then be amended in here so that we could say that since this is not our property that this burden of disclosure would be on the park owner? Because, this way we would not be saying what's wrong with your park, we would be saying, "You go to the park owner and find out about conditions in this lot."

RICHARD WEINER: I think we are ending up torpedoing this bill.

JOHN TENNYSON: Jeri.

JERI McLEES: Let me see if I can come up with a couple of ideas. In the beginning of this disclosure statement we talked about adding the coordination of other disclosure forms, that language that is currently in the Realtor's form. In Mr. Henning's suggested amendments he has something that we don't like, completely, but I think may resolve some of the problem, that there is a notice to the buyer along with these other disclosures that any questions regarding the park itself, the common areas, the streets, whatever kind of language we want to put in there, should be addressed to the park management, period. Not that we're disclosing, not that we're saying there are any problems or that we have any responsibility as it relates to this disclosure form, but just like, if you have a question that needs to be contained in the other disclosure items, you would go to that. That narrows this form exactly to what it is intended to do, that the seller discloses those things over which he or she has control. It gets to your issue, Jim,

JERI McLEES:

that it makes the buyer aware that if they see something that looks weird or they are talking, or whatever, they know that they don't go to you, and it gets rid of your liability and they go to the park owner.

JIM SAMS: Would this satisfy my liability, that we would have, if this was done in this way?

JERI McLEES: I look to the attorneys, but I think that...

RICHARD WEINER: If there is actual knowledge of a problem, I think that you probably have an obligation.

RON KINGSTON: Well, that gets into whether you have the affirmative duty to disclose material defects. Personal things versus real property. Real property is very clear. Common law says you have the duty to disclose. Personal things, you don't have the actual affirmative duty to disclose...

RICHARD WEINER: But, California cases will make it so that you do. You know, I think judges would say that you would have that obligation.

RON KINGSTON: Unless you ask for... Unless a person asks what's wrong with x or wrong with y. That's one thing, but if they don't ask, you don't tell. Sounds like the Clinton issue, don't ask, don't tell.

RICHARD WEINER: It's not as clear as it is with real estate, but I think ...

JIM SAMS: Well, our concern is getting something to protect our residents and I'm not satisfied with the answer I got, because she said that if we did it your way, with the amendment, that would be fine. Then I get a thing here that says, well, from an attorney, that says well, you will be liable. And, so now how do we negotiate this mine field, here, and protect the resident in the process?

RICHARD WEINER: I think you are always liable for failure to disclose a known defect, whether you have a disclosure form or not. You have, I think, you have...

JOHN TENNYSON: Yes, Otis.

OTIS ORSBURN: I wanted to add that when we're talking about the grade and things like that they aren't in control of that homeowner, but, we're trying to do this disclosure on a very focused, limited scope. When there is some type of a settling problem in that house that affects the structure, then it's something that

OTIS ORSBURN:

really is affecting more than just what's within the park control. They are selling him a house that's settling to never, never land, but they are not allowed to tell him that, or there's nothing that brings it up? I think that, maybe, some of this disclosure should be restricted to what affects the structure that they are offering to sell, and limit it to that.

JERI McLEES: But, aren't we seeing that, Otis, the seller is aware of any significant defects or malfunctions in any of the following, and one of the things we are going to say is the foundation, the support system, the structural components. If the home is truly settling, that is something you would know and therefore, you can, you would disclose.

RON KINGSTON: Jeri, I'm not sure it's as clear as that. We could ask about the same as Travis' issue about earthquake bracing systems, you are aware that it has it. Now are you aware there is a malfunction of the bracing system, or that of which the bracing system is attached? I'm not sure that this form is that sophisticated nor are the parties, so I'm not sure I can necessarily make that .... like you can. I think the question is, what determines the value as to the desirability of the home? And, it seems like .... in terms of, that's one question. Jeri, you raised the question, you have the duty to maintain the property, but if I know something that is wrong with the property which any, let's say you are going to buy my home and he's thinking here is a nice swimming pool or this is a nice club house, and I know there is a real big problem there and part of the desirability of buying my home is that he not only likes my home, but he likes the park and what it looks like. He doesn't know that there is something wrong with the park. I happen to know that there is. Should I tell him? Should I tell him or just keep my mouth closed?

JERI McLEES: But, I honestly .... for a moment, and we went back 20 years ago, and we had similar discussions.

JOHN TENNYSON: Jeri, could you hold that for a moment. I think Dick has to leave and did anybody discuss a possible date while we had a break? September 30 or October 1?

GROUP: Discussion.

JOHN TENNYSON: The 28th of October? Same time or do you want to start earlier?

GROUP: Why don't we start early and maybe finish that day.

JOHN TENNYSON: When do you want to start?

JERI McLEES: How about 10 am? That gives you guys flying in enough time, doesn't it?

JOHN TENNYSON: Ok, then, 10 o'clock on October 28, a Tuesday.

OTIS ORSBURN: Is there someone assigned to make the modifications as we move along?

JOHN TENNYSON: Yes, we are. And we'll draft them up and mail them out, and if you have a problem, then we'll discuss it at the next meeting. Ok, if you have to leave. We'll continue for another 10 minutes, if that's Ok. Jeri has a point.

JERI McLEES: Yes, and I don't want to raise any hackles, but if we are talking about what the seller should disclose as it relates to the park, then we get into the other position where what we, of the park, should disclose what we know of the value of the home if it wasn't on our site. So, I say let's just stay out of the whole arena, out of other people's control.

DAVE HENNESSY: How can you? You want to forget the whole disclosure form and accept no responsibility, no obligation, nothing?

JERI McLEES: No, no, no. Dave, I believe that we, as the park owner, under existing law have sufficient obligations and sufficient liabilities and sufficient protections that if we are doing something in malfeasance, or whatever, that the buyer is already being protected.

BRUCE STANTON: How does the buyer know that?

JERI McLEES: I think, when you have the notification, which John can draft appropriately, that says something along the lines of buyer beware. You need to go talk to the park because they need to talk to the park anyway about my rules and my rental agreements, etc. That is fine. I don't have a problem with that at all.

DAVE HENNESSY: That's what we want in there.

JERI McLEES: I don't mind that. What I mind is the very specific language relating to my real property. That's my concern in this disclosure.

BRUCE STANTON: What about, then, in that statement you just mentioned including " but not limited to" and just including a quick descriptive of some of the areas such as whether the park is in the flood plain, such as, I mean, something that the buyer would read and then be able to say, "Ok, now I know where to go to answer that question."

JERI McLEES: Can I respond, John, directly ...

JOHN TENNYSON: Go ahead.

JERI McLEES: My vision of this coordination with other disclosure forms that we talked about at the beginning of this meeting, where we were going to do an "including but not limited to" special study zone, conditional use permit, whatever it may be and it is the litany that, I think, John is going to come up with. He can, indeed, put that in. If the park is in any flood zone, if it truly is in a flood zone, then I don't have a problem with disclosing it, but I want to disclose it because, I, as the park owner, know what it's in, not because the innocent seller thinks it's something that, not being ugly or nasty, but, you know, when in doubt check everything and everything is wrong because they are trying to protect themselves. That's where I'm saying I don't mind having that liability, but I do not like that liability, Dave, being placed on me when I don't know what's being disclosed or what is in the thought of this seller.

DAVE HENNESSY: What else would you put on that disclosure?

JERI McLEES: You know, Dave, I would have to sit down and think about all...

DAVE HENNESSY: You've got a whole list of them there. Is there anything else you can see that you would allow or recommend or suggest that goes on there for your part? When you said a moment ago the rules and regulations, you'd OK that.

JERI McLEES: Yeah, because I want you to enter into a rental agreement if you are coming into my community. Yes, your ability to comply with the rules and regulations. That's for sure. The rental agreement, the zoning, the conditional use agreement.

DAVE HENNESSY: The city ordinance?

JERI McLEES: The city ordinance regarding?

DAVE HENNESSY: Rent control.

JERI McLEES: If the city ordinance does indeed require me to advise people of that. Some do and some don't, so I'm not sure,... if you asked me to put rent control on this disclosure statement, I'm going to tell you I'll get fired from this position. But, I think there are some things...

DAVE HENNESSY: But, you see where I'm coming from? The things that you've got there you can't avoid those disclosures. In other words, the park owner has a responsibility, and I understand where you're coming from.

JERI McLEES: I am not saying I don't have a problem with me disclosing certain things, or if you come and ask me, or Ron comes and asks me, and says, "You know this park is on the Sacramento River, has it ever flooded?" And, I say, "No," even though I knew it flooded in '90, '91, and '92, then I think with or without this form I've got a liability as a park owner. Attorneys? But what I'm saying is I don't want Jim Sams to disclose or not disclose something which he may not have the appropriate and adequate knowledge of.

DAVE HENNESSY: OK, but it will be on a disclosure form attached to this form you are saying he is going to draft up.

JERI McLEES: No, what I'm saying is that this form that is coming from the seller to the buyer is a notice that there may be some other information that you, the buyer, should gather before you make a decision, i.e., a special study zone, the community rules and regulations, you know, etc. And that the seller is notifying the buyer that you need to look at this information. That's the part that is on this form. I think if we do anything else...

JOHN TENNYSON: Mr. Sams.

JIM SAMS: I heard what I think is a misconception here, and that is that you describe that you are on a flood plain. Now, I have a number of mobilehome parks in my zone which suffer flooding under individual mobilehomes which are not subject to the flood plain. Therefore, it would have to be broader language than just flood plain. It would have to be anything which would threaten the stability or the structure itself, making my investment worthless, as it would be. So, I hope that we don't get into such a narrow definition on this particular item you are talking about that we cannot address all the issues and not just part of them.

JOHN TENNYSON: Denise.

DENISE DELMATIER: Are you folks contemplating writing words that would basically redirect the buyer to the park owner on an issue relating to the park, and

DENISE DELMATIER:

could you envision or support a clause of "including but not limited to" to some of the things that Mr. Hennessy just mentioned as a .... list?

JERI McLEES: In answer to the first part of your question, that's what I believe is our position, that we want to redirect those questions to the proper entity, which is us, any statement that is on this form. That I have no problem with. I think I would like to, as far as exactly what this "including but not limited to," just like, I think, Ron said in the beginning, we need to broaden it enough that it piques their interest, but I do not want to make it so broad that when we talk about flood plain, I was just throwing something out as an idea, a hundred year flood plain, or two hundred year flood plain, who cares. But, issues relating to those kinds of things, flooding...relating to the use of your homesite. Relating to things like that should be directed to me. The seller should not be disclosing that to the buyer because that has to do with your contract with me.

DENISE DELMATIER: There might be concerns with...

JOHN TENNYSON: OK, well perhaps the park owners and the residents groups need to consult on that issue and see what they can come up with. I would like to, quickly, in the next 5 minutes before we adjourn here, see if there is anything under "C" that we may want to put down that relates to the home or space. I don't know if there is controversy on that. This one, for example, could relate to the home itself -- environmental hazards such as asbestos, formaldehyde, radon gas, lead-base paint, and so forth and so on.

JERI McLEES: But, then you get into the contaminated soil or water on the space or lot.

JOHN TENNYSON: Well, we may have to modify the...

JERI McLEES: Take that out.

TRAVIS PITTS: A period after lead-base paint would be nice.

DENISE DELMATIER: Wouldn't we want to incorporate the language ... under "A" .... with the home?

JOHN TENNYSON: Well, that is "affects," this is "are you aware of."

ELIZABETH WEST: No, we did it under "A."

GROUP: Discussion

ELIZABETH WEST: You could take whatever under "C" that everyone agrees is part of the home and you could just eliminate "C" altogether, incorporate it under "A" and "B."

GROUP: Discussion.

ELIZABETH WEST: Well, for purposes of consent, I think we can agree, leaving that question aside for a second, I think we can agree on those items already listed ... related to the home itself. I don't think there is any objection.

JERI McLEES: Four, five, those are two, I think, that are definitely related to the home. Part of one.

TRAVIS PITTS: Building codes, as they are commonly interpreted, have no application.

JERI McLEES: That's true.

JOHN TENNYSON: What did you say, Travis?

TRAVIS PITTS: In number five, building codes, common interpretation are not applicable to manufactured housing.

JIM SAMS: Well, in item four, if we bought a mobilehome, how would we know whether or not there were permits?

TRAVIS PITTS: What for? You would not...

JIM SAMS: So, you wouldn't have to know about that.

JERI McLEES: That's right, because you wouldn't know. But if you are the one who installed it without the permit, you would know.

JIM SAMS: Yeah, so it would only apply then?

TRAVIS PITTS: It's only the term "building codes" that I believe is inappropriate. Compliance with applicable codes, or... "applicable" is good. But, if you use "construction codes, building codes", any of these common terms leads people to the wrong body of codes.

JERI McLEES: You know, like seven, I think is an example. Any settling of the home from any cause is something that you, as the seller, knows. The settling. Why it is settling, I don't know. That's one that might be allowed in the disclosure and then you would come to the park owner with the buyer and say why is this settling? And I could say this is why and this is what I am doing.

DAVE HENNESSY: Travis, ...the other two cases, which we've got right here now.

TRAVIS PITTS: We have all manner of these types of problems, some of them have to do with the park, some of them have to do with whether you are talking about the fifty year, the hundred year or the two hundred year flood plain, or ...

DAVE HENNESSY: ... You've got this business, and ding, you're on it and they take care of it. And then the others...

JOHN TENNYSON: What about eight? Not necessarily flooding, but draining, grading, leveling the home.

JERI McLEES: Yeah, as long as it's got something that does do with the home itself...

TRAVIS PITTS: But eight, is the space or what? Eight is the space or what?

GROUP: Discussion.

JERI McLEES: I think though, John, there may be some room for the semantics of it where, if, when I'm selling the home -- I'm speaking for Jeri, right now. I'm not sure I'm speaking for WMA -- if I'm selling the home and I know that there is water under the home right now, and it is not divulged and the buyer doesn't understand that you can lift up the skirt and look, because they think more conventional housing. That's a problem, and I think that that should be disclosed because it is something that I am aware of and then they come to me, to Tami, as the park owner, and say why is there water under the home?

JOHN TENNYSON: Travis, who is responsible for water under the home, the homeowner, as in Donna Matthews' case?

DAVE HENNESSY: Don't answer now, he's still got three cases pending.

TRAVIS PITTS: Water under the home is Ms. Matthews' problem. There is the exception. Everything else is the park operator ..

JERI McLEES: But there is the exception.

DAVE HENNESSY: Most of the rules and regulations, though, we can't do anything about grading or ... park rules prevent grading without park approval.

TRAVIS PITTS: The park is responsible for the grading to prevent the ponding of water. Period. The difficulty occurs when the resident in the park begins to do landscaping, or in one case, turns their rain gutter downspouts under their house or some other insanity that it's very difficult to hold the park operator responsible for. It's not something that can be put down in black and white. We generally go after the park operator. We lose in the event where it is something that the resident has done that has created the problem.

JOHN TENNYSON: In Ms. Matthews' case, she didn't do anything, but that was a unique situation.

TRAVIS PITTS: It is a unique situation because of the terms of the lease agreement Ms. Matthews entered into. It excluded the authority of the park operator to come on her property to make repairs, therefore, counsel held that they had no ownership control, and Ms. Matthews had to correct the problem. It's a unique case.

JOHN TENNYSON: So, how do we deal with that in this context?

TRAVIS PITTS: Well, we are having difficulty dealing with it now and so how to get it down on this paper so it will be dealt with forever is almost impossible.

JOHN TENNYSON: If you have water under the home, you're obviously going to know it.

TRAVIS PITTS: And, it's easy with real property, but this instance where you have a different owner of the real property and the home is really tough. I do not know how to tell you to put it on this paper and resolve it.

JOHN TENNYSON: Yes, Mr. Leathers.

PAT LEATHERS: Since you are getting ready to leave, excuse me for being the new kid on the block, but could you please clarify what "the question" is? The big question that ...

RON KINGSTON: The duty to disclose material defects or the duty to disclose items that could materially effect the desirability and the purchasability of the property. Period. The question is, should it be limited to the mobilehome and

RON KINGSTON:

those items which the purchaser is contracting for or should it be that plus defects or problems that exist at the mobilehome park, that the seller is aware of. In other words, there are really two questions. You separate that between real property law, which is long and well-established law. That, to me is the substantive question, and I proposed one approach. John may want to talk about it.

JOHN TENNYSON: Well, whether we should ask Legislative Counsel whether they have a duty to disclose, the homeowner, that is. Mr. Pitts.

TRAVIS PITTS: The principals here believe that they are relatively close in coming up with some language that would mitigate this concern, and if they could work that out before the next meeting, I would be inclined to go along with that suggestion.

JOHN TENNYSON: I think they also should include a representative from the California Association of Realtors.

TRAVIS PITTS: We have a problem with the requirement or the provisions to disclose something that the homeowner has no ownership control over and is highly speculative.

DENISE DELMATIER: That's the issue I was going to try and put a little bit more centrally, in that the question is, does the homeowner have an obligation to disclose any information other than on material that he or she, in fact, owns, i.e., the property?

JERI McLEES: You are saying that you don't want them to, anyway, correct?

GROUP: Right. Yeah.

JERI McLEES: It's the same kind of issue if we reversed it. I may believe that something in the interior of the home has inferior wiring, as a park owner, I may believe that. I don't want to have the obligation to disclose that because that really is not anything to do with me. I am not a party to the sale.

RON KINGSTON: Well, I guess the real question here is the desirability or marketability or merchantability of the property yet, here' the point. Those two gentlemen were telling me that in either case they not only look at the mobilehome, but they look at the park in terms of determining value.

PAUL HENNING: Space, the space.

RON KINGSTON: The space?

PAUL HENNING: The space could be in violation that is causing something to that mobilehome. For example, there's a possibility, a great possibility, that roots of a tree come under and get next to the support systems where this home, then, has to be continually releveled because of the trees. Could be the trees that are next to the mobilehome are beating the top of the roof. Are the parks liable to take care of things like that?

JOHN TENNYSON: Well, I bet we'll have a little bit of discussion about that.

PAUL HENNING: And, another thing, you have a park that has the old section and has a new section so a guy likes a home that's in the old section and there's a water cooler there, and he says, oh boy, I can to change that and get an air conditioner. He can't because that section of the park won't take those air conditioners, you know.

JERI McLEES: But, that's why he needs to come and talk to me.

JOHN TENNYSON: OK, I think we are pretty well ... if the two residents groups and the park owners and Realtors can meet in the next month or actually in the next two months and get together and see if they can work something out, it would really facilitate our next meeting in terms of arriving at a conclusion. Otherwise, we may end up having three or four meetings. Thank you very much.

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# California Legislature

## Senate Select Committee on Mobile and Manufactured Homes

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**Mobilehome - Manufactured Home Resale Disclosure Form Task Force**
**Tuesday, October 28, 1997**
**Room 113, State Capitol**
**10 am**

## AGENDA

I. 10 AM - Introductory Remarks .....Chairman or Coordinator

II. Review and fine tuning of "Draft" TDS based on August 27th Meeting

III. TDS - Section C and Park Issues

IV. 12 Noon - Lunch - on your own

V. 12:50 PM - Reconvene

VI. Continuation with Section C and Park Issues

VII. Set aside issues - Section B set asides (water, sewer, sprinklers, driveway, etc.)
Local government TDS
Mobilehome Residency Law disclosure
Definition of Agent in HSC Section 18046
Other

VIII. Additional Meeting if necessary - DECEMBER 2, 3, 4, 10 or 11th

IX. 5 PM - or earlier - Adjourn

# LEGISLATIVE TASK FORCE ON MANUFACTURED & MOBILEHOME RESALE DISCLOSURE TRANSCRIPT

State Capitol, Room 113
October 28, 1997
Second Meeting

JOHN TENNYSON: Good morning, everyone. Senator Craven is unable to make it to the meeting this morning, so I will be coordinating the meeting, again. Hopefully, everybody who was at the last meeting received the mailing that we sent out about two weeks ago, the transcript of the last Task Force meeting the 27th of August, the proposed draft disclosure form, as far as we've got, as best I could interpret it from the transcript and the updated copy of Section 1102.

First of all, I think we have all of the organizations represented here today, except for Multiple Listing, and Mr. Weiner should be here, I understand, about 10:30 am or so. We do have one change. I would like to introduce Mr. Milan Dobro, representing CMRAA today for Mr. Hennessy, who was not able to make it.

So, at this point, what I would like to do so that we can move along in an orderly manner, is to, after these few brief introductory remarks, and if anyone else has any brief introductory or housecleaning matters to bring up, to launch into the draft TDS that was mailed out, so that we can fine tune that and make any corrections, additions, or what have you, to what I believe we have agreed to already. Then, after we've gotten that far, we'll move into the Section C and park common area issues, which I think are the meat of today's meeting. This meeting will last all day today, if necessary, and we hope to wrap this up today, so that we can then finalize the TDS and the code sections that need to be put into the same bill and send that back out to you for your comments, and, hopefully, if that is satisfactory with everybody, unless some additional major issue comes up, we can then introduce pre-print bill, or a bill in December, upon this issue.

However, if we cannot agree, then we are going to have to have another meeting, and I would like you to look at your calendar's now, so that we don't have to do this at the end of the meeting, when half of the people are already gone because they have to leave because of their planes, or what have you. November is going to be out as far I'm concerned because I have hearings in November, one in Pismo Beach and others in Sacramento. But, some day in early December, if that would work out with you people here. I have listed some dates down below as

JOHN TENNYSON:

possibilities, but I am amenable to some other dates, if we need to meet one last time. So, at this point I'll ask you if December 2nd is a possibility? No. December 3rd? December 4th? All right, December 4th, then. Is everyone in agreement with that if necessary? 10 am, hopefully same room or you'll be notified.

Ok, does anyone else have any other opening remarks, housecleaning comments, or questions before we get into Roman numeral 2 on the agenda. Everybody has a copy of the agenda in front of you. Mr. Sams.

JIM SAMS: Yes, I wanted to express to the committee Mr. Henning's regret that he could not be here today because of illness, and I am his alternate so I am taking his place.

JOHN TENNYSON: Ok, very good, thank you. I might add, for those of you who are not familiar with the mechanics of this room, in order to be able to speak you need to push the white button to turn on your mike. That will allow us to record your comments. We had some problems last time, in the other room, with the mike in the middle of the table. Some people at the far end of the table could be hear very plainly, but on our end of the table we had a hard time interpreting some of the remarks that were made, so please use your mike, and please address your questions to the chair/coordinator. That would be very helpful. Ok? Thank you.

All right, let's start out, then, with this draft TDS form that was mailed out, a copy of which is also included in your packet, today, second page under the agenda. And, again, this was drafted based upon the transcript, the discussions of the last Task Force meeting, as well as my notes. There were some places where we had some problems. For example, it wasn't clear to me -- Mr. Pitts had raised the issue of the smoke detector certification -- exactly where we were going to put that, so I just used a little discretion and stuck it under "Coordination with Other Disclosures and Information." So, we did have to leave room for a little interpretation and discretion in developing this form. So, shall we begin? Comments, questions, concerns, etc.

RON KINGSTON: John, how would you like to proceed? Do you want to start at the very top of the form?

JOHN TENNYSON: Yes. One thing that has already been brought to my attention, very minor, is that some people would prefer "manufactured homes" to proceed "mobilehome." I don't really care one way or the other. Otis?

OTIS ORSBURN: John, if I may make a recommendation, is it a possibility to just place a sentence in the beginning that states that manufactured home and mobilehome is replaced with "home," and just put "home" throughout it? And, that way we're not stumbling across, trying to combine the two through the whole disclosure statement.

JOHN TENNYSON: So, you want to say something to the effect that, "This disclosure statement concerns the mobilehome/manufactured home (hereafter referred to as "home")?

JIM SAMS: I would suggest that we do put "manufactured home" before "mobilehome" as well, because GSMOL is trying to make that change over to manufactured rather than to mobile.

JOHN TENNYSON: Comments? Ron.

RON KINGSTON: I think that might be confusing to the purchaser because now you can have, basically, two transfer disclosure statements, one which is actually the sale or transfer of single family, one to four properties. That's referred to as a transfer disclosure statement. And then, if now, we have the manufactured home/mobilehome statement, which then refers to a home, I think it will lead to greater confusion as to which disclosure statement should be used. It might be easier, therefore, to probably just stay with manufactured home/mobilehome and stay consistent. Plus, there is overwhelming ...

OTIS ORSBURN: I have a problem with the image. It is a home and I would like to try and keep that, and the manufactured/mobilehome as a title does identify it as a separate instrument. Therefore, when you get into the body of it, I don't believe someone will make a mistake between the forms.

JOHN TENNYSON: Well, might I suggest we consider in the introductory sentence, "The disclosure statement concerns the manufactured home/mobilehome (hereafter referred to as "manufactured home")? Does that cause problems definitionally? Mr. Pitts, do you have any questions, or a comment on that?

TRAVIS PITTS: It doesn't create a problem for us, the use of "manufactured homes." We, too, would like to get away from the terminology, "mobilehome."

JOHN TENNYSON: Ms. West.

ELIZABETH WEST: Well, I was just going to suggest, in response to Ron's concern, that perhaps, and in the interest of brevity, as well, and simplicity, maybe we could just say "mhome", hereinafter referred to as "m/mhome or mhhome or mhome." You know, it's just an abbreviation that would distinguish it from a single family stick residence.

JOHN TENNYSON: Yes, Jeri.

JERI McLEES: John, I think I concur with Otis. If we call it the "Manufactured Home/Mobilehome Transfer Disclosure Statement" in the beginning, that's the title. And, I really would reference to just "home" throughout, if that is what it is. I can't agree to it being called "manufactured home" because we are also disclosing the sale of the 1968 vintage, which is not necessarily a manufactured home.

JOHN TENNYSON: Yes, Mr. Pitts.

TRAVIS PITTS: Travis Pitts. May I recommend that we go along with the use of the "home" after the definition, and at the bottom of the page where they are numbered, put "MH page 1", so and so forth, to avoid the potential conflict that Mr. Kingston thinks he might have. Every page would be identified as an "MH."

GROUP: Yes. That's fine. Looks good.

JOHN TENNYSON: Is that satisfactory? Everyone?

RON KINGSTON: I'm just going to reserve until I have a chance to pass it off to CAR.

JOHN TENNYSON: Ok, we'll refer to it as "home" and at the bottom of the page we are going to put "MH 1, 2, 3," whatever. Ok. Proceeding down below the title, any other issues? Comments? We're in "This disclosure statement concerns the mobilehome/manufactured home (hereinafter referred to as "home") located at..." and the "at" could be the address, "in the city of, county of, state of California, described as..." and that's where you put your year, make, serial number, HCD decal or HUD label number. That's per the discussion last time. Is everybody with us so far? Ok, then..., Mr. Pitts.

TRAVIS PITTS: At the HCD decal number, I would prefer that it be just "decal." The HUD label number is something entirely different than the decal. And, if we wanted to get the HUD label number and the insignia number we would actually have yet another block, so we would be satisfied if it just referred to the HCD

TRAVIS PITTS:

decal. The insignia number and other information we have on other documents. We don't need it here.

JOHN TENNYSON: Fine, if that's in agreement. My understanding of the last discussion of this is that there might be situations where you would need the HUD label number and the insignia number, but if HCD decal number is all you need, we'll scratch the rest of it out.

TRAVIS PITTS: On this form, Mr. Chairman, it's sufficient because we also have reports of sale. We have several other documents that would contain this extended information.

JOHN TENNYSON: Ok. Is that satisfactory with everybody? Jeri?

JERI McLEES: I've just got one technical question. Under the serial number, is it the same thing, Travis, if it is a triple wide where we've got 745 ABC? Would that be how it would be acceptable, or do we have to list all three of the serial numbers? I know on the registration card we have all three.

TRAVIS PITTS: Mr. Chairman, it would be acceptable to list 12345AB&C on this form because this is not the form where we are going to take our transfer information. We have other forms that go into great detail. This form only needs to be sufficient to tie to those documents, and so, the abbreviation serial number would be fine.

JOHN TENNYSON: There's not room for three, though, on here.

TRAVIS PITTS: Well, I understand, but typically the serial number would be consecutive, so if you use serial number 123-1,-2,-3, it would be sufficient with the decal to tie it to a particular home without having to spell out all of the several serial numbers.

JOHN TENNYSON: Are there cases where you don't have an HCD decal number, like these old homes that were registered under DMV that haven't been transferred for 25 years?

TRAVIS PITTS: Yes, we have homes out there with DMV licenses. We have homes with nothing on them. We have homes coming in from out of state.

JOHN TENNYSON: What do we do in that case?

TRAVIS PITTS: This particular document is for the resale of a home that is within the state of California. I already will have, under the law, or should have, a registration record for this home, before this document ever comes up. So, there would be little likelihood that I would need that information on this document that I didn't already have on a data base.

JOHN TENNYSON: But, if it is left blank because there is no HCD decal number, isn't the buyer going to be concerned? In that case?

TRAVIS PITTS: The buyer should be concerned if there's no HCD decal number because that would imply that it is not properly registered in the state of California.

JOHN TENNYSON: If it has no license number, though, that doesn't mean it's improperly registered, it just hasn't been updated, right?

TRAVIS PITTS: Well, you're talking about the difference between the HCD decal and the DMV license.

JOHN TENNYSON: Right.

TRAVIS PITTS: We could just put decal/license number. You don't like that?

JERI McLEES: I think we are trying to enhance our image and now we're going back to the trailers.

TRAVIS PITTS: Well, I don't want to, but John was technically correct.

JOHN TENNYSON: Well, we don't want to raise an issue in the mind of the buyer that's not necessary. Just because it has a license number doesn't mean it's improperly registered.

JERI McLEES: But, it could be. You need either a pink slip, correct, or certificate of title. Those are your two options. If it is still with DMV, you have a pink slip. And, the buyer needs to know that. Why do you think you raise the issue? If he's transferring title, he is going to have to determine either to go to DMV, which often times they do with those older homes, to transfer it still under the pink slip, or make the determination to:..

JOHN TENNYSON: Well, they wouldn't be going to DMV anyway. They would be going to HCD if it is a mobilehome.

JERI McLEES: But, there is a real nuance there of trailer coach that's how the pink slip reads. Sixty vintage, you know.

TRAVIS PITTS: I do not disagree with all of that, except this is not the document that transfers title, so I do not need all the information that I have to have for a title transfer to appear on this disclosure statement. This only needs to be sufficient that a reasonable person could tie the TDS, transfer disclosure statement, to the home. It doesn't have to have all of the description that we normally would have on a title record.

JERI McLEES: I think that, John, under those circumstances we could just put, if there is no decal number, we can just put N/A and then it is up to the seller to ask the buyer why there is no decal number.

JOHN TENNYSON: Mr. Orsburn.

OTIS ORSBURN: I might suggest that if the serial number identifies the home enough for the TDS that we just don't put on the decal number at all.

JOHN TENNYSON: Mr. Dobro.

MILAN DOBRO: I am under the impression that once a home that has been on DMV is sold or transferred it goes off that particular classification. Am I correct?

TRAVIS PITTS: Under the law, yes, sir.

MILAN DOBRO: So, it is insignificant what is listed there. It's going to be changed anyway.

JOHN TENNYSON: What about HCD decal number or equivalent?

TRAVIS PITTS: It's no problem for us.

JOHN TENNYSON: Ok. Let's move on. Under that, "This statement is a disclosure of the condition of the above described home in compliance with Section 1102(b) of the Civil Code and Sections 18025, 18046 and 18046.1 of the Health and Safety Code as of the date," whatever date this is it is being filled out. "This instrument is not a warranty of any kind by the seller(s), as defined in Section 18046 of the Health and Safety Code, 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." That language is basically boilerplate from your form, I believe. Yes, Mr. Kingston.

RON KINGSTON: John, the first two words, "this instrument" is different than the current transfer disclosure statement. The current language reads, "It is not a

RON KINGSTON:

warranty." In addition, this sentence is not a stand-alone paragraph. It is incorporated. Is there a reason to separate it and change the wordage?

JIM SAMS: One advantage I see in having it separated is it stands out. If it becomes part of the previous paragraph, to my way of thinking, it would not be as obvious that this is something that should be considered. So, I think this structure of the form permits the reader to understand that this is an important paragraph.

RON KINGSTON: As opposed to anything else in the form?

JIM SAMS: No, this is a very important part of the form.

JOHN TENNYSON: Frankly, I don't know why it was done this way. It may have been simply a typo if nothing else. I don't know.

RON KINGSTON: So probably we could just eliminate the words "this instrument."

JOHN TENNYSON: Well, "this instrument" is in my form. That's not what I was referring to. I was referring to it being separate, put into a separate paragraph. But you are saying that the wording, "this instrument," is not found in 1102? That's the problem? Well, what's the wish of the Task Force?

ELIZABETH WEST: Let's go ahead and do "It" instead of "this instrument."

RON KINGSTON: Because, technically, this not an instrument. It is a disclosure document. If you really want to be technical about it.

JOHN TENNYSON: Ok, any problem there? So that brings us down to Roman numeral one? Is everybody following? Mr. Sams.

JIM SAMS: I think before we proceed to that point, we had some discussions with WMA and, at this time, I would ask Jeri to present our tentative agreement which will be submitted to both of our...

JOHN TENNYSON: Which changes to Roman numeral number one?

JIM SAMS: It will not change it. It will add to it. So, this is language we would wish to add to that...

JOHN TENNYSON: Right in the beginning?

JIM SAMS: Right after, "may wish to obtain." So, if you will permit, I would like to have her introduce that to you.

JOHN TENNYSON: Go ahead.

JERI McLEES: I can see your reluctance, John, and I think the reason we would like to have it in there is it is a very important...

JOHN TENNYSON: Well, I don't even know what it is.

JERI McLEES: I know, I know.

JOHN TENNYSON: My concern is that we are going to be skipping all around so that when we go to put this together, we are going to be somewhat confused as to... That is why I was hoping to proceed in an orderly manner, but if...Does this fit in in the beginning here, under Roman numeral number one?

JERI McLEES: Yes, that is the reason we wanted to do it. If you would like to wait until after we get through with the typewritten, then we can go back to it.

DENISE DELMATIER: I would prefer to have it addressed now as an integral part of that particular disclosure and once you hear it, you will understand that it is absolutely tied to that portion of the disclosure.

JOHN TENNYSON: Ok. Who's going to present it?

JERI McLEES: I will present it.

JOHN TENNYSON: Ok. Jeri.

JERI McLEES: This is conceptual in the language. "Any inquiries regarding the condition of the park property including the condition of the homesite and conditions of tenancy shall be directed to management."

JOHN TENNYSON: Where is this going to be placed?

JERI McLEES: It would be after "...wish to obtain." There would be language that says, "if the home is located or will be located in a mobilehome park, any inquiries regarding the condition of the park property including the condition of the homesite and conditions of tenancy shall be directed to management."

JOHN TENNYSON: Do you have copies?

JERI McLEES: I have one copy which I will be glad to share with you.

JOHN TENNYSON: Do you have a typewritten copy?

JERI McLEES: No, we'll have that this afternoon. And, there is one other sentence. "Seller shall not be liable to buyer for conditions of park property including the condition of the homesite."

JOHN TENNYSON: Well, I'm not a stenographer, so, is that readable? We can have somebody photocopy it. We'll take a brief five-minute recess.

BREAK

JOHN TENNYSON: Ok, we're back in business. Does everybody have a copy? After the word "obtain", above Roman numeral number one on the first page, WMA is proposing to insert this language. Does everybody understand where it is to be inserted? Same paragraph. Ok. Comments.

JERI McLEES: Can I elaborate a little bit on this because we do not have in this hand-written note the language that it has to be that it is located in a park?

JOHN TENNYSON: Go ahead.

JERI McLEES: So, what it would say is if the home is or will be located in a park, any inquiries regarding the condition of the park property. And then, Mr. Kingston has requested that in the second sentence where it says, "seller shall not be liable to buyer," he would like to says, "seller and his or her agent, shall not be liable to buyer for conditions of the park property..." and GSMOL and I are in agreement with that addition.

JOHN TENNYSON: Mr. Sams.

JIM SAMS: I might say that we have no objection to that, as well.

JOHN TENNYSON: Mr. Weiner.

RICHARD WEINER: That's fine, to add "his or her agent" is fine. You are going to put somewhere "mobilehome park" for this sentence? Is that right?

JERI McLEES: May I answer that, John?

JOHN TENNYSON: Yes, go ahead.

JERI McLEES: What we would like to do is put in the beginning of the sentence, after "obtain" that "if the home is, or will be, located in a park, any inquiries..."

RICHARD WEINER: You should have mobilehome park.

JERI McLEES: Well, park is a manufactured housing community as well as mobilehome park, so that's why we said "park."

RICHARD WEINER: Do we have that defined anywhere?

JERI McLEES: In the Civil Code under definitions.

RICHARD WEINER: Ok.

JERI McLEES: That's why.

JOHN TENNYSON: If the home is located in a park...

JERI McLEES: If "is or will be located in a park" because it may be one that is being moved.

JOHN TENNYSON: "Is or will be located in a park, as defined in Civil Code...

JERI McLEES: "As defined in", that's fine, 798.6.

JOHN TENNYSON: Then, "any inquiries" and so forth.

JERI McLEES: Right. And then, as I said, in the second sentence, where it says "seller" after seller insert "and his or her agent..." And, we've defined agent already, so I think we're...

JOHN TENNYSON: Is the word "homesite" defined anywhere, as opposed to space?

JERI McLEES: No, lot is defined. I'm not sure there has ever been a definition of space, Travis? If lot is the definition in the Health and Safety Code, we get back to our semantics of what we are trying to upgrade a little bit, we don't,...

JOHN TENNYSON: Mr. Pitts.

TRAVIS PITTS: I would like to make two suggestions. First of all, in the first line, "...tenancy shall be directed to..." I would like to insert "park."

JERI McLEES: Again, I just used "management" because in the Civil Code it defines "management" it doesn't define "park management." We could put "as defined" again, if that would make it...that's the reason I'm not...

TRAVIS PITTS: I was only trying to make this more usable to a person who doesn't have access to all the codes.

JERI McLEES: Then, I think "park management" is fine.

JOHN TENNYSON: "...directed to park management..."

TRAVIS PITTS: "...to park management" instead of having any question as to whom and then at the end, instead of "...the property including condition of the park." Not the homesites or anything else.

JOHN TENNYSON: Mr. Dobro.

MILAN DOBRO: This statement that has just been written here, moves the question about the park condition to management. Why isn't there a similar paragraph that moves the condition of the home to the seller rather than to the park management, because often times the park management gets involved in the status of the home whether it needs corrections of HCD violations, and so on, and they cite that before they allow the seller to sell the home? It seems to me that we are waiving that same violation that the park may have by not allowing the seller to have the park also be forced to correct their violations before any sales are made in any way, shape or form. Because, many times the park owners own the home so they sell them. So, it's two different situations that occur. I'm not trying to change the thing, I'm just bringing up... it seems to me, like we're setting up a play area on one side of the equation and not on the other.

JOHN TENNYSON: Well, Mr. Dobro, as I understand the intent of SB 1704 and the reason we are here is, frankly, not to necessarily correct any problems that might exist in the park, and not to denigrate those problems or the seriousness of those problems particularly in regard to homeowner complaints about them, but rather the purpose here is to come up with a form that can be made applicable as it relates to disclosure of problems relating to the home and the sale of that home. And, the problem we got into last time in this, and you weren't here, but the problem we got into last time was whether we should bring in the park problems, bring in the neighborhood, bring in the community, I mean, do you have to disclose when you sell a home that there are toxic waste dumps six miles to the east?

MILAN DOBRO: Yes, I understand.

JOHN TENNYSON: Where do you draw the line? So, does anybody else have any comment on that? Mr. Kingston?

RON KINGSTON: Just regarding this?

JOHN TENNYSON: His question only, yes. Do you have another comment?

RON KINGSTON: Several.

JOHN TENNYSON: All right, does anybody else want to address his question? No? Mr. Sams.

JIM SAMS: Yes, we have the same concern about that, as you well know, about condition, and that is one reason why we have said there needs to be some mechanism set up which we have tried to do today. I don't think we want to get into the total of correcting them, so much as knowing they are there for the buyer. So, in that way, I think GSMOL had considered that to be appropriate.

JOHN TENNYSON: All right, Mr. Pitts, I think, had a question. I'm not sure who was first, here.

TRAVIS PITTS: That's Ok. It was only with respect to the recommendation that some how we would stop the private party sale because of park conditions that's totally in objection to HCD. It's totally unrelated that we would prevent a seller from selling their home because of conditions they had no control over.

JOHN TENNYSON: Ok. Mr. Orsburn.

OTIS ORSBURN: One thing that comes up from his statements is that also the park management may have violations that they have written up on the site that the buyer should be aware of, also, other than just this disclosure statement by the seller of the home. Typically, when they serve notice to the property managers that they are going to be selling, property managers do what they call a walk-through and then may call out like loose hand-rails and things that aren't meeting the Code at that time that should be completed before a sale can transfer. And, I don't know whether this should be a place to say that maybe that the park manager may have done a walk-through and have items that may need to be repaired before the home is transferred.

JOHN TENNYSON: Yes, Jeri.

JERI McLEES: We discussed that at length this morning and decided that this really was not the place for it to be. The seller is disclosing on the home and park is disclosing on its property and let's not mix them up for the purposes of this bill.

JOHN TENNYSON: Dick?

RICHARD WEINER: Just some comment on what Travis said before. It seems to me it's proper to leave the last sentence the way it is, the last line, "...including the condition of the homesite.", as long as we have some definition, which I take it where "homesite" is never defined and is not part of the code.

JOHN TENNYSON: Yes, I appreciate your bringing this back to the original question on this "homesite."

RICHARD WEINER: Yes, somehow we should define it if we are going to use the word, and then I think the last sentence, as long as you define it up above, is probably Ok.

JOHN TENNYSON: Yes, go ahead, Ron.

RON KINGSTON: Let me explore what homesite means. Does homesite mean the outbuildings or does it mean the underlying real property? Does it mean the steps, the landing, the carport? Are we inventing a new term of art? If we are inventing a new term of art, is there a need to do that, or can we rely on existing terminology which the legislative and the judicial branches of government seem to have found adequate to this time? And, if they find it adequate, then perhaps we should turn to conventional terminology instead of inventing ...

JOHN TENNYSON: Well, that's why I brought up the issue of why are we using the word "homesite" and whether another term like "lot" would be more referable? Mr. Sams.

JIM SAMS: One approach that we thought, during our discussions, was the fact that some parks have spaces, others have addresses. And, if you say "space," you may be not adequately expressing what the particular site is. So, we came up with the word "homesite" as an alternative.

JOHN TENNYSON: Well, what is your intention with regard to homesite? You are talking about the real property under the home, the lot itself? Is it the actual ground, not the accessories, not the storage shed, not the stairs, not the railings, not the porch, not the cabana? Is that right?

JIM SAMS: That's right, because we are talking about the space and its condition for occupancy, not the mobilehome. There are two separate things, here.

JOHN TENNYSON: Well, how about using the word "lot" as defined in the Health & Safety Code. Ron.

RON KINGSTON: Mr. Tennyson, you could use the terminology, "...or the underlying real property which shall not include any attachment made thereto." Of course, that implies that it doesn't include the mobilehome or any other improvements. Or, you could just say, "...the underlying real property, excluding any improvements made thereto."

JOHN TENNYSON: Mr. Dobro.

MILAN DOBRO: In dealing with regulations in city ordinances and so on it is referred to as "space," the location of the mobilehome. In dealing with Mobilehome Residency Law and HCD, it is referred to as the "lot." So, I think those two definitions are very clear, and I don't believe we have to define it any further, that it's not encumbered by any property sitting on top of those lots or spaces.

JOHN TENNYSON: Ok. Mr. Weiner.

RICHARD WEINER: The word "space" isn't defined anywhere, right? Even though it may be in other arenas defined, if it isn't defined here, we are probably better off using the word "lot" unless we go to something as suggested before...

JOHN TENNYSON: Mr. Sams.

JIM SAMS: I would agree with his terminology because it is more specific and there is no doubt left as to the meaning.

JOHN TENNYSON: All right, so that brings us... Mr. Pitts.

TRAVIS PITTS: I'm sorry, but Mr. Sams, I don't agree that it is less confusing. It is more confusing. When you start bringing in the underlying real property and attachments thereto. There are attachments that are a fixture and improvements to the underlying real property. There are attachments that are not fixtures. It opens, to me, a very large can of worms. If it is the "lot" or we need a definition of "homesite" I think that is a better way to go than to put in the $4 lawyer words for the folks who are trying simply to sell their home and understand what is they are signing. I think that becomes very complex when we start with "...the underlying real property, attachments thereto." That does concern me.

JOHN TENNYSON: Any further comments on this matter?

RICHARD WEINER: Well, I would suggest you use the word "lot" then. I think that's defined in the Code.

JOHN TENNYSON: All right, so we're down to homesites. Would it be "lot?" Do you want it "as defined in whatever Health & Safety Code Section it is?" What about the last word in the sentence? Are we still with "lot" or with "park," as Mr. Pitts has suggested?

JERI McLEES: I think GSMOL was using "lot"...

DENISE DELMATIER: Yes, GSMOL is in agreement with the term "lot."

JOHN TENNYSON: All right. Any other issues...yes, Mr. Kingston.

RON KINGSTON: Let me explore this a little bit, so I understand the sentence structure and goal. The beginning of this paragraph reads, "Any inquiries regarding condition of park property, etc..." I guess, first of all, I have some questions regarding the introduction, or the introductory statements made in the paragraph. A person can make an inquiry, but they may not receive any information. Therefore, is it the intent to say "Disclosures regarding the condition of the park property shall be obtained by the park management. The park management shall furnish the following list of documents." ? So, a perspective...

JOHN TENNYSON: The answer to that is "no," for purposes of transcription. Is that correct, Ms. McLees?

JERI McLEES: That is correct.

RON KINGSTON: So, let's say, for the point of discussion, Travis wants to buy my mobilehome, and, according to this language, he could make an inquiry of the park management and the park management would say nothing between the time we enter into a purchase contract and the transfer actually occurs. So, therefore, Travis wouldn't get any documentation, any disclosures, if the park management decides to say, "I'm not going to tell you anything." Is that the objective?

RICHARD WEINER: But, then, he may decide not to buy the home. It seems to me that where it says, in the next sentence, "Seller shall not be liable to buyer..." the conditions, I think we have covered the field without...the buyer makes inquiries, may or may not get an answer, but at least for the purposes of this document, seller shall not be liable for those conditions. And that's one thing we've done.

JOHN TENNYSON: Ms. McLees?

JERI McLEES: If Ron would like to change the word "inquiries" to another word such as, "information regarding shall be directed to management" or "request for information" that's fine. Our whole purpose in this is that this is a disclosure relating to the sale of the home, only. And, any other disclosures to be dealt with separately between park management and the buyer and the seller is not involved in that. To start the litany of lists of those things which we, the park owner must disclose opens a can of worms that goes far beyond what we believe we are trying to accomplish here. When we wrote out this language this morning, it was very quickly done, subject to some fine tuning by the attorneys, I'm sure. But, the purpose of the language was to say, "Buyer, you need to go to the person or persons knowledgeable about the conditions of tenancy and the park property and get any information you wish to have in making your decision from that person or persons." If Travis comes to me and I don't give him any information, he probably is going to go elsewhere. Why would I, as the park owner, not talk to the buyer? I want to get rid of Ron.

JOHN TENNYSON: Ok. Ms. Delmatier.

DENISE DELMATIER: Well, just to expand on Jeri's comment. We certainly want to have, in this statutory change, an express direction to the prospective buyer, where that prospective buyer should go to obtain this information. So, we don't want to leave it silent. We want it to be in the statute for express direction.

RON KINGSTON: So, clarifying this, it says you are not to be liable to the buyer, but does the seller have a duty to disclose? And, right now, you are silent on that, so what you are saying is you are not liable but the seller, Ron, still must tell Travis what's wrong with the park. That's what you've done by this language. Is that your intent? If that is not the intent, then perhaps some...let me quote to you how I derive that rationale. "Seller shall not be liable to buyer for conditions of the park, including the condition of the property." It's totally silent in terms of a seller's obligation to disclose the condition of the property. Unless I am misreading it. Show me where I'm wrong.

JOHN TENNYSON: Why don't you just put in "for not disclosing any condition."

RON KINGSTON: All I'm trying to do is get clarity of what the intent is.

DENISE DELMATIER: That would be fine. That would be consistent.

RON KINGSTON: So seller shall not disclose nor be held liable?

JOHN TENNYSON: I don't know who is first, here. Mr. Dobro.

MILAN DOBRO: I believe the way to solve that problem should be to petition the state Legislature to pass a law in the Mobilehome Residency Law that allows a potential buyer to be able to get that information from the park management before the sale is completed.

JOHN TENNYSON: Mr. Pitts, you were next.

TRAVIS PITTS: I think we are coming to resolution of the issue. I think what is recommended here, the last recommendation, is a separate issue entirely from what we are dealing with. I think this could be stated slightly differently. "Seller shall not be required to disclose nor shall be liable..." Will that satisfy you?

RON KINGSTON: It is not to satisfy me, at least it helps underframe the issue properly because right now, you are not liable, but you still have to disclose. What I'm trying to do is take the part of the people to understand how this is worded.

TRAVIS PITTS: You can say "the seller or their agent shall not be required to disclose nor shall they be liable for..."

JOHN TENNYSON: Ok, any other comments? Mr. Kingston, did you have further comments?

RON KINGSTON: Can we resolve this issue and then we'll go on? Just a certain question, I have.

JOHN TENNYSON: Go ahead. Ok, so "Seller shall not be required to disclose, nor be liable, to the buyer for conditions of the park property." All right, is everybody with us so far? Where are we next? You had further comments, right?

RON KINGSTON: All I'm doing is just asking questions. Next question I have is when can the inquiry by the buyer be made? Is it when they are under a contract of sale or before, or do you care when? Let me phrase that in the context of an example, again. Travis is going to buy my manufactured home. He is interested in it, but has general questions about the condition of the park property. The park owner or management doesn't want to perhaps be barraged by Travis and several other people who are interested in purchasing my manufactured home. All they want to do is receive questions about the condition of the commons area, if you will. When you are under a contract of sale, much like what happens in a homeowner association, the only time a seller can get certain documents, is when you are under a contract of sale. So, I guess I have a question there for...do you want to say in here that inquiries regarding the condition of the park property can

RON KINGSTON:

be obtain it while you are under a contract of sale or at any time and then allow the park management to just field any number of questions and at times they will say, "Gee, I'm sorry, I'm not going to tell you," or at times, they may say, "Well, gee, now that you are under a contract of sale we will tell you."

JOHN TENNYSON: Ms. McLees.

JERI McLEES: I guess now I'm a little confused. This transfer disclosure statement is not given to the buyer until they have an offer, is that correct?

RON KINGSTON: The way the law currently reads it is prior to transfer of title. So it can occur in that period, any time. And, many times a seller will use this precedent to a contract, an offer to purchase because a buyer will want to know about the conditions. Under common law, it helps the buyer to determine the marketability and desirability of the property, and therefore, it helps them determine how much money they are going to offer to pay to purchase the property.

JERI McLEES: Then, from a practical standpoint as the park owner, or manager, whenever this statement is given to the buyer, this is the time when the buyer is apprised that questions regarding the park should go to the park manager. As a practical standpoint, we want them to have all of that information as to the conditions of the tenancy before they make their decision. I don't care whether there is a contract of sale. I don't want my poor manager to have to worry is there a contract, is it a legitimate contract. If somebody calls me right now and says I am interested in buying a home in your park, I'm going to give them my rental rate. I'm going to give them that kind of information. So, I guess the question is I would hate to muddy the waters again by saying this can only be given when there is a contract of sale because some unscrupulous type manager is not going to give out any information till I see all of these documents.

RICHARD WEINER: I don't see that it should be touched at all because there was no purpose in the legislation to require the park to make disclosures. That would be separate legislation down the line and that has to be addressed in that way. I don't think, however, in this case that was the purpose of the legislation and that it need be addressed at all. We have it down to a point. The buyer may make inquiries. The park may say nothing at all. In which case, then it is up to the buyer to either decline to go ahead with the transaction or to make further inquiries, but at that point, the seller is off the hook, and the park is not covered by this legislation.

JOHN TENNYSON: Mr. Sams.

JIM SAMS: I perceive a possible danger in that, saying that the inquiries made and he may or may not respond. In some mobilehome parks, we have a problem where management will use this method to deny sale of mobilehome. And, if the buyer is not satisfied as to the condition of the site on which he is going to be living, he may not buy it and by that means, management could control the sale of that mobilehome. So, actually, I think it has to be stronger in the sense that we have to not assume that park managers are going to delay that in order to delay a sale to someone they don't like.

RICHARD WEINER: But how is that any different than it is now? The law now is you make the inquiry and it is either answered or it is not. The purpose of this legislation was to direct the sale to disclosure by the seller of the condition of the manufactured home. Period. And I think that doesn't need to go to anything beyond that.

JIM SAMS: I don't agree with you. You see, that's where I have a little difficulty. I see no protection for the seller as to the site on which that will rest, and I had a case in Marysville where there was a definite problem with the lot and it destroyed the mobilehome. The woman had to go to court. So, I'm only assuming that a certain percentage out there would not be honoring this inquiry and that does disturb me, and this is one of those things that I have mentioned to WMA's representative a little earlier. And, this inquiry that we have here is sort of a method that I had of possibly gaining some agreement here, but I don't think it's the total answer.

JOHN TENNYSON: Ok, any other comment on this? Mr. Pitts.

TRAVIS PITTS: Well, I hate to be redundant, but GSMOL first stated, with which I do not disagree, the only purpose of this statement was informational. We want the buyer to know that this is where you go with these types of questions, and that was my understanding this was intended to be only informational. What is in the conversation, here, and the recommendations would tend to make it mandatory that the park operator perform some act which is not the intent of this legislation and would really be a separate issue.

JIM SAMS: But don't you have a mandatory requirement here for disclosure by the seller? On the personal property? What is different between a mandatory on where that property is going to be located and the mandatory on the seller?

TRAVIS PITTS: I think the difference, Jim, is whether or not this legislation is successful. If we are replacing current law which makes it a criminal act to sell a

TRAVIS PITTS:

manufactured home with one that says you can use disclosure to avoid a criminal act and we attempt to solve other problems which are legitimate, I'm not arguing that, but if we attempt to solve all the problems of the world in this legislation, I don't think we'll ever get it.

JIM SAMS: My problem is I'm afraid it's so weak, and I subscribe to this, don't get me wrong, I'm showing you some of the things in the back of my mind where it might not be successful, but that is only stated for the record, that we should be considering that fact.

JOHN TENNYSON: Mr. Kingston.

RON KINGSTON: Let's review the statutes of fraud, if we may, because I think it might be somewhat instructive. Two ways that a duty to disclose arises -- one, which is, you ask me is there anything wrong with the product that you are about to buy from me. And, I tell you yes or no. The other way is, I have an affirmative duty to disclose without you asking. Under the first scenario, is it envisioned that if I know there is something wrong with the park do I have a duty to disclose under this, or can I stay totally silent? I know there is something wrong with the park, a very significant problem with the park that might affect the desirability of you deciding my manufactured home, and I have no longer that duty? Are you relieving me of that duty?

RICHARD WEINER: I think that's an independent duty. There is a duty, but I don't think that we need to cover it in this document.

RON KINGSTON: Well, there is a substantial disagreement in terms of does that existing duty arise today and this concept, this form, has even elevated that discussion to the point where I think we need to talk about reaching some agreement to this matter, because if we're willing to clarify the condition of the manufactured home, itself, but again, if this is really an important element, if I know there is something wrong with park, do I have an affirmative obligation to tell you? I'm not going to be held liable, and I'm not required, am I totally not required to tell you so I can totally stay silent and I can intentionally conceal that, or not? I just ask that question.

JOHN TENNYSON: Mr. Pitts.

TRAVIS PITTS: I think we answered that in the prior amendment where we said, "the seller shall not be required to disclose nor enlighten." It answered that.

RON KINGSTON: Travis, I'm not sure that you do in this way. If you ask me the question, "Is there something wrong with the park?" And, I say, "No." And, I know that there is, and I know that I'm not required to disclose it and I know that I'm not required, and I know I'm not liable for it, but I just committed, I just told you a lie. I know there is something else. See, you are actually relieving me of liability of the duty to disclose, and I know there is something materially wrong with the park. As long as I understand that, if that is the direction you want to go...

JOHN TENNYSON: So, basically, what your question is, is this immunizing them from out and out fraud?

RICHARD WEINER: I don't think a court would hold that at all. That would hold responsible regardless of what we say in this form. You can say it, but I don't think that would hold up.

RON KINGSTON: Yes, and this is an important discussion to have. I mean, people might be shaking their heads and saying, "Oh, God, let's not talk about this." But, this goes to the heart of the duty to disclose whatever is going to be required under this form.

MILAN DOBRO: Could you say, "I refer you to the park owner or management," instead of saying, "No?" That way, you don't make an answer or make you liable for it?

RON KINGSTON: You could say it that way as long as you phrased it that way, but if a buyer really said, unless you...but again, if you know, it sounds terribly redundant when I say this, but if you know there is something wrong with the park and it might cause you to offer $10,000 less than you are going to offer, to me as a buyer, I'd want to know. But, there are certain people within this group that feel comfortable and you are either park managers or you are sellers but you're never a buyer. Everybody here that represents, particularly GSMOL, or those living in a mobilehome, you will be a buyer at some point in time and you will want to know certain material facts, and that is a material fact and how should you get that information.

JOHN TENNYSON: Ms. Delmatier.

DENISE DELMATIER: That's why I think we made this a two part test, essentially, in that there is some responsibility here on behalf of the buyer and we required the buyer, if they have questions or inquiries, that the buyer has a responsibility to take this up with the owner. That's the first part of the test. The second part of the test is that we make an express disclaimer on behalf of the

DENISE DELMATIER:

resident, that they have no liability or requirement to disclose information relative to property that they do not have either control or ownership over.

JOHN TENNYSON: Mr. Pitts.

TRAVIS PITTS: I hate to belabor this, but we are mixing two different things. One is, we are not required to disclose. The other is he tells a lie. That's fraud. That's separate. You can't resolve all that on this disclosure statement. If you ask me a question and I tell you a lie, I have disclosed a lie. That is a separate provision of law. It's not what we are trying to address here.

RICHARD WEINER: It seems to me that we can't address all those issues. It is a problem, no question about it, but I don't think we can address it. If we try to address it, we are going to get...not just because it will take a long time, but I don't think we can possibly cover the field. You are not going to get the park to agree that they are going to have to disclose when inquiry is made. I think you are going to have to end up leaving this kind of issue the same way it is in regard to the transfer of real property to the courts, if somebody has a problem. This is full employment act for attorneys. It adds to that, but I don't think you can do anything about that.

RON KINGSTON: Each one of us could deprecate the legal profession as we may, but the most important thing I want you to remember is that this bill will go before Judiciary Committee, and the trial lawyers will look at this and they will look to having somebody accountable whether you like it or not, and this issue will be forced to be addressed before this bill gets out of the Legislature. And, so, what I am suggesting to you, if we don't resolve it today, it will be resolved before Judiciary Committee much to your disliking, or dislike, I should say.

RICHARD WEINER: How is it addressed in terms of real property? We don't have to address it any more than it is addressed in the area of conventional housing.

RON KINGSTON: Oh, it's very different...actually, conventional...let's kind of go through conventional housing disclosure, because I think it is very instructive. Conventional housing for homeowner associations, which we haven't even talked about, mobilehome park homeowner associations and how this applies, yet, was one of my other questions, but for a homeowner association, the seller is required to obtain certain required disclosure documents prior to the sale of the home from the homeowner association. The association for failure to disclose for the seller, for failure to disclose for a willful violation of that code section can be held liable

RON KINGSTON:

for up to $500 for damages. Now, I am not aware of any association or seller suffering under those requirements, financially suffering under those requirements, but it still lingers out there. Now, what you are trying to do under this legislation is really separate yourself from that similar type of requirement and by the construct of this couple of sentences you are very clearly saying that the seller has no duty to disclose because under real property the seller has a duty to disclose the condition, of not only his home, but of the commons area. If they know it, they've got to disclose it, and it's embodied currently under the disclosure statement.

JOHN TENNYSON: Yes, Mr. Dobro.

MILAN DOBRO: May I ask Mr. Pitts a question? If a seller who was asked that question by a potential buyer, could he say, "Well, call HCD and get the report on it if there are any deficiencies on the park," as an answer and would HCD reply to such a request?

TRAVIS PITTS: We would not have the capacity to respond to all of those reports as I would see them coming in. Everybody asking for the condition of every park in the state of California.

JOHN TENNYSON: But, Mr. Pitts, it's a matter of public record, so they could request a copy of the record if they were willing to pay for it.

TRAVIS PITTS: Under the Public Records Act, anyone can come in and look at the records, or obtain copies, you are correct.

JOHN TENNYSON: But, that would only apply to the inspection that was done last year or six years ago or whatever.

TRAVIS PITTS: At whatever point in time the inspection was made, it will only be to the degree of our knowledge and certainly might not cover whether or not it is next to a toxic dump or the other problems you might run into that I wouldn't cite in the first place, because I am not in control.

JOHN TENNYSON: Ok, where are we now? Further comments, questions? Mr. Kingston?

RON KINGSTON: Go ahead.

RICHARD WEINER: I still think we have to leave it at this. The purpose is not to deceive the purchaser. The purpose is, our purpose, is to try to separate the

RICHARD WEINER:

obligations because you have the manufactured home, not where it is located, the park is not really part of that home. Our purpose is to try to separate that liability and it seems to me that we are doing it as best we can. I think we will not be able to solve that. I'm not sure that we can't explain that. The intent is to make that separation, not to try to get bogged down in it.

JOHN TENNYSON: Mr. Sams.

JIM SAMS: That still means that what you say would be true, that a park manager might not respond on this. Then there would occur liability if a person moved into a space and there was a problem there and they had not responded. Would that raise the level of liability?

RICHARD WEINER: You mean the liability of the seller or ...?

JIM SAMS: No, of the management for not responding to a legitimate request as to the condition...

RICHARD WEINER: I wouldn't think so, without further legislation.

JIM SAMS: So, actually, we are proposing here something which is only dependent on the good will of the manager. I don't like to belabor that, but my position here is to protect the resident. And, I would assume that if I would write to the manager and ask for an assessment of that particular lot and they did not respond because there was something wrong with it, to me that would, I would presume that would be liability.

JOHN TENNYSON: No, we went through this with Mr. Dobro's question about mandating it, and we talked about whether that should be in here or separate legislation and I think--obviously we had different opinions here--but, I think the majority of us are of the view that we are trying to focus on the home, here, and not get too far afield on the other issues that may be endless. If I'm not misspeaking here. Further comment? You had other points, Mr. Kingston?

RON KINGSTON: Yes, I have a question. Does this apply to a mobilehome condominium?

JOHN TENNYSON: A mobilehome resident-owned park situation? If it's a mobilehome, yes. The mobilehome certainly would be subject to disclosure.

MILAN DOBRO: The Mobilehome Residency Law applies to the individually-owned park as well.

JOHN TENNYSON: Well, this isn't really tied into the Mobilehome Residency Law.

RON KINGSTON: I guess I'm even more confused now, than almost ever because, if I'm selling my mobilehome -- stay with the example, here -- if I'm selling my manufactured home to Travis in a mobilehome park, I have certain duties and obligations here, as prescribed in this concept. If I'm selling my manufactured home to Travis, which happens to be in a condominium, that would fall under Civil Code Section 1351, etc. Today, I have different disclosure obligations concerning the operation of the mobilehome condominium unit. It seems to me that you would say that these provisions shall not apply in that situation where it is a mobilehome condominium unit and that Sections 1351 of the Civil Code, etc. do apply. And, all I'm doing is asking. This is a point of clarification because you don't want to have two conflicting differences here because if I am buying a mobilehome in a condominium then I want to know the condition of the common area because I will have financial duties and obligations to maintain them. I'm the guy who is part owner.

RICHARD WEINER: There isn't any exclusion in those code sections for condominium mobilehome parks, is there?

RON KINGSTON: No, but what I'm saying to you here is we're constructing an internal conflict and we're going to have to say if you are purchasing pursuant to that body of law, then this doesn't apply.

JOHN TENNYSON: Are you talking about all common interest developments? under 1351? In that way, it would include not just condominiums, it could include a whole host of other types PUDS, maybe even co-ops in some cases.

RON KINGSTON: All the five different types of common interest subdivision units that are currently permissible under California law.

RICHARD WEINER: I think we can cover that with a sentence or two.

JOHN TENNYSON: What is GSMOL's position on that, or do you want to think about it for a minute?

JIM SAMS: A little over my head, John.

JOHN TENNYSON: Well, his point is that under current law, where you have a common interest development, where you have co-owners, the mobilehome owners have an interest in the common areas, not just the home, so should this exclusion for information regarding condition of the common property, park property, apply in that case?

JIM SAMS: I don't see a problem with that. The person whose occupying the mobilehome is the basic owner, I would assume.

JOHN TENNYSON: You don't see a problem with what, taking them out of this, or leaving them in?

JIM SAMS: No, leaving them in. I think...but again, I'm in waters here which I'm not that informed on.

JOHN TENNYSON: Ms. McLees.

JERI McLEES: John, when we started this "park," we talked about the definition of "park" and what we defined "park" from was the Mobilehome Residency Law which is "a manufactured housing community or a mobilehome park." "Mobilehome park is an area of land where two or more mobilehome sites are rented." I think we need to exclude them, and I think we can do that with just a simply language...

JOHN TENNYSON: But, "a mobilehome park" in the Health & Code is also a resident-owned park.

JERI McLEES: But, we are not using the Health & Safety Code and we use the Civil Code definition, so it would not necessarily be a resident-owned park, because then you do have co-owner and there should be disclosures of the real property which you would have an ownership interest.

RON KINGSTON: Alternatively stated, you could just say at the very end of this bill, or words to this effect, "This act shall not apply to any subdivision of property that is organized under 1351 of the Civil Code."

JOHN TENNYSON: So, what you are saying then, you are saying not just this sentence, you are saying this Sub B shall not apply. Is that what you are saying? That anybody who has a mobilehome in a resident-owned park or common interest development subject to 1351 shall be subject to the other requirements under 1102?

RON KINGSTON: 1102, right.

RICHARD WEINER: I would prefer to exclude it just from this sentence. I think it is the heart because I think the legislation was designed to cover manufactured homes in whatever capacity they were owned. This particular problem, I think, because there is ownership of common areas, really must be excluded but that, I think could be covered just by excluding that from this last sentence.

JOHN TENNYSON: Ok, let me raise another question, if I might. In a number of these resident-owned parks, you have homes -- mobilehomes, manufactured homes -- that are not owned by people who have an interest in the... who are not participating in the condo buyout or what have you. In some cases, even after resale it continues to be a rental. What do we do with them?

JERI McLEES: It seems to me that in those instances where we talk about a rental of the lot and we define "park" as something as rented...

JOHN TENNYSON: We aren't talking about a sub-lease, now.

JERI McLEES: No, I know what we're talking about. You are in a resident-owned park...

JOHN TENNYSON: They are like a regular rental park, but the management, in this case, happen to be the rest of the homeowners.

JERI McLEES: Right, and I am in agreement with you. What I am saying is, they then should go to the management of the sub-division for the information, and they go to the management of my park when it's a privately-owned park. The seller of that unit still can only disclose those things relating to that unit, if they are renting the homesite, if they are renting the lot. They cannot disclose those things that are on the underlying real property. Am I right, Mr. Weiner? So, I think we are...the same thing is true if the home is located on private property then the seller discloses things relating to the real property. If the home is located on a rental property of any sort, whether it is resident-owned or privately, the seller can only disclose those things which he or she is transferring. Can't disclose things that he doesn't have control over. The point is well taken, and I think it is an extremely good point, but I think the way to do it is with the simple exclusion of...if this is a park or this is a site which is going to be rented, maybe, that's what you do, people have to go to the ownership or management of the park.

JOHN TENNYSON: Ok, with regard to the exclusion then, what is the desire of the Task Force? Should they be excluded from Sub B and be subject to 1102 or are we just talking about this particular sentence? Mr. Kingston.

RON KINGSTON: I think that the most expeditious way, perhaps, would be to say, "1102(b) shall not apply should a manufactured home and the underlying real property be transferred as real property." And, then you basically stay as is. So, if it is a mobilehome in a park, that is a homeowner owned park, and you just sell...the seller, for whatever reason, decides to hold on to the property and just decides to sell the mobilehome, this would operate. On the other hand, if he sells everything which is then real property, then the current transfer disclosure statement, as it is today, shall be required to be delivered to the buyer. So, keep existing law the way it is, but you enunciate the way it happens, so...

JOHN TENNYSON: The trouble with that is some of these are not real property. You have situations where you have co-op or stock non-profit corporations, what have you, where they have a stock interest and they don't actually have ownership of the lot itself. This wouldn't apply in that case. In other words, ...

RON KINGSTON: There are only five stock co-ops that I am aware of in the state of California. Not one of them is a mobilehome park. Unless that's changed in the last two years.

JOHN TENNYSON: Well, there are a lot of non-profit corporations out there where they don't own the -- I don't have the facts and figures -- but, where they don't own the actual lot.

JIM SAMS: That is correct. There are a number of them that are just co-ops. They own shares and that's not dealt with here.

JOHN TENNYSON: Mr. Dobro.

MILAN DOBRO: In a resident-owned park, they have people they select to serve as managers. Wouldn't the same conditions that we listed here before apply where someone wanted to buy one of those homes? The seller would say, "You can find out the disclosure by going and talking to management." What difference does it make if the management is selected by owners or a manager that is appointed by the park owner?

JOHN TENNYSON: Well, I think the issue here, Mr. Dobro, is whether the homeowner has ownership and control of the...in other words, if you have a condominium or subdivided interest, particularly, he or she is going to have ownership of not just the home, but of the meets and bounds description of the space or the actual lot, plus, of course, ownership of the common areas, or park ownership, so therefore, the question is, isn't that closer to the actual conventional sale of real property in terms of ownership and control versus a rental situation where they have no ownership and control and, probably, no knowledge.

MILAN DOBRO: Well, wouldn't the same thing apply, though, if the selected manager was approached, and he said, "Well, we have a sewer problem under that home," he would tell them that. If he were asked, and if he was legitimate and replying correctly. Wouldn't a manager give the same information out, especially in a resident-owned park?

JOHN TENNYSON: Well, they could. Again, there's nothing in here that requires them to give and that's another issue.

MILAN DOBRO: Well, I think we're talking inquiries here that would not subject the seller to liability if he doesn't disclose it. I don't know, I think it is the same issue there.

JOHN TENNYSON: Mr. Pitts.

TRAVIS PITTS: Could we get around Mr. Kingston's current issue by again amending that section that says, "Seller or their agents shall not be required to disclose, etc." Proceeding that by "except as required by Section 1351 of the Civil Code the seller shall not be required." Then, 1351, as you pointed out already, has specific requirements for disclosure in the instance of a condominium, or co-operative, so we wouldn't be changing anything.

JOHN TENNYSON: Well, I think there may be a distinction there. I think what Mr. Kingston wants is for those that are in condo-type parks to be required to comply with 1102 as it exists today, not 1102(b). Whereas, your proposal would only deal with this particular sentence, if I am understanding what you are saying. I am clear with regard to what Mr. Kingston would desire, but I'm not clear with regard to what the rest of the Task Force wants to do on this, at this point. Yes, Ms. McLees.

JERI McLEES: It is our position that this disclosure form should be used for the sale of all manufactured housing, that's the purpose of it, whether or not it is on rented property, or owned property, by the seller. The only difference is, is what the seller can disclose as it relates to the underlying property or their ownership interest. And when posed a question, it, perhaps, can say something along the line, "if the home is going to be located on a lot which is to be rented, or which a tenancy is going...," something like that -- I'm looking to the lawyers for maybe a better legal term -- so that, therefore, that sentence relating to the disclosure on the property would then go to the management. If the lot is going to be purchased or the ownership interest, whether it is a stock co-operative or whatever, is going to purchased, then all of the disclosures regarding the underlying property have to be made as well.

JOHN TENNYSON: Or, if the ownership interest is subject, as Mr. Pitts had suggested, to the requirements of the Common Interest Development Act.

JERI McLEES: Right. And, that's fine with me, as well, because I think that what we are trying to differentiate is if it is a rented piece of property.

RICHARD WEINER: We've covered that. Travis has covered that except for this one instance of a rented...

JERI McLEES: Site. Yes, but that's what I'm concerned about, but I think we can resolve that easily. We've got so many words out here, now, I'm getting a little confused. But, by putting in there, "a lot which is for rent, or will be rented," or something like that, it can be put right in.

RON KINGSTON: Jeri, the simple way to do this, as I'm just constructing language, if the transfer is subject to Civil Code Section 1351, this section shall not apply.

JOHN TENNYSON: So, "b" shall not apply.

RON KINGSTON: Yes, 1102(b) shall not apply.

JERI McLEES: But, 1102(b) is the entire disclosure.

JOHN TENNYSON: That's right.

RON KINGSTON: Yes, because if the transfer is real property, this doesn't apply. If it is not real property, this does apply.

JERI McLEES: Ok.

RICHARD WEINER: Then we have a property stock co-op.

RON KINGSTON: No, because stock co-op is defined under 1351 as one of the five forms of common interest subdivisions.

JERI McLEES: Ok, but 1351 is only the condos, subdivisions, whatever those five are, it's not the mobilehome located on private property? Is that correct?

RON KINGSTON: Anything that is a subdivision of property which includes common interest ownership is under Section 1351. It's called the common...

JERI McLEES: Ok, ok. So, if I have a mobilehome that's located in Folsom on an acre of land and I'm going to sell that home...

JOHN TENNYSON: That's covered under current law.

JERI McLEES: That's goes under current real estate law, right?

JOHN TENNYSON: If it's fastened to the ground, yes.

JERI McLEES: If it's fastened to the ground. Ok. And, if I have a mobilehome in a subdivision, the 1351 group, then current real estate disclosure form will take effect?

RON KINGSTON: Generally, yes, because every piece of property is subdivided. So, that's why I'm trying to get to the form of ownership of the subdivision. If it is a subdivision that falls under the purview of the Davis-Stirling Common Interest Development Act, then that shall govern. If it's normal real property, under your one acre lot example, and it's not in a common interest development then the regular TDS applies. If, however, it lies on a parcel of land that happens to be rented or leased, conceptually, as I understand it, 1102(b) would generally apply.

JERI McLEES: Ok, so if I own a home in the mobilehome subdivision, but I am a renter of the lot, then this would apply?

RON KINGSTON: Yes. If the transfer is subject to Civil Code Section 1351, 1102(b) shall not apply.

JOHN TENNYSON: Is everybody in agreement with that?

RON KINGSTON: Or would you say, "This Act shall not apply if the transfer property is subject to 1351?"

RICHARD WEINER: Again, you are talking about excluding the entire Act as opposed just to this sentence about the...

JOHN TENNYSON: Not Sub B, the pages we are working on.

RON KINGSTON: You have to, because you are distinguishing the difference between real property and all other, which is...

JERI McLEES: Yes, and I think that is right because what we were trying to do at the inception of all these, I believe, is to get some kind of disclosure on the

JERI McLEES:

personal property. The other interests, ownership interests, are covered by other aspects of...

JOHN TENNYSON: Except where the home is owned by a person who is renting or leasing the lot.

JERI McLEES: Right. But I think what Ron is saying -- it might now be in that language -- I think what Ron is saying is that that transfer would not be covered under 1351 if I was renting a lot in a resident-owned park, because I can't transfer an ownership interest. So, therefore, if he says, "Except for transactions which are covered by 1351, this shall not apply." Any other transaction will apply. So, I think that covers that, John. I agree with Ron.

JOHN TENNYSON: All right, where are we now?

RON KINGSTON: The way I would say this is, "This Act shall not apply to transfers of property subject to the provisions of Civil Code Section 1351, etc."

JOHN TENNYSON: Ok, are there any other issues with regard to the WMA/GSMOL proposal? Then, what we'll do during the lunch break is try to type this up the best we can and have it for you when you come back. Let's go on, if you are done with this, to Sub 1 now, if we are finished with this. Just one thing more. Dick.

RICHARD WEINER: As far as 18046, I am afraid that when talking about the seller defined in Section 18046, it doesn't really define it.

JOHN TENNYSON: Well, we haven't defined it yet. We're going to have to work on that this afternoon.

RICHARD WEINER: I know, but the wording, I don't think, is correct. I think we are going to have to put it in some other...18046. Do we have a copy of 18046?

JOHN TENNYSON: Right. My point is that we discussed last time defining seller or agent in that Section, or it doesn't have to be that Section, but that's what we discussed, and this is the perception. It's not meant to say, "It's 18046 as it exists today." It is 18046 as we have proposed to amend it in the same bill. Mr. Pitts was the proponent of using this Section as the area to define this agent/seller. Isn't that correct?

TRAVIS PITTS: Yes, you are correct. The assumption was that we were going to completely rewrite 18046.

RICHARD WEINER: Or put in some other code section.

JOHN TENNYSON: Mr. Kingston.

RON KINGSTON: Not to belabor this issue, but one thing that occurs to me that people will need to, more likely than not, defend against when this issue comes up in the Legislature, is if a park manager does not disclose a certain condition, the buyer purchases, relies that the park is of a certain quality and determines that it is far lessor quality than that, will the buyer have a cause of action against the park management for failure to maintain the park and they have actually suffered damages as a consequence? And, I guess, now it is beyond...I think what is going to be argued is that it is beyond the scope of this bill. But, I will suggest to you this will come up before the Judiciary Committees, and I mean this bill just begs the question of this fact, and eventually the park management will probably need to defend against that.

RICHARD WEINER: But, why would it be any different than it is now?

RON KINGSTON: Simply because when you raise the new sentences, although now it is more than two sentences, but when you raise this type of language in here, "...inquiries are to be directed to park management" and the liability shield for sellers and their agents concerning certain disclosures involving the condition of the park and lot. Unquestionably, I know the trial lawyers well enough that this issue will come up. And, this will be a hard fought issue and you may need to work on an appropriate defense.

JERI McLEES: On behalf of the park owners, we will work on that.

JOHN TENNYSON: Ok, anything further on the language prior to Roman numeral one on the draft from last time. Ok. Roman numeral one. This is the part that was discussed last time with regard to coordinating with other disclosures and information. The Mobilehome Residency Law was referenced and some other things, and that is the reason that we put in the word "information" because some of these things are really not disclosures. "The Mobilehome/Manufactured Home Transfer Disclosure Statement is made pursuant to Section 1102(b). The Civil Code or other Statutes may require disclosures or other information may be important to the buyer depending upon the details of the particular transaction (including, but not limited to disclosures required or information provided by the Mobilehome Residency Law, the mobilehome park rental agreement or lease

JOHN TENNYSON:

the mobilehome park rules and regulations, and park or lot inspection reports completed by the state or local enforcement agency, if any.)

Any comments or questions on this particular verbiage? Ms. McLees.

JERI McLEES: I question, now that we have come up with that language that we just agreed to, whether we need those items enumerated in the parentheses. It seems to me, for purposes of brevity, etc. and lack of confusion we would just say, "Upon the details of the particular transaction." Because all of those other issues will be covered by the inquiry to the management.

JOHN TENNYSON: Comments? Mr. Dobro.

MILAN DOBRO: Should there be a comment listed there whether the location of the park is covered under a rent control ordinance? Because, it is required now in most cities where there is a rent control ordinance. The park owner must give a copy to the potential buyer that there is a rent control ordinance in existence and they are not obligated to sign a lease. They can ask for the ordinance established at one year or less.

JOHN TENNYSON: I'm not sure that's the status of the state code. You may be talking about some local ordinance.

MILAN DOBRO: I'm talking about a local ordinance.

RON KINGSTON: We are going to take strong objection to having that inserted in here. And, primarily because it is about the condition of the property, not a condition of the rental cost and most everybody knows what the rent control is, so if that goes in, we are going to have major problems with this.

JOHN TENNYSON: Any further comments? Mr. Orsburn.

OTIS ORSBURN: Yes, I believe that words in the parentheses are an inclusion that helps the people to understand that there are other things that they need to look to, and I think it is a protection for all to leave those in there. That way, they can't say there wasn't some type of notification to them that there were other things to look for.

JOHN TENNYSON: Ok, Mr. Sams.

JIM SAMS: I would agree with that. I think that we need that language in even though it may be a little bit extra.

JOHN TENNYSON: Mr. Weiner, I believe is first, then Mr. Kingston.

RICHARD WEINER: Assuming that broadly that's sufficient enough listing, then I think it should be included in the way it is.

JOHN TENNYSON: You could say, "not limited to."

RICHARD WEINER: Yes.

JOHN TENNYSON: Mr. Kingston.

RON KINGSTON: I have three comments. One, the last closed paren at the end of the paragraph, where is the opening paren of that?

RICHARD WEINER: Including. It starts, "including."

JOHN TENNYSON: Including. There is a sub paren in there.

RON KINGSTON: But, then you have "including" and then you have another closed paren within that open and closed paren within that paren?

JOHN TENNYSON: Yes, to elaborate what the Mobilehome Residency Law is.

RON KINGSTON: Well, then for grammatical purposes then, Civil Code, that probably would be in brackets.

RICHARD WEINER: Or you could just put it in commas. That would probably be ok.

RON KINGSTON: But, to start from the very top. The current law says "coordination with other disclosure forms." And, this we fashion, "coordination with other disclosures and information." What do we mean by the term "and information?" Would that be misleading to the consumer?

JOHN TENNYSON: No, I think it was designed to be helpful, because these are not all disclosures. The inspection reports are not disclosures, they are information, basically. There is no requirement, under current law, for those to be disclosed. Basically, what we are saying here, "These are the things you might want to take a look at." That's basically it.

RON KINGSTON: It should be disclosure...for me. I'm not going to raise that as a ...

JOHN TENNYSON: Proposing the word "information," I just thought it was less...Whatever the desire of the Task Force is. I don't have any personal pride of authorship on that. If you think it is misleading, then we'll take it out. We'll take it out, then, if it is misleading. Is that what you want?

GROUP: No. Keep it in.

RICHARD WEINER: None of these things are disclosures. None of these. Mobilehome Residency Law is not a disclosure. The rental agreement or lease isn't a disclosure. And, neither are the park rules and regulations. Those are all information. What you are saying is there may be some disclosures.

JOHN TENNYSON: Ok, what else?

RON KINGSTON: The word, second line, second sentence reads, "other statutes may require disclosures." "Other statutes require disclosures." Is it redundant to use the word, "may?" which is a new word inserted in this sentence.

JOHN TENNYSON: He is saying "may" is redundant in the second line, second sentence, where it says, "other statutes may require..."should say "other statutes require..."

RICHARD WEINER: I don't know that there are any.

RON KINGSTON: Yes, there are.

JOHN TENNYSON: And your last point?

RON KINGSTON: Second to the last line. Now that you are using, where it says "park/lot inspection reports."

JOHN TENNYSON: That's basically what it is. They inspect the park and they inspect the lots. They don't inspect the home.

RON KINGSTON: Ok. Travis, I just have a question of you. When you go out and inspect the park, is it a park/lot inspection report?

TRAVIS PITTS: It could be described as that, but we actually do an entire inspection of the park and the lot. The inspection report has been separated. One

TRAVIS PITTS:

for the park and park management, and then others for all the residents of the lots. So, simple variations of the inspection report.

JOHN TENNYSON: Well, if you want a better way to describe that, we can all it the "mobilehome park and resident lot reports."

RON KINGSTON: Yeah, whatever the law is. However you conventionally refer to them, so people can say, "Ah, yes, this is what you mean." Whatever you call a report, is what I think you should refer to it in this ...

TRAVIS PITTS: The report is referred to in law as a Notice of Violations.

JERI McLEES: We don't want that in.

RICHARD WEINER: The other state agencies and local governmental agencies would also use some kind of inspection reports, as well.

JOHN TENNYSON: No, they are all related to the inspection program, the seven year inspection program. Well, there maybe other reports prior to that as well, but they are all keyed into Title 25. Maybe that's what we need to put in there.

JERI McLEES: Well, maybe we put, "an inspection report completed by," pursuant to Section whatever it is. Whatever that code section that gives us the inspection. Because that's really what we are looking at. It is not really at the park/lot inspections.

JOHN TENNYSON: We could say, "according to administrative regulations Title 25," something like that. Would that be sufficient?

TRAVIS PITTS: Well, that would be more specific or, "inspection completed by the state pursuant to California Code of Regulations, Title 25.

RICHARD WEINER: Would there be any local reports, or is that all inclusive?

TRAVIS PITTS: No, it is not all inclusive. There could be others. We've run into this before. I think it would be better if we strike the "park/lot" and just leave "inspection reports completed by state and local agencies", because we've run into one recently where we had a homeowner cited for some sort of fish pond that the local mosquito abatement district was dealing with. I wasn't dealing with it. But, the mosquito abatement district got after a homeowner and when the park

TRAVIS PITTS:

operator took exception and the homeowner wouldn't correct it under provisions of the Civil Code. So, it's not just HCD.

JOHN TENNYSON: But, that's not a Title 25 violation.

TRAVIS PITTS: It is not Title 25.

JOHN TENNYSON: We don't want to get into all of them, either, and have a list that would cover several pages.

RICHARD WEINER: So, you are suggesting crossing out "park/lot" and putting in?

TRAVIS PITTS: Inspection reports.

JOHN TENNYSON: Yes, but the buyer won't know what the inspection report, pursuant to Title 25 is. I think you need to have some kind of a description of the inspection of what? Inspection of the park and or lots, something like that. What Mr. Orsburn said earlier, so that people have a better understanding, providing them with "consumer friendly" information, if you will.

TRAVIS PITTS: Mr. Chairman, Travis Pitts. I am arguing that you make it very generic. Just inspection reports, not Title 25. Just to alert them that there are other things out there, but I don't think that we have the capacity to enumerate what all of those were because I never knew the Mosquito Abatement District cited...

JOHN TENNYSON: But we aren't trying to. The most important of those reports is probably the Title 25 reports related to the parks in the laws.

TRAVIS PITTS: All right. Inspections by the enforcement agency pursuant to the Mobilehome Parks Act.

RICHARD WEINER: John, but how does that help the buyer, though, in this case? If there are all kinds of inspection reports that are possible, why don't we eliminate that? I think it is more confusing to talk about Title 25 than it just to have this say that there can be other park or lot inspection reports.

JOHN TENNYSON: What we are trying to do is to --and I believe this has come up at an earlier hearing in regard to disclosure -- the issue of people knowing about -- I think Senator Ayala brought this point up -- knowing about whether

JOHN TENNYSON:

these parks and the lots, specifically for which they are going to be responsible even though they don't have ownership, they have control, according to HCD, and therefore, if there is a problem on the lot, they've got to pay for it. So, if there had been an inspection of this space or lot by the enforcement agency and there is a report on it, whether there was a violation or violations and those violations had been corrected or not, that presumably would be of some major importance to a buyer. Because, what has happened as a result of these mobilehomes being bought and sold over the years is that you have violations on the lot, you have a storage shed that has been improperly located or you have other problems, set-back requirements that the third or fourth or fifth buyer doesn't know anything about until there is an inspection, and now they have to pay for it. And, they are not happy, let me tell you. I've dealt with dozens of these people. And, we are going to be hearing from dozens more at a hearing regarding the inspection program next month, and that's the reason that was put in there. But, if the Task Force doesn't think that's important, we'll leave it out. Mr. Sams.

JIM SAMS: I have a question. Is this going to include inspections of the park violations as well, like loose stands for electrical or various kinds of problems with the land? Now, you are talking about inspections of the mobilehome. Will this also include the violations of the park on that particular lot, which they will also have to deal with?

JOHN TENNYSON: Well, they would have access to that information as a matter of public record if they are smart enough to seek out that information and obtain copies of it from the enforcement agency and then they could find out about them, yes. That doesn't mean anything is going to be done about it, but at least they know about it, and that's what we're talking about here. There's nothing that mandates, as we've gone over this again and again and again, that this be disclosed. It's merely saying, "There is such a thing. Maybe you should know about it." And, if they are aware and want to find out where to get that information, it's not impossible to find out. Yes, sir.

RICHARD WEINER: I think it is just fine the way it is.

JERI McLEES: One semantic thing. Shouldn't it be "inspection reports, if any, completed by state or local enforcement agency"? Because, it sounds like, it may or may not...

RICHARD WEINER: It has "if any" at the end, so wherever you want to put it in.

JERI McLEES: Yes, I think it ties to the reports itself. Are we keeping park/lot in or out? I'm confused.

JOHN TENNYSON: I think we are going to say "inspection reports completed pursuant to Title 25, California Code Administrative Relations by the state/local enforcement agencies." It is my understanding that the desire was that we take park/lot out?

RICHARD WEINER: Again, I'm not satisfied with the Title 25 because it is not necessarily all inclusive. You might want to say "including Title 25 inspections."

JOHN TENNYSON: I was going to say, " park or lot," or "park and/or lot inspection reports."

JERI McLEES: I think, if I'm not mistaken, Title 25 does not mandate the inspections. It's the Mobilehome Parks Act Statutory Safety Code Section that does so.

JOHN TENNYSON: Plus, there are reports that have been done prior to the O'Connell bill where somebody registered a complaint and regardless of...we're not talking about the inspection program, we're talking about the fact that...the enforcement of Title 25, however that is accomplished.

JERI McLEES: But, that comes under 18300, or whatever it is of the Health & Safety Code. Title 25 is just the regulations for compliance, but the inspection report has got to be generated by statutes. Am I right, Travis? Again, we are being rather technical, I know.

TRAVIS PITTS: Yes, we're being technical. You are technically correct. The mandate for the park inspection and, in fact, the notice of violations is spelled out in the statute today. While the inspections, however, are conducted pursuant to Title 25 and the citations are issued pursuant to Title 25, so I think it could easily go either way, as required by law and conducted pursuant to regulations so if it said, "completed pursuant to Title 25, CCR" that's all we're citing, is Title 25, CCR, not the statute.

JOHN TENNYSON: Mr. Orsburn.

OTIS ORSBURN: How about "and any park or lot inspections performed by state or local enforcement agencies"? So, that covers whether it's Mosquito Abatement, HCD,...

RICHARD WEINER: And, it's not very different from what is in there now. I think that's fine.

OTIS ORSBURN: That would clarify whether it is a park or a lot.

RON KINGSTON: Can I just ask one question? If it was completed 15 years ago, is it pertinent? Inspection has occurred and has been corrected. Travis goes out there with one of his deputies and says, "The park has the following violations." It lists A through Z. And, that was 1990 and now it is the year 2010. Is that inspection report important?

JOHN TENNYSON: If the violation has never been corrected, it would be.

DENISE DELMATIER: It may or may not be, exactly.

RICHARD WEINER: What difference does it make?

RON KINGSTON: Well, it does in so far as how long do you keep the inspection reports. And, how long do you disclose them?

RICHARD WEINER: But, we're not trying to define any of that. All we're saying is that there may be other inspection reports out there. You go look for them. That's all we're saying.

JOHN TENNYSON: How long do you keep the records, Travis?

TRAVIS PITTS: We did keep them about three years then we purged them. Currently, under this inspection program we have kept them since 1991. But, we will be purging all of those that are in compliance and only maintaining those that indicate a violation. I think, going back to what GSMOL said early on, that impressed me, the purpose of this section is to alert buyers that there are other sources of information. It is not to resolve the problems of the world, and I think as it is currently written, it does that, and I can see that it does not resolve the problems of the world.

JOHN TENNYSON: Anything else on this? Ok, real quickly, do we have any issues under Substituted Disclosures? "The following disclosures have or will be made in connection with the transaction, and are intended to satisfy the disclosure obligations of this form, where the subject matter is the same: ..." and this was basically taken out of the existing 1102. Smoke detection certification was something Mr. Pitts pointed out at the last meeting. Mr. Pitts.

TRAVIS PITTS: Mr. Chairman, in the interest of time, I would like to strike the reference to smoke detector certification. We will offer you another amendment to another provision of law that deals with the issue that doesn't affect this form. We'll use this form in lieu of current law. We have a separate requirement under the law now to provide a statement that a smoke detector is installed. We would amend that provision of law to simple reference this transfer disclosure statement as meeting the requirement.

JOHN TENNYSON: What do they check, the smoke detector?

TRAVIS PITTS: Correct.

JOHN TENNYSON: Anything else on this? Mr. Weiner, go ahead.

RICHARD WEINER: I was trying to figure out what this sentence says. "...pursuant to receipt for deposit form or contract of sale."

JOHN TENNYSON: Well, I believe the statement is from the existing law.

RON KINGSTON: It is a little bit different. Current law says, "Inspection reports" instead of "home inspection reports completed pursuant to the contract of sale or receipt for deposit."

RICHARD WEINER: What's the intent of the sentence, as you understand it?

JOHN TENNYSON: The reports where the buyer wants a report of the inspection of the home. You hire a private inspector to come in and inspect the home. Isn't that what we're talking about here?

RICHARD WEINER: I was just trying to figure out whether those reports take precedent over this? You are talking about substituted disclosures. That's what we're talking about, isn't it? It says, according to this sentence, "The following disclosures have or will be made in connection with transaction, and are intended to satisfy the disclosure obligations of this form..." Does that mean that you don't have to give the form? You don't have to give this form?

JOHN TENNYSON: This form here or the other one?

RICHARD WEINER: The law requires you to give the other forms. So, in other words, nothing covered in this form, as long as it's the other form that's given where the information is the same then that report takes preference, that's what this says. If that's what the intent is then it's fine.

JOHN TENNYSON: Yes, I believe that's, as I understand existing law, that's the case.

RON KINGSTON: The second thing, just from a legal standpoint. One thing we deleted in here is somewhat of a mystery to me. Following the word, "transfer." "The following disclosures have or will be made in connection with this transfer..." You deleted the words...

JOHN TENNYSON: "Real estate transaction." I believe we put "transaction" because this isn't necessarily a real estate transfer.

RON KINGSTON: The subject matter is the same. Ok. A couple of points, one of which is when you have bullets...Well, let me back up for a minute.

JOHN TENNYSON: Ok, well, we don't have squares in our computer so...

RON KINGSTON: Well, the squares... it sounds kind of funny, but people just don't know how to deal with bullets. Do they check it? Do they do whatever? So, we probably should have little squares or check boxes. And, "other" has been perhaps the most -- sounds very detail oriented -- but has been the most confusing element of the current transfer disclosure form because nobody knows how to complete it. Nobody knows what to do with it. They all leave a question mark. It's better to provide by example what you mean or leave it silent. But, if you leave "other" everybody throws up their hands and this is an intensely litigated issue.

JOHN TENNYSON: Ok, we'll take it up. Are there other conditional things that should be included on this or in this area, substituted disclosures? Relating to mobilehomes, I'm sure there are.

RICHARD WEINER: I was just wondering. It says, "Home inspection reports completed pursuant to the contract of sale or receipt for deposit." Does that mean that if a home inspection report is called for in the contract of sale, that then is substituted for this disclosure form? Is that what we are saying? Do we mean to say that?

JOHN TENNYSON: Well, I would say only to the extent that the inspection report covers everything that is in here. If all of these items that are enumerated in A, B and C are included, then, yes. If not, then only those items that are in that report.

RON KINGSTON: Let me respond. In terms of how the litigation has gone on in this regard. After the statement where it reads, "Substituted Disclosures:" -- these

RON KINGSTON:

are instructive words that the court has looked at -- "The following disclosures have or will be made in connection with this transaction,..." So, it is in addition. The courts have determined that it is not to replace it is to add to, to supplement, if you will. And, so, because they didn't want this to be end all-be all, number one. Number two of which is a constant legal question arose concerning the following words and are intended to satisfy the disclosure obligations of this form, and let me tell you the reason why we constantly get into this discussion. If I have an affirmative duty to provide you xyz in disclosure, if I don't give it to you in a certain manner, in a certain phrase, phraseology, it will be litigated over. So, the purpose of this form is to say, "As far as what we're asking of you in terms of the content of this form, this will satisfy your legal obligation." And, that's it. Now, if there are other forms that I'm providing you, they stand alone. But, as far as this form is concerned, and the content that is contained in this form, that is deemed to be satisfactory. If you don't have that phraseology in here, you are opening yourself up to major lawsuits.

JOHN TENNYSON: It is not an existing law, either.

RICHARD WEINER: The way I read this if you provide a home inspection report, because the contract of sale says that that's going to be provided, it seems to me that you can take the position, and someone probably would take the position, that that satisfies the disclosure obligations of this form.

JOHN TENNYSON: So, we should just take it out? The whole thing about substitute disclosures? If that's the existing law. Maybe we should just take "substituted disclosures" out.

RON KINGSTON: I would take -- two observations -- I would take some strong objection to it because...for two reasons. One, the words saying in here that they are intended to satisfy the disclosures of this form gives fairly good instructions to the parties of the transactions and to the court as to what the obligations are. And, two, when it says that you have additional disclosures it is putting the parties on notice that there can be other disclosures, that this isn't the end all, be all type of thing. Now, taking back to 1985, the Eastern v. Strasburger case, that case observed that there are many forms of disclosures and a contracted purchase may refer to various disclosure forms. And, those types of disclosures you may substitute or you may not. You just have to instruct the purchaser...well, the parties have to agree to what disclosures are to be made. So, I think your better leaving it in.

JOHN TENNYSON: Mr. Orsburn.

OTIS ORSBURN: I think that if you had a disclosure by the seller that shows that there are problems within the house or non-disclosure of other items and then they have an independent inspection company come out and find things that were not disclosed, so they are going to be adding things, that there needs to be something that addresses... that disclosure form is going to have an affect on this, also. And, although this states that another substituted disclosure would satisfy the disclosure obligations, where the subject matter is the same, maybe we can change the word where it says, "intended to satisfy the disclosure" say, "intended to supplement the disclosure of this form" where the subject matter is the same. Therefore, when you do have other inspection companies coming in, they are going to have valid disclosures that may not be the same as this and they will not negate this disclosure form.

JOHN TENNYSON: Ron, what's your response to that? Supplement? In addition to? Does that help to clarify it?

RON KINGSTON: Supplemental disclosures? Is that what you're...

RICHARD WEINER: Use the word "supplement" instead of "satisfy."

JOHN TENNYSON: "Intended to supplement."

RON KINGSTON: Satisfy is a legal term of art. So, if you use supplement, then it may supplement, but it may not satisfy the disclosure obligations. I think you are opening up a major can of worms.

JOHN TENNYSON: Mr. Sams.

JIM SAMS: I don't see the problem that he sees here, particularly, especially where it says, "will be made in connection with this transaction." I believe that we should leave that language in. I think it's important that we indicate that we allow some other information to be obtained, but I don't think it will, definitely, cause a problem in this.

JOHN TENNYSON: All right, well, at this juncture, it looks like...I was hoping to get to Roman numeral number two, but we got stuck on this point. We'll come back, take a vote on this, I guess, or find some other way of resolving this. Come back at 1:15 pm. Those who are not familiar with the building, there's a cafeteria downstairs and there is one on the 6th floor as well. Thank you.

LUNCH BREAK

JOHN TENNYSON: Being distributed is the manufactured home/mobilehome transfer disclosure statement we discussed this morning which includes the WMA/GSMOL language and take a look at it and see if I left anything out. I'm sure the first question that will come up is why the 1351 language isn't in there. I wasn't totally clear on that. My interpretation was that that would go in the Sub B section since the whole section, not in, necessarily, the form.

RON KINGSTON: In the last sentence of paragraph 1, "The Seller or his or her agent shall not be required to disclose or be liable to the buyer for conditions of the park property, including the condition of the lot." So, therefore, what this sentence is saying is that you are not liable to disclose the condition of the park, but you still may be held liable for failure to disclose. Is that what's intended? Let's just take the sentence apart so we're absolutely clear as to what the intent of those who have proposed this language. "The seller or his or her agent shall not be required to disclose..." Ok? You are not required to disclose the condition of the park property or the lot, that's clearly understood. Then, you have to read the sentence, "The seller or his or her agent shall not be liable to the conditions of the property, including the condition of the lot." So, you are not required to disclose and therefore, but you can still be held liable for the failure to do it. So,...

RICHARD WEINER: You are right. You should add the words "disclose or be liable to the buyer for failure to disclose."

RON KINGSTON: That's right. If that's what the intent is. Because right now, it is a very unusually worded sentence.

JOHN TENNYSON: So, "the seller or his agent shall not be required to disclose..."

DENISE DELMATIER: "...or be liable for failure to disclose..."

JOHN TENNYSON: "...or be liable for failure to disclose to the buyer conditions of the park property including condition of the lot."

RON KINGSTON: It's an important amendment. Is that the intent of the original draftsmen?

JOHN TENNYSON: Shall we repeat that again, or has everybody got that? "The seller or his or her agent shall not be required to disclose or be liable for failure to disclose to the buyer conditions of the park property including condition of the lot."

JERI McLEES: After "buyer," John, we change "for" to something.

JOHN TENNYSON: Take "for" out. Yes, Denise?

DENISE DELMATIER: I ask for clarification. Is there a problem, or could we expand on why...I agree with you "for failure to disclose" is an important amendment, but could you expand on why it should not be "shall not be required to disclose or be liable for failure to disclose to the buyer, or be liable for conditions"? In other words, three clauses there. You are not required to disclose, you will not be liable for failure to disclose to the buyer or be liable for conditions.

RICHARD WEINER: But, I think that would be the law, anyway. The seller wouldn't be liable for the conditions of the park property.

DENISE DELMATIER: Is there a problem with making it explicit in the statute rather than leaving it open to interpretation.

JOHN TENNYSON: I think what the issue was, was a liability for failure to disclose. That's why we're here. That's what this whole issue is about is disclosure. It's not liability for park conditions per se.

DENISE DELMATIER: Well, that was not the discussion this morning. The discussion this morning was one, that the seller ought not be required to disclose, but number two, that we make it explicit in the statute that the seller ought not to be liable for the conditions of the property. Now, I agree that, probably, the interpretation of those two clauses together, the first two, should result in the interpretation that the seller ought not be liable for the conditions, but if that is the interpretation, then what's the problem of including the interpretation in the statutes in making this clear?

JOHN TENNYSON: Maybe you need to explain what you mean by liability. My understanding of liability is liability for not disclosing. If you're talking about being liable, you are concerned about another issue, apparently, and that is liability of the seller for a violation on his or her lot that was not resolved? Is that what you are talking about?

DENISE DELMATIER: Absolutely. Right, that's correct.

JOHN TENNYSON: Well, that's a whole new issue. I didn't even think we were going to get into this.

DENISE DELMATIER: Yes, that is exactly what we were discussing.

JOHN TENNYSON: Mr. Sams.

JIM SAMS: Well, it is an issue, but I don't think it opens a total issue. I think it merely specifically says this, and I agree with Denise that in trying to protect ourselves, we have to have a little more specificity and I think this does the job on that. And, I don't see that it harms the intent of the disclosure.

JOHN TENNYSON: Well, the rest of the Task Force wasn't privy to these discussions, so I'm a little bit in the dark, here.

DENISE DELMATIER: The language says what it says. And, as we proposed it this morning before the lunch break, the language said what it says. But now,...

JOHN TENNYSON: My assumption was you were talking about the liability of your disclosure. That was the implication, anyway, to me. Because, we are talking about disclosure here. That is what this whole Task Force is about. We're not talking about liability for some violation.

JIM SAMS: Wouldn't this come out in the disclosure, John? Wouldn't this be something that could develop very much from the fact of not disclosing? In other words, if there is a failure to disclose, could there not be a ramification where the buyer would come back on you? And the position is very important here, whether we want to address that or not. If we touch on it so that we deal with it here, I don't think it opens it up to all kinds of other expansions.

JOHN TENNYSON: Well, maybe you can explain to me what the problem is in terms of apparently some people in your organization have had some kind of a problem with this? They have been sued by the buyers of their homes because of some violation on the lot? Is that what you are telling me?

JIM SAMS: I cannot cite a specific case. I do know that there are cases where people have bought mobilehomes. They have problems with -- I've cited the Marysville case -- where they have problems with the park land and as a result of that, they have had to sue to remedy the situation. Well, where you have failure to disclose, here, this would possibly let someone buy a mobilehome on a problem lot and as a result of that, it could open it up, without the specified language, to abuse of that.

JOHN TENNYSON: Any other comments? Ms. McLees is this your understanding of your agreement?

JERI McLEES: My understanding of my agreement was that the seller would not have any liability to the buyer for something which is my responsibility, which is the park, because the seller has no knowledge of that integration. I was getting

JERI McLEES:

very confused with Jim when he was just saying about the failure to disclose or not disclose. I think we're talking about apples and oranges, here.

DENISE DELMATIER: Yes, we're moving away from the original intent of what...

JERI McLEES: Well, we're trying to resolve Ron's problem which I think is a very valid problem. And, we're trying to resolve your concern that if we tell you that you don't have to say something or you should not say anything about my property, that therefore, you should not have a liability for those things which I have told you that you can't disclose because you don't have knowledge.

JIM SAMS: Well, and I think you'd find that we have no way of doing anything about that so, therefore, it is a separate situation and one we need to deal with here. And, it's not trying to change the agreement, it's only trying to be a little more specific here.

JERI McLEES: I think in a matter of semantics, though, we're talking disclosure should be one item, that the seller shall not be required to disclose anything regarding park property, and shall not be liable for failure to disclose any of that information. We've covered those at this point. What Denise is saying is correct. When we came up with this first plan, in which we said, "seller shall not be liable to buyer for conditions of the park property including condition of the lot."

DENISE DELMATIER: Without that language, then obviously, the seller would want to disclose.

JOHN TENNYSON: Mr. Kingston.

RON KINGSTON: Two questions. By inserting the language, "or be liable" in this sentence as previously discussed, it raises the following: one -- does this, now, suggest that the damage to the commons area of the park could be occasioned by or caused by the resident change from existing law? In other words, and if the answer is no, that the resident is no longer liable for the conditions whether or not he or she caused the conditions then you are talking about a significant departure from the law. If that's not the intent, then the language needs to be changed because this language is saying, therefore, is that the seller is not liable for any of the conditions, whether or not he or she caused it.

JERI McLEES: No, that's not what the language says. The language says the seller shall not be liable to the buyer, not to anyone else. So, if the resident has

JERI McLEES:

caused a condition that is between me, the owner of the property and my tenant. And, that's between us. The buyer isn't privy to that. So, it doesn't change it at all as it relates to that, Ron.

RON KINGSTON: Is this manufactured home/mobilehome statement a disclosure document? And, if it is, then you may not need this language because all...because, the title of this is that it is a disclosure statement and if it concerns the condition of the property, the common area property, you may not need this language. That particular set of language, unless I'm missing something.

RICHARD WEINER: You mean the last sentence altogether?

DENISE DELMATIER: The last clause.

RON KINGSTON: The clause that reads, after the word "liable" we initially agreed to insert "for the failure to disclose." Denise suggested following "disclosed" insert, "or be liable."

DENISE DELMATIER: No. Return to the initial language and I'm not adding anything. You're adding a clause to include in addition to what's here "for failure to disclose" "be liable for failure to disclose." What I'm suggesting is that by eliminating "be liable to the buyer for conditions of the park property" that is a significant departure from what was discussed this morning, and while you may not have been a part of that, that was certainly the intent of the agreement that was reached with WMA. Now, to eliminate -- as you proposed -- to eliminate "be liable to the buyer for conditions of the park property" that is a significant departure. So, I have no objections to adding in "for failure to disclose" but need to retain "or be liable to buyer for conditions."

JERI McLEES: And, I must concur that that was our agreement with GSMOL and all I was trying to do was say perhaps we're getting so convoluted that we who know what we are doing, but they don't understand what we are saying. And, we need to clean up the language to be very clear resolving Ron's thing which is a disclosure issue, correct?

RICHARD WEINER: The problem is that this is a mobilehome disclosure act and it's really between the buyer and the seller and this is inserting some obligation as to the buyer and the park. I hate to have the judgment of putting in there...there are probably dozens...It probably adds something that wasn't covered by this legislation.

JERI McLEES: I think that it becomes more clear, when we get it cleaned up, that the buyer must look to the park for anything relating to the park. And, the seller has no...you know, it's hands off. And, it highlights to me, I go, "wait a minute. You don't have to disclose it so therefore I really do have to go to talk to the management." Which is what I want the buyer to do in the beginning. What if we did two sentences. "The seller or his or her agent shall not be required to disclose or be liable for failure to disclose to the buyer conditions of the park property including the condition of the lot." Then, take the same thing, "The seller or his or her agent shall not be liable to the buyer for such conditions." And, its only liability to the buyer the seller may still be as is current law, liable if it is something they caused to me, the park owner. But, that's a separate matter.

JOHN TENNYSON: Ok. Discussion on the proposal as Ms. McLees has elaborated?

DENISE DELMATIER: That would be acceptable to GSMOL.

RICHARD WEINER: Just a question. What if there is no disclosure? Can the buyer be responsible, if there is no disclosure?

DENISE DELMATIER: By whom? If there is no disclosure by whom?

RICHARD WEINER: By the seller.

JERI McLEES: I'm confused, Dick.

RICHARD WEINER: "The seller shall not be required to disclose or be liable to the buyer for failure to disclose..." And the, you just wanted to add...

JOHN TENNYSON: She wants to add an additional sentence that says that, "the seller or his or her agent shall not be liable to the buyer for conditions of the park property including the lot."

JERI McLEES: Which is what the language was that we started out with this morning.

JOHN TENNYSON: Mr. Deiro.

PAUL DEIRO: We're moving away from disclosure with that last sentence.

JIM SAMS: We realize that but there needs to be some additional language giving more protection and this is agreed to by both WMA and ourselves, and I fail to see how a buyer could assume some liability that already was a liability before they

JIM SAMS:

took possession of the space unless it would be defects in whatever, the sewer or the electrical or whatever, but otherwise, I don't see how that's a threat, by changing the language.

PAUL DEIRO: I don't see it as an inconsistent disclosure for this form, if it's agreed upon.

JOHN TENNYSON: Mr. Orsburn.

OTIS ORSBURN: My concern is we are protecting the seller and you have a buyer now coming in. We're are doing a great job of protecting the seller of this house. But what about the good people that are buying it would like to be coming in and I believe we are assigning a strict liability to the park for some causes that may have been affected by that person that lives in the house now, such as infringing on drainage of the lot by inserting things around or under the house to stop the lot from draining like it is suppose to. That shouldn't be a liability of the park. However, if we assign it and say that anything to do with the lot belongs to the park, then that seller gets off scott free and the park is going to get caught with a lot more liability then they are bargaining for here. So, I am concerned about that. I am glad you are agreeing, but I think we should understand what we are agreeing to because you are going to have a lot of new buyers coming in. The sellers are going to get off. They are going to be gone out of the parks. I would be concerned about our new people coming in, too.

JIM SAMS: Well, we are also concerned about that. We might lose the right track here, but we don't intend to. I just have a problem with trying to maintain the protection for the seller and handing something to the buyer because the seller has an investment. The buyer doesn't have an investment, yet. He has to ascertain whether or not he wants to invest. But, the seller does have an investment. So, I think the emphasis has to be on protecting the seller and I still fail to see how there could be a liability against a buyer which was already there. Now, we were talking with WMA this morning and we said that yes, we can understand that if somebody changes the contour of the land and causes the problem, then, of course, I don't really feel that the park should be liable. But, I think that's up to the park to view their land and see if this is being done. And if it is, put a stop to it.

OTIS ORSBURN: Ok, but that's not what the statement says. The statement will say that the park is liable for anything outside of the house. There isn't a choice.

JIM SAMS: What part of it says this?

OTIS ORSBURN: It states right here that the seller shall not be required or be liable to the buyer for the condition of the lot. Period.

JERI McLEES: How can the seller be liable under current law for the condition of the lot to the buyer?

OTIS ORSBURN: It creates a condition on the lot that...

JERI McLEES: But, he responds to me, the park owner, the owner of the real property.

OTIS ORSBURN: But it affects the structure. Let's say that it affects the structure.

DENISE DELMATIER: Then, we're required to disclose, if it affects the structure of the home. Anything related to the home, the seller is required to disclose.

OTIS ORSBURN: Which is drainage, ok? Let's say it's drainage that's causing it and how they have landscaped.

JERI McLEES: And, if the drainage and how they landscaped is affecting the home, the home settling, the home, whatever it may be, they would have to disclose and I think that is in here. But, if the seller just happens to know what affects the drainage that has nothing to do with the home, that is between the tenant and the park owner. And, if there is a problem like that and a buyer who comes in and inspects my homesite and enters into a written rental agreement with me that he accepts that homesite as it is, then we have a contract. But, he who left should have a liability to me not to the buyer.

JOHN TENNYSON: Mr. Kingston.

RON KINGSTON: A couple of observations. First, when it says...the language seems to indicate the seller is not liable for conditions of the park. Without saying the park is liable, it seems to imply that not only is the park owner responsible for those conditions, but the remaining residents. So, if you were...for point of argument, if you let this language alone you would, therefore, suggest that the remaining residents are liable and the park owner. If you wanted to clarify that point, and just say that WMA clients are liable for conditions of the park you best say it that way.

DENISE DELMATIER: We're not saying that.

JERI McLEES: We're not saying that.

RON KINGSTON: Do you understand the issue?

DENISE DELMATIER: Yes.

RON KINGSTON: Because, all you are saying is the seller...

DENISE DELMATIER: And, that's all we want to say.

RON KINGSTON: So, you don't mind having the rest of the residents and the park owner be liable for the conditions of the park.

DENISE DELMATIER: It's whoever is liable for the property, and if someone wants to sue down the line, that's up to a court to decide. All we're saying is very narrowly that the seller is not liable for the park property. Period.

RON KINGSTON: All right. By implication you may be getting yourself into some more problems than you realize. I'm just suggesting that you may want to consider that. The second point is as you attempt to design a legal scheme to exculpate the seller and agent from these types of duties, you can't do that by just saying it in a statement, not a statutorily prescribed form. You've got to do that in a separate code section. You've got to...you try to write something by just a form and say, "Yep, that's going to do it." But, unless you've been schooled in the law, I would suggest to you that you now have to step aside from this and not only write a disclosure statement, but now you are going to have to a separate code section to achieve your goal.

RICHARD WEINER: I'm not sure that really is such a problem that you are curing, anyway, by adding this language. I don't know that there is anything that you are really protecting the seller from. As between the parties, if there was something that was caused by the seller, he is going to be liable. If it isn't, I don't think he is in any event.

DENISE DELMATIER: Then, it shouldn't do any harm.

RICHARD WEINER: There is a lot of things we can add that I'm, not sure that the language itself is going to cover all the situations. As just mentioned, you might be better off just leaving it alone where there is no liability admitted.

JIM SAMS: We would prefer to see the language because like she says, it is better to at least cover the base than it is to assume and we're assuming here, but I'm not

JIM SAMS:

an attorney and I hear what he's saying. My only question to him was how would it involve the residents of the park as well as management. I don't see the picture.

RON KINGSTON: Because, here is how you would analyze it. By exculpating the seller, that by implication leaves the remaining parties at interest which only leaves the park owner and the remaining residents. If, however, you're actual design, your desire is to say as to the condition of maintaining the park and as to the continuing obligations concerning any violations to be corrected, etc. are that of the park owner, then say it that way. Say it as clearly as you can instead of confusing the issue.

JIM SAMS: Could we indicate the condition of the -- I haven't talked this over with them yet -- could we say another sentence such as, "The condition of the space is the park owners responsibility" and leave out what she said?

JERI McLEES: No, because that is where we get to the point where the seller may have done something to the property and may have some liability to me as the park owner, but again, the buyer is the innocent party here and that's what we're trying to say. So, I could not agree to that.

RICHARD WEINER: Couldn't we just vote on this?

JOHN TENNYSON: It looks like that is what we are going to have to do. Mr. Orsburn.

OTIS ORSBURN: I was just thinking we might consider just again, just a little re-wording, and if I could just say what I thought.

JOHN TENNYSON: Go ahead. Make your suggestion.

OTIS ORSBURN: I would have, "Disclosure for conditions..."

JOHN TENNYSON: Where are you?

OTIS ORSBURN: I am re-wording the...where it says, "...any inquiries..."

JOHN TENNYSON: Where it starts, "The seller or his or her agent..."?

OTIS ORSBURN: No, it's actually up a little higher, after "...as defined in Section 798.6 of the Civil Code..." right there, "any inquiries..." is where I wanted to make some changes. Bring that all the way down to a more cohesive paragraph

OTIS ORSBURN:

and basically, what I thought was have it say "disclosure for conditions of the park property and or the lot, are not the responsibility of the seller or agent. Buyer should contact park management regarding the conditions of the park property including the lot." That way, you are assigning liability, you are telling them there is further disclosure coming forth and here are the people you contact.

DENISE DELMATIER: Right, and that basically restates that responsibility for disclosure is the responsibility of the park owner. It does not talk about liability but conditions of the park.

RON KINGSTON: It sure does. It now wraps up all the parties. It raises the issue of who is liable. Is it the park owner or the seller or his agent? We don't answer that question. When you say, "it's the responsibility" is that exclusive responsibility or is that some of the responsibility to maintain the park, is it the park manager? So, unless you say, "These are the parties that have the obligation to maintain, or..." etc., you will leave that question at issue. And, you may not want to do that.

OTIS ORSBURN: Yes, not assigning the responsibilities of liability but assigning responsibilities of disclosure. And, this statement basically says that the responsibility of disclosure for the property, including the lot is that of the property management, not the seller. Because, that's what we are, again, talking about, is disclosure.

JERI McLEES: Can you repeat it one more time?

OTIS ORSBURN: Sure. "Disclosure for conditions for park property and/or the lot are not the responsibility of the seller or agent. Buyer should contact park management regarding conditions of the park including the lot."

JERI McLEES: And then we have to put in the conditions of tenancy, too, but that's a minor...

OTIS ORSBURN: Right.

JOHN TENNYSON: Let's have a 5 minute recess.

RECESS

JOHN TENNYSON: Ok, we're talking about the...skipping down, temporarily to "Substitute Disclosures" under Roman numeral one, where we left off after lunch,

JOHN TENNYSON:

and basically what we have done is made it similar to the existing form, putting in the square, taking out "other," taking out "smoke detectors" and who wants to comment on that? Mr. Kingston said he was fine with it. Ms. Delmatier.

DENISE DELMATIER: I was just going to make a very minor recommendation that "The following disclosures have or will be made in connection..." we substitute "in conjunction with..."

JOHN TENNYSON: What's the reason for that? That's the existing language.

DENISE DELMATIER: For purposes of using the correct verbiage. I think conjunction is...basically, we have talked about "supplemental" and "in addition to." I think it just clarifies what it is we are talking about. So, in partnership with "in addition to." It's not a big deal.

JOHN TENNYSON: Ok, we'll take under advisement. Anybody else?

RICHARD WEINER: I realize that's what the existing language is. I don't think it should be there at all, but I understand that that is consistent with the form that exists now.

JOHN TENNYSON: Anybody else want to change it to "conjunction?"

RON KINGSTON: I would prefer, to the degree that we stay compatible with existing law, I think we would be best served unless there is some compelling reason, it is a good reason to do as is.

JOHN TENNYSON: Mr. Sams.

JIM SAMS: I favor the "conjunction" rather than "connection."

JOHN TENNYSON: All right, how many want "conjunction?" Anybody want to leave it as it is? Leave it as it is. Anything else under Roman numeral number one? Dick.

RICHARD WEINER: One thing, I guess. We do want to put "other" in there, but the form itself, the existing form has the words "additional inspection reports or disclosures with a colon and then has three lines for those reports. It seems to me that if there are some other reports, if we like this language, then maybe that should be added as well.

JOHN TENNYSON: Well, maybe Mr. Kingston can enlighten us. I'm not familiar with any other reports that are required that relate to mobilehomes. Or, maybe Mr. Pitts has something he can enlighten us in that regard. So, that's why we left it out.

RON KINGSTON: 1102. Let's look at what 1102 does and I'll explain to you... Inspection reports a lot of times...it says, "complete with this contract of sale," are many times done to say it charges a person with the responsibility to contract for types of services to have that work done. That's the first line. The second line which reads, "additional inspection reports or disclosures" refers to something that was not done in connection with the contract of sale, but the parties want to release those inspection reports or disclosures. It wasn't done with this contract of sale, perhaps it was done with a previous one and the seller wants to provide those copies. This helps facilitate the discussion and guide the disclosure document. And, that's the reason for the second check box.

JOHN TENNYSON: So, you would favor including it?

RON KINGSTON: Yes.

JOHN TENNYSON: Any objections to that? So done. Anything else under Roman numeral number one above that where it says, "Coordination with other disclosures and information"? That verbiage is basically what we talked about this morning. Ok? Mr. Kingston.

RON KINGSTON: Ok. Now we go back to this verbiage about the inquiry proposal.

JOHN TENNYSON: Ok. I just want to make sure that we're done with Roman Numeral One as far as it goes. All right. Now, we are going to go back to the GSMOL/WMA proposal with regard to inquiries, and we have some language here that we will briefly discuss that Mr. Orsburn has provided us. And, you would substitute again, do you want to tell us where this is going to go in?

OTIS ORSBURN: Certainly. In the center of the paragraph, the sentence starts, "The home is or will be located in the park..."

JOHN TENNYSON: "...as defined in Section 798.6 of the Civil Code..."

OTIS ORSBURN: Right. And then right there is where...

RICHARD WEINER: Do you want to put a period there?

OTIS ORSBURN: We'll probably have to straighten that out, because it shouldn't say, "if", it would be right after 798.6 of the Civil Code, then "disclosure..."

JOHN TENNYSON: You scratch the rest of the language?

OTIS ORSBURN: Right.

JOHN TENNYSON: And, then, you want to insert your language. "Disclosure for conditions of the park property and/or the lot are not the responsibility of the seller or the agent. Buyer should contact park management regarding the park property including the lot." Ok. Comments? Mr. Kingston.

RON KINGSTON: I'm going to make a motion, if I may, and then speak to it. That, we table this issue till the next meeting and that should there be alternative language that any of the parties wish to provide, they do so and provide that to the staff within two weeks following this meeting. The purpose of the motion is because I think there is such sufficient confusion I think everybody kind of needs to check with their membership and I would hate to see that this be rushed into at this time. And should a vote be taken on this matter, that you may end up revisiting it anyway after you have had a chance to really talk...let's look at it this way. The agreement between WMA and GSMOL was just penciled out this morning. There have been more and more nuances, more and more questions that seem to be coming up, that I think, individually and collectively, people need some time to kind of think and go back with this. I think the remaining part of the day that we all have, we devote to this issue, I think time could be best spent continue focusing on the rest of the form.

RICHARD WEINER: Perhaps, if we have time at the end, we can come back.

JOHN TENNYSON: Well, we were hoping to wrap this up today and not have to have another meeting, but it looks more and more like we are going to have that meeting on December 4. If there is time...well, first of all, let me...how many people would favor, by a show of hands, postponing this discussion until either the end of this meeting or December 4? Ok, that's what we'll do. Yes, Ms. West.

ELIZABETH WEST: Can I make a suggestion? I like what you said about getting the language into staff within two weeks after this meeting, and what I would also suggest is that perhaps you might want to review the language. If there were ten different versions, you would handle it differently, but if there were this version and the version that was done this morning, and perhaps one other version, that you could send those out to people so that they would have it ahead of time and the versions would be sorted out by staff, but people would be prepared to

ELIZABETH WEST:

come and discuss it having read the language prior to the December meeting. So, I would suggest that.

JOHN TENNYSON: Ok, that's a good point. Anything else on this? All right, if not, let's move on to the original draft that we provided in your packets this morning, second page, Roman numeral number two, and, of course, we are addressing here the specific items basically that are going to be included in the mobilehome and the language above that. So, the person will make the appropriate changes with regard to "mobilehome/manufactured home" which will be crossed out and will be simply referred to as "home." Anything else in the first paragraph or the first two sentences that comes to mind that needs to be changed? Yes, Ms McLees.

JERI McLEES: May I interrupt very briefly? I have to leave for another commitment, but Tami and I have discussed the rest of disclosure and she recognizes those items which we wish to discuss.

JOHN TENNYSON: Thank you, thank you for being with us. Ok, I'll read through it very quickly. "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 Home. Seller hereby authorizes any agent (s) as define in Section 18046 of the Health and Safety Code, (now remember, we're going to work on that as one of the set aside issues referring to either this code section or another one) 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 Home."

Ok, moving on. "The following are representations made by the seller(s) and are not the representation of the agent(s), as defined in Section 18046 of the Health and Safety Code. This information is a disclosure and is not intended to be part of any contract between the buyer and the seller. Seller is, is not occupying the home." Everybody with us? "A." Yes.

RICHARD WEINER: In the code section as it exists now, following the word "agents" is the word, "if any," which probably is appropriate because there may be no agents. We probably should add that.

JOHN TENNYSON: That is a good point. You are talking about the small print or the large print?

RICHARD WEINER: The large print.

JOHN TENNYSON: "...Representations of the agent (s) if any.."

RICHARD WEINER: Or you could have it even at the end of the "...Safety Code, if any." Either place.

JOHN TENNYSON: You are talking about "agent(s)" though. So, it would probably be better to have it after "agent(s)", don't you think?

RICHARD WEINER: If that's how it is in the Code, because we don't have that definition in the existing Code Section.

JOHN TENNYSON: All right. Anything else? Ok, moving on. Capital letter A. "The subject Home includes the items checked below which are being sold with the home." And, these are basically things that we talked about. We did add a few things. Do you want me to read through them or do you want to read through them on your own? Mr. Kingston.

RON KINGSTON: John, I think we'll read through them. The only question I have is that we now have four columns. Is there a reason for four columns versus what the existing law is? The way the existing law is...

JOHN TENNYSON: Well, the CMHI form, which I was asked to use as sort of the model, has the four columns.

RICHARD WEINER: There are a lot more items that are on the existing disclosure sheet, the one that is used for real estate.

JOHN TENNYSON: It doesn't make any difference to me. You are just going to have a longer page, is all.

RON KINGSTON: The only reason why I raised that...let me kind of tell you how this thing was laid out and why it was laid out the way it is. As you read it from left to right, left to right things tend to flow, like range, oven, microwave. In this case where it is "range, oven, microwave, dishwasher." What we found by doing some test sampling when the original transfer disclosure statement was being written was they wanted to read across for similar types of subject matter and it seemed to flow. While this is a technical, some people would even argue this as arguing the minutia, it...

JOHN TENNYSON: Do they always come in three's?

RICHARD WEINER: No, they don't. As an example, one is "washer/dryer hookups, window screens and rain gutters," as three in the existing form. You can hardly tie those together.

RON KINGSTON: The only reason...see, what we started doing was leaving spaces for...putting the form together, to the degree that we can hold them together, like TV antenna, satellite dish, and intercom. They all seem to be communication links. I'm just pointing this out the way it lays out.

ELIZABETH WEST: Is that the way it was in the original one? I mean it was...

RON KINGSTON: Yeah, back in the early 80's.

ELIZABETH WEST: Appliances compatible, I mean?

RON KINGSTON: Yes.

JOHN TENNYSON: Well, it's up to the Task Force. I might point out that in the 1102.6 form they are not all in three's. You've got "water, window air conditioning, sprinklers and public sewer system." I don't think those are necessarily connected. "Window screens, washer/dryer hook ups." So, sometimes it comes in threes and sometimes it doesn't.

RON KINGSTON: You try to connect them.

JOHN TENNYSON: Whatever. We'll take that under advisement, I guess. I'm more interested in the specific items. If there is something that we need to exclude or include. Who was first here? Tami.

TAMI MILLER: Excuse my voice. I just have a question about patio decking, meaning the porch decking. So, should it say porch instead of patio?

JOHN TENNYSON: Well, I don't know. Mr. Pitts, do you have any comment on that, which is the most appropriate terminology?

TRAVIS PITTS: If you are looking for appropriate terminology, it would be porch. It is not critical.

JOHN TENNYSON: All right, we'll call it porch then. Anything else?

RICHARD WEINER: I guess I just don't understand that asterisk business about the automatic garage door opener.

JOHN TENNYSON: Well, that's in the existing law, 1102.6. It is also on the CMHI form, I believe. Yes, it was. It was in a different place. That, apparently, is satisfying a disclosure whether you have a door which automatically reverses when somebody is sitting under it.

TRAVIS PITTS: Like smoke detectors, another provisional law we are trying to satisfy.

JOHN TENNYSON: Maybe we should have an asterisk for smoke detectors, too, and cite that section. Which section is that, Mr. Pitts, do you remember off the top of your head?

TRAVIS PITTS: I do not. I will look it up.

JOHN TENNYSON: Anything else we need to...

RICHARD WEINER: Smoke detectors were required to be there.

ELIZABETH WEST: I have a suggestion, going back to Ron's concern.

JOHN TENNYSON: About the columns?

ELIZABETH WEST: And about the flow of related items. I was just going to volunteer, Ron, to maybe reconfigure the list according to what he thought it ought be and submit it to the staff.

JOHN TENNYSON: Be happy to have you do so, so we don't have to do it.

RICHARD WEINER: We should not have to have a separate reading for it.

JIM SAMS: I have a question on "detached garage." We had visited this a while back and said, "what did it constitute on disclosure about the mobilehome? Does it include accessory buildings?" Is a detached garage considered an accessory building when it is not attached? So, should we include that on the list here?

JOHN TENNYSON: Well, this is just a list of items which are being sold with the home, as I understand it. So, you are to indicate whether it is an attached garage or detached garage, whichever the case maybe and if you don't have either, you don't put anything.

JIM SAMS: All right, I withdraw the question.

RICHARD WEINER: There is a question at the end, "are any of them in or not in operating condition," that is part of the disclosure.

JOHN TENNYSON: Oh, but when you check, when you don't check something then it's not applicable. We did add "water heater braced, strapped or anchored" because that is something that is important in a mobilehome as it is in a conventional home. In fact, the requirement for a mobilehome predated a conventional home, did it not, in terms of strapping?

RON KINGSTON: Are any mobilehomes on septic tanks?

JOHN TENNYSON: Yes.

RON KINGSTON: Am I missing where that is?

JOHN TENNYSON: It is not in here.

TRAVIS PITTS: Mr. Chairman, it would be our position with respect to the sale of one of these homes in a mobilehome park that the septic tank is not sold with...

JOHN TENNYSON: It is not the homeowner's property, is it?

TRAVIS PITTS: Correct. It is a fixture or improvement to the real property. So, that's the reason it is not in here.

RON KINGSTON: So, whose maintenance responsibility is it to have it periodically inspected?

TRAVIS PITTS: It is the park's. That's their sewer disposal system.

JOHN TENNYSON: Usually, it's not an individual septic tank, is it?

TRAVIS PITTS: No.

ELIZABETH WEST: Above ground, part of the mobilehome? I haven't seen one.

JOHN TENNYSON: Above the ground?

OTIS ORSBURN: Those are holding tanks.

JOHN TENNYSON: We've added "earthquake bracing system." Ok, can we move on? Has everybody had a chance to look at the list?

RON KINGSTON: Built-in barbecues as on a deck or something like that.

TRAVIS PITTS: I have not seen one. That doesn't mean that they don't exist, but I have never seen one.

OTIS ORSBURN: They are very rare in relation to conventional built houses.

RICHARD WEINER: There was a line or some lines that we had for other things. There isn't one here. In the existing Code Section 1102.6, there is also the...there is one down there.

JOHN TENNYSON: Is it in the wrong place?

RICHARD WEINER: No, actually maybe ...

RON KINGSTON: John, the hot tub locking cover? You probably should have a asterisk so that people understand what that means.

JOHN TENNYSON: All right.

RICHARD WEINER: What are you looking at?

JOHN TENNYSON: He is looking at 1102.6. Excuse me, Ron.

RON KINGSTON: Would be the spa locking safety cover. Where would that be? Do we have that? You probably should add "safety" with an asterisk.

JOHN TENNYSON: Safety? Ok.

OTIS ORSBURN: What is the asterisk referring to?

RON KINGSTON: By definition of law, retro fit requirements and inspection requirements.

OTIS ORSBURN: Ok, but it doesn't refer to anything as a footnote on the form?

RON KINGSTON: On today's form it does. It says, let me just read this to you. "This garage door opener (which already is asterisked) or child resistance proofing may not be in compliance with the safety standards relating to those automatic reversing devices as defined in law or which the pool safety standards as defined in law. The water heater may or may not be anchored, strapped or braced." And, the purpose of which is to give you more clarity as to what they really mean.

OTIS ORSBURN: I didn't tie in child resistant pool barrier with a locking safety cover for the hot tub.

RON KINGSTON: Yes, that is how it is defined under a law that passed a couple of years ago.

JOHN TENNYSON: Ok, and we didn't put in windows, security bars, quick release mechanisms on bedroom windows. We'll put that in, too, which is in 1102.6.

RICHARD WEINER: I would suggest that, perhaps, in terms of these asterisks, since the asterisk covers more than one thing, that we use the format of what is on 1102.6 now because...

JOHN TENNYSON: It puts them all together.

RICHARD WEINER: Right. There is an asterisk that has three or four things to covered in one thing and maybe we should use the format of the form.

JOHN TENNYSON: Yes, that's fine. Ok? Anything else on that? Ok. And, below that, of course, we have the...yes.

RON KINGSTON : You added, under roof, "age," then you added "approximate, as opposed just...

JOHN TENNYSON: Where are you?

RON KINGSTON: Ok, I see what you did. Garage door opener as opposed to automatic garage door opener? Does the public understand? Shall we just insert the word "automatic?" Under the first column the bottom on there says, "garage door opener."

JOHN TENNYSON: All right.

RICHARD WEINER: This one says automatic. This one just doesn't have the word automatic.

RON KINGSTON: Automatic garage door opener with an asterisk. Yes, second column about fifty per cent the way down. It should be openers, probably.

JOHN TENNYSON: Ok, the rest of it is pretty much a copy of 1102.6.

RICHARD WEINER: We're copying the bottom of 1102.6. We should leave out "child resistant pool barrier," right? That is not a item that would be included.

OTIS ORSBURN: What about the hot tub locking cover?

JOHN TENNYSON: Locking cover would be.

RICHARD WEINER: Not the child resistant pool barrier.

RON KINGSTON: You'd have to take a look at the codes right now. I think it is generically refined as a child resistant pool barrier and that includes spas, pools, etc.

JOHN TENNYSON: Again, when we're talking here about the locking covers and such that apply to any spas and hot tubs that are on the home as opposed to the community park. And, they are not going to have a swimming pool on a mobilehome space, or not that I am aware of.

RON KINGSTON: Hey, John, I think I'm just suggesting we take a look at the Jackie Speier bill of a couple of years that defines child resistant pool barriers to see how it is defined before we kinda change the terminology.

RICHARD WEINER: It also talks about pool safety standards in that asterisk in the existing form that should be eliminated in rewriting.

JOHN TENNYSON: All right.

RON KINGSTON: And the way the law reads about the strapping is actually in water heater, anchored, braced or strapped, you may just want to reverse the wording there, instead of braced, strapped or anchored, how it reads in today's law is anchored, braced or strapped.

JOHN TENNYSON: Ok, any other questions on capital letter A?

ELIZABETH WEST: Excuse me, I have another commitment.

JOHN TENNYSON: Ok, thank you, Liz.

ELIZABETH WEST: Thank you very much.

JOHN TENNYSON: If not, then we'll move on to "B" on page 3 of the draft.

RON KINGSTON: I'm sorry, window screens?

JOHN TENNYSON: Window screens, did we leave those off, too?

GROUP: No, they are on there. They're there.

RON KINGSTON: Oh, they are way up there.

JOHN TENNYSON: No, they're here.

Ok, proceeding with "B." "Are you (the Seller) aware of any significant defects/malfunctions in any of the following in the Home ? Yes or No. If yes, check the appropriate space(s) below:" And, as you recall, this was a list that we went through to take out the items that were under the ownership of the park, so it doesn't reflect 1102.6, and it is not intended to, at least that's my understanding from the Task Force. So, we have "interior walls, ceilings, floors, exterior walls, insulation, roof, windows, doors, home electrical systems, plumbing, porch or deck, porch steps and railings (we added railings because I thought that would be significant), other steps and railings as opposed to porch, porch awning, carport awning, other awnings (because of the comment was made that there is more than one awning or there are different awnings, and people might need to have their memories jogged on that), skirting, home foundation or support system." I wasn't sure that to do with "other structural components," so we just put it in there.

RON KINGSTON: John, other steps and railings...

JOHN TENNYSON: You usually have a back door, for example, or you might have a second step or railing somewhere, or a third one.

JIM SAMS: Or, you might have a ramp. Some mobilehomes have ramps.

RON KINGSTON: Well, it says in the opening sentence, " Are you (the Seller) aware of any significant defects/malfunctions in any of the following in the home?" In the home implies that it's inside, as opposed to, perhaps, appurtenant structures adjacent to or touching the structure. So, if you keep the word "in" then no one will ever check "other steps and railings" unless you have a two-story manufactured home.

JOHN TENNYSON: "In connection with the home," maybe.

DENISE DELMATIER: John, is there a problem with saying in or on?

JOHN TENNYSON: That would be fine.

RON KINGSTON: "On the home?" So, a significant malfunction on the mobilehome?

JOHN TENNYSON: Or, "in connection with the home," probably would be more grammatically correct. Any discussion about the specific items? Additions? Deletions?

RICHARD WEINER: In the existing form, it has...

JOHN TENNYSON: Which form, the 1102.6?

RICHARD WEINER: Yes. It has "plumbing, sewer, septics." Some of that we talked about eliminating. Some of it we probably should include.

JOHN TENNYSON: Plumbing we already have. According to my notes, "sewer and septic" were to be taken out. "Slabs" were to be taken out. "Driveways" were to be taken out. "Sidewalks" taken out. "Walls/fences" taken out. Any problem with "other structural components" ? Ok, is everybody happy with "B"? Capital letter "C." Now, there was some controversy here. This is "Are you (the Seller) aware of any of the following?" and according to my notes, this is where we sort of bogged down. I'm not sure we can agree to all of these, but let's go through what we have here, under "C." "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 on the subject home interior or exterior." We took out "contaminated soil or water" because that was of some concern, I believe, according to my notes. It is on the land, not on the...we're on sub "C" now.

RON KINGSTON: How did...?

RICHARD WEINER: We voted on "B" and we voted "yes."

RON KINGSTON: How did you resolve the "other structural components?"

JOHN TENNYSON: Nobody had a problem with it.

TRAVIS PITTS: Mr. Chairman, there are homes built on the sides of mountains on what are called support structures and that is the only thing I can envision going in there, but they do exist. They are rare, but there are structural components.

JOHN TENNYSON: Ok, going back to "B" are there..

RICHARD WEINER: One thing you may have on that...

JOHN TENNYSON: Well, that's in the existing 1102.6 ... "other structural components. Describe on attached additional sheets, if necessary."

RICHARD WEINER: You may have...some people may put in other structures as opposed to components...of various kinds.

RON KINGSTON: The only thing, I guess, I have a question about is today it says structural components, other structural components, that's fine, and then it says describe. And then there is a second sentence in current law. It says, "if any of the above is checked, explain." It would seem to wrap that sentence up in to the other structural components, and I would like to separate that out so if the seller feels that there is any significant defect in the interior walls or the ceilings, they know to kind of explain that in the line, so I would like to suggest that we return and insert the language...and make the following changes. You keep, "other structural components" and then, it would just read, "describe." And then a new sentence with new lines. "If any of the above is checked, explain. Attach additional sheets, if necessary." Just a little bit clearer so that...

JOHN TENNYSON: Ok, anything else? All right, we'll move on to capital letter "C". Are you, the seller, aware of any of the following? And, this is where we left off, basically, last time. There were several things that were not agreed to in terms of what's on the existing list and the CMHI list and in the existing law. The ones that I believe, to the best of my understanding, of notes and the transcript were agreed to included, Number one, "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 on the subject home, interior or exterior." We did not include contaminated soil or water because that, if I recall the discussion correctly, was the real property, not the home. Yes?

JIM SAMS: Would this in some way involve propane tanks? Would that be considered to be an environmental hazard? Would we have to maybe specifically not include, or would the fact that they are not on the list take care of that?

JOHN TENNYSON: Well, they are fuel storage tanks, so you would have to mark "yes," if you had a propane tank.

JIM SAMS: Ok, so that would be considered to be a hazardous substance?

JOHN TENNYSON: It is a hazardous substance.

JIM SAMS: But, by the same token, you do not have to explain, or anything like that? Just mark "yes." What I'm saying is these are acceptable environmental risks.

JOHN TENNYSON: Yes, you would have to explain it. You would say that the propane tanks provide the power to run the heater and whatever else it runs, the stove, or whatever appliances, as is the case with every other mobilehome in this park.

JIM SAMS: I wonder if it would be obvious to the person they would need to explain that.

JOHN TENNYSON: Well, they may not know that some mobilehomes have propane, particularly in rural areas, and people may not be familiar with that. They may think that it has natural gas like it would have in a mobilehome park in the city.

JIM SAMS: So, they might mark "no" on that, not knowing it is considered to be a hazardous substance. I wonder if it shouldn't be included.

JOHN TENNYSON: Comments? Mr. Kingston.

RON KINGSTON: As a drafts person to sentence one, let me see if I can give you a little history behind this. The buyer wants to know about environmental hazards, hazards that have been shown to be dangerous to your health - asbestos, radon gas, and those types of features. Propane gas, on the other hand, is not known to be a hazardous substance unless it explodes. And, it is not known to be an environmental hazard, it is known to be a health hazard, if it is handled in a dangerous condition, and therefore it has been conventionally construed that propane is not under this subject to sentence one because of that fact. If propane were an environmental health hazard in and of itself, then it would be one that would be checked. Same thing is as if you had a natural gas line, in an of itself is a health hazard if you inhale it in its raw form or if it causes a fire, if it ignites, because that is not an environmental health hazard by definition.

OTIS ORSBURN: So, you are thinking like a 50 gallon drum of weed killer, or something like that.

RON KINGSTON: If you have a chemical storage tank underneath a mobilehome and it happens to hold diesel fuel or some really hazardous environmental condition that hasn't been checked and you know about it? The answer to this question would be "yes." If it doesn't exist, then the check box will be "no."

JOHN TENNYSON: Denise.

DENISE DELMATIER: Well, I think we need a disclaimer here for that because what it say is, "...materials that may be environmental hazard." And, propane may be under certain conditions.

RON KINGSTON: I guess I would be taking objection to that because then you would be checking natural gas, propane gas, anything that heated the house.

JIM SAMS: Why couldn't the disclaimer say, "any heating fuel is exempt" without making propane or natural gas or...I'm concerned about this because when people start filling out the form, they know this is hazardous, even I knew it was hazardous, and to what category you put it might be different. But, I think it would be more understandable on the form if we were to decide that these fuels are not, for the purposes of this form, are not considered to be hazardous.

JOHN TENNYSON: Mr. Pitts.

TRAVIS PITTS: Jim, I don't disagree that these fuels are hazardous. If mishandled, they can be extremely hazardous. But I don't believe that any of them are environmental hazards. It's not an environmental hazard to have propane gas. It is not an environmental hazard to have natural gas.

JIM SAMS: Of course, you have the understanding to come to that conclusion. How about the eighty year old woman who has a mobilehome who is going to answering this selling her mobilehome. Is she going to have the same level of understanding that you are? I'm talking about people who are not able to understand these little things that you are talking about. That's why...

JOHN TENNYSON: Well, let's just take fuel out, then. Maybe that will solve it.

JIM SAMS: Maybe just say that this will not include the fuel products or whatever language we'd like to come up with.

DENISE DELMATIER: The whole debate over storage tanks and the hazardous waste agreement definitely would categorize this as an environmental hazard. So, I agree with what the intent is, but that is not what this says, under existing hazardous waste laws.

JOHN TENNYSON: Well, shall we just take fuel out then? Just leave chemical storage tanks, if any? I don't know what chemical storage tanks you would have in your home, but ...

JIM SAMS: I don't have trouble with what you have in there. I have trouble with understanding what the limitations are on the part of the resident, so I think if we

JIM SAMS:

left what we have in there that would be no problem, but if we would exempt these things, like anything that is a fuel which is not in itself hazardous in that sense, possibly, we could do it. But, I don't know if that is the way to phrase that, particularly.

JOHN TENNYSON: So, you want to leave fuel in, but then you want to put in an exemption for certain kinds of fuels, is that what you are saying?

JIM SAMS: Yes, that's what I'm saying to you, so that there is a more understandable level on the customer.

JOHN TENNYSON: Then, why raise issue to begin with?

JIM SAMS: Because I think the fact is that it does not give a very specific idea of what fuels we are talking about and maybe your suggestion is well taken, there, that we put that these two fuels are exempted, for the purpose of this disclosure.

JOHN TENNYSON: Ok, any other comment on this?

RICHARD WEINER: Nobody would have a natural gas storage tank, I don't think So, really you are only talking about propane.

RON KINGSTON: Well, to expedite this, you may just want to check with the Department of Health Services to determine what is conventionally thought of as an environmental health hazard instead of us sitting here beating this issue up.

JOHN TENNYSON: Ok, let's move on. "Number 2. Room additions, structural modifications, or other alterations or repairs made without necessary permits. Number 3. Room additions, structural modifications or other alterations or repairs not in compliance with applicable codes." Remember, we eliminated building codes. "Number 4. Any settling of the home from slippage, sliding or problems with leveling of the home or the foundation or support system."

RON KINGSTON: Actually, we may not even need "home." "Any settling from slippage..." because you already asked the question about this applying to a particular home.

JOHN TENNYSON: I think the park owners wanted "home" in there, according to my notes, to distinguish homes slipping, sliding or soil slipping or sliding.

RON KINGSTON: Is there a reason why we deleted the word "other soil" following the word...

JOHN TENNYSON: Because soil is the park owner's property, according to my notes here regarding the discussion. It's in the transcript. Ok? Now, the next one I wasn't sure of, to be honest with you. There was a lot of discussion and no real resolution, so I just stuck it in anyway. "Drainage or grading problems with the home, space or lot." Yes, Mr. Sams.

JIM SAMS: I would like to point out that as far as I am concerned, the word "flooding" should be included in there as well. As I said in the other meeting that we had, we have instances of that which is not all encompassing, such as a major flood but just flooding problems, ponding problems.

JOHN TENNYSON: Well, I think the park owners have a problem with that. My notes indicate that they had an objection to the word "flooding." Tami.

TAMI MILLER: Actually, if you look at 11 of 2.6 #9, where it says "major damage to," if you insert the home or any of the structure by fire, earthquake, floods or landslides," I think that might take care of the problem, Jim.

JIM SAMS: Well, it says "major damage." I don't know how you define "major." Maybe we could drop "major" and just put "damage," well, yes, that would take care of it.

JOHN TENNYSON: All right. Let me make sure that I understand. Instead of drainage or grading problems..

TAMI MILLER: No, you can leave 5 as is.

JOHN TENNYSON: Leave 5 as is. You are adding, then, number 6 which will be...

JIM SAMS: Number 9 on the 11...

JOHN TENNYSON: Leave "damage to the..."

DENISE DELMATIER: Drop "major."

JOHN TENNYSON: "...damage to the home?"

JIM SAMS: ...to the property...

JOHN TENNYSON: To the home, wouldn't it be? Because that's what we're talking about here, to be consistent. "...damage to the home or any of..."what was the rest of it?

TAMI MILLER: Or any of the structures from fire, earthquake...

JOHN TENNYSON: What structures?

JIM SAMS: Before you do too much writing, I do not agree to that.

JOHN TENNYSON: All right. Go ahead.

JIM SAMS: I am concerned about a kind of situation, not damage to my mobilehome, but a consistent pattern of flooding. I have a park in my zone right now that floods twice a year, Auburn Villa, which is driving people out of their homes. Twice a year. We have, not only the flooding problem, there, but we have ponding, we have flooding under the mobilehomes. Now, this says, "damage to the property or any of the structures...", so I think it should remain "property" in the sense that the property under the mobilehome is being affected by water.

TAMI MILLER: And the question should be directed to the manager, not disclosed by the seller.

JIM SAMS: Ok, you've got me on that one, Tami. Well, why should we, then, also have under there, sliding or drainage problems?

TAMI MILLER: If you know that you have created a drainage problem, you should be disclosing that.

JIM SAMS: It doesn't say that. It says, "drainage or grading problems" which may have been caused by the management.

TAMI MILLER: No, it says, "damage or grading problems with the home, space or lot." If you know you have created a grading problem by the landscaping you have put in, then you are aware that you need to disclose that.

JIM SAMS: Well, I would not have thought that was what it said.

TAMI MILLER: Am I wrong? Am I reading that wrong?

JOHN TENNYSON: Well, it's not clear. What happens if you have a drainage problem that comes in from the street somehow? Should they not disclose that?

TAMI MILLER: Well, if drainage or grading problems with the home, space or lot. That's what is says right here. Disclose it.

JOHN TENNYSON: Right. But, what I mean is, if you had a park in Oceanside where the streets were so configured that in most cases it wasn't a problem, but if you had a heavy rain, heavy downpour, the water would back up into some of the spaces and would not drain down into the home, but under the home, or the carport, or that kind of thing. Would that be... I mean it's not clear here. It doesn't say who is responsible.

TAMI MILLER: I don't think we want to get into who is responsible.

JOHN TENNYSON: I didn't say that we should, I'm just saying it doesn't say here, whose responsible. It just says "drainage or grading problems." So, if you have someone who lives in this Oceanside park, who has this problem, they would have to disclose it, that would be my interpretation, even if they didn't cause it.

JIM SAMS: If I could make another comment, Mr. Chairman, we have indicated, and I have agreed with WMA that we would not go and pick back and forth here. We would let each segment do its own and I sort of want to withdraw a little bit because I didn't understand the question. The thing that I am concerned about is that management will respond, but it is their land and so therefore, they are bound and I wish we could put it into the form, to do that, but I do not want to get into this thing where I don't like the park manager so I am going to point out all of this stuff, he is going to point out that I need a new electrical hook up to my mobilehome, so we were trying to avoid that, so I will withdraw that particular one at the moment. I think that should be covered at some point, though.

JOHN TENNYSON: All right, where does that leave us now? We are at "drainage or grading problems with the home, space or lot." Does everyone agree to that?

RON KINGSTON: There is no flood? The word "flood" is not being added.

JOHN TENNYSON: We were asked to take that out last time.

RICHARD WEINER: I guess it seems to me to have an effective form if there is...it doesn't assign whose fault it...if there is a flooding problem under the home itself, it seems to me that it should be disclosed.

JOHN TENNYSON: Any comment?

RICHARD WEINER: I'm just saying that if there is a flooding problem under the home itself, it seems to me it should be disclosed without assigning any responsibility for it. Nobody is saying it's the park's fault or it's the homeowner's fault, but if there is flooding under the home, it seems to me it should be disclosed.

DENISE DELMATIER: I think we'd like to go back to Tami's original suggestion and that was retain number 9, minus "major" but "damage to the home, etc. etc."

JIM SAMS: That would actually take care of my problem because damage to the home is what we are talking about here and that would indicate a problem there, but it would not specifically do it the way I had proposed just a little bit ago.

DENISE DELMATIER: There is no assignment of responsibility.

JOHN TENNYSON: So, "damage to the home or accessory structures..."

JIM SAMS: Yes.

DENISE DELMATIER: "...from fire, earthquakes, floods or landslides."

JIM SAMS: That would be acceptable.

RICHARD WEINER: I think that's fine. I think whether there is damage or not, there can be a problem with flooding, which may or may not cause damage to the home itself, so that's why I thought...

JOHN TENNYSON: Mr. Pitts.

TRAVIS PITTS: How does that differ from 5 which is the purpose of the grading...

RICHARD WEINER: It is a question of whether to add the word "flooding" to drainage or grading problems.

JOHN TENNYSON: Well, one is you have drainage or grading problems with or without damage and the second one is where you have damage.

TRAVIS PITTS: Well, my problem was with the interpretation of the word "flooding" and I think what Mr. Weiner is talking about is getting water underneath the home. I'm not sure that is flooding.

RICHARD WEINER: The reason I am adding the word is that it is in the existing form, using the wording, "flooding, drainage or grading problems." That is the only reason I'm adding the work "flooding" beneath the home itself, and that's what I'm concerned about.

JOHN TENNYSON: Well, what about "drainage or grading problems with the home space or lot, including water under the home?"

OTIS ORSBURN: I have a suggestion, if I may. On number 5, "drainage or grading with the home or lot that affect the home structure." That way, you are identifying we're selling the home and it affects the structure and then number 9, "damage to the home or any structures being sold with the home from fire, earthquakes, flood or landslide."

RON KINGSTON: I am confused why you need to identify...

JOHN TENNYSON: What was your question? You are confused about what?

RON KINGSTON: He is proposing

OTIS ORSBURN: To restrict it to how it affects the home that they are selling.

RON KINGSTON: Five does say, "drainage problems with the home or lot."

OTIS ORSBURN: If it doesn't affect the structure, which is what they are selling, then it's not disclosed as this particular item. But, if it is affecting the structure, then disclosing that something is affecting it.

JOHN TENNYSON: Well, nobody had a problem with number 5 before, did they? Well, let's just move on then, if nobody else has a problem with it. Ok?

RON KINGSTON: But, how are we rewording 5?

JOHN TENNYSON: "Drainage or grading problems with the home, space or lot." Period. And then, number 6 is "damage to the home or structures (I like the terminology "being sold with the home," I think that's good) from fire, earthquake, flood or landslides." All right, we did get down the list, so I guess what we need to do at this point is pick up things that were not discussed last time or held in abeyance.

RON KINGSTON: One of the question is...let's say you have a citation issued by a code enforcement agency against the mobilehome itself. Should that be revealed? Would that be important to a buyer? It seems to me it sure would.

OTIS ORSBURN: I think that would be covered under...

RICHARD WEINER: Under 15?

RON KINGSTON: Yes, under 15. Fifteen, now..."Any notices of abatement or citations against the property." You could say against the home. It really should be.

JOHN TENNYSON: You are reading from 1102.6? Actually, I would like to ask a question, here, because originally, I thought we were working from the CMHI form, but apparently not, we are working from the 1102.6 form? Part of the problem is we have been working, some of us, as I have been under the misapprehension that we were working off, from the last session, the CMHI form, Mr. Orsburn's, but you seem to be working from 1102.6. Which is it? Because it's confusing to staff in putting this together.

OTIS ORSBURN: It's on both of the...

JOHN TENNYSON: Yes, but they vary quite a bit.

RICHARD WEINER: The numbers, the numbers.. you have "14. Any notices of abatement or notices of citation against the mobilehome."

JOHN TENNYSON: So, which form are we going to work from in modeling the new form?

JIM SAMS: I think that 1102.6 covers some points which were not covered in CMHI.

JOHN TENNYSON: All right, then we'll just dispense with this one.

JIM SAMS: Well, I don't advocate that. All I am saying is there are some points there on 1102.6...

JOHN TENNYSON: Well, my point is, when you have three or four different forms, it is very difficult for staff to follow. You say number 6, but you don't explain which number 6 you are talking about from which form and then we put it together and you're not happy because we didn't have the right one. So, you know, if we can all agree what form we are going to work from it will make it a lot easier and we won't have to have another 15 hearings. So, shall we work from 1102.6 or not?

JIM SAMS: I would like to for the moment.

JOHN TENNYSON: All right.

JIM SAMS: I would like to again agree with Mr. Kingston about number 15 on 1102.6, the abatement, and take that one at a time.

JOHN TENNYSON: Ok. So, any notices.... you want that language as it exists? Is that fine with everybody?

GROUP: It should be home instead of ...against the home.

JIM SAMS: On number 16, I think it is very important that any lawsuits by or against the seller be disclosed because that could cause a real difficulty for the new buyer. And that probably should, I don't know, you are going to leave that "home" or "real property?"

JOHN TENNYSON: Affecting the home?

JIM SAMS: Affecting the home. And then, there is another section if I ...

JOHN TENNYSON: Wait a minute, now. "Any lawsuits by or against the seller threatening or affecting this home or the home including any lawsuits alleging any defect or deficiency in the home or ..." Perhaps, "accessories sold with the home."

JIM SAMS: Yes.

RICHARD WEINER: Including any lawsuits alleging any defect or deficiency in the home including...

DENISE DELMATIER: Or home or accessories sold with the home.

JIM SAMS: And, the last point I would make, assuming that we are still on 1102.6, I have a fax copy here, is that any outstanding debts pertaining to the mobilehome should also be disclosed.

JOHN TENNYSON: Wouldn't that be taken care of in escrow, anyway? In the title search?

JIM SAMS: Possibly so. I would have to ask our attorney, here, on that.

RICHARD WEINER: In fact, it would be taken care of.

JIM SAMS: It would?

RON KINGSTON: That's going to be a condition. Every purchase agreement I have ever seen, they always, lender or anybody, they always require satisfaction of any debts against the property to be totally satisfied. In other words, they are to be given clear, marketable title to the property, and that is what HCD's role and function will be. Nobody will buy or finance property without that. That's just...I mean, I don't know about you, but Mr. Tennyson wouldn't want to assume my debt if he buys my mobilehome, I think.

JIM SAMS: Then I withdraw that suggestion. That's all that I have.

RON KINGSTON: And then, John, I just...we should probably add after adding section 16, as previously discussed, the following question like it appears in 1102.6. "If the answer to any of these is yes, explain. Attach additional sheets, if necessary." Then you have your certification, signature lines and date blocks.

RICHARD WEINER: Just one question regarding the signatures. Travis, are there any, I mean I know there are some situations where there are liens that are not registered with HCD. Is there a need to have that added? You don't have the same people working in the sale of manufactured homes as you do in conventional housing regarding liens and...I was wondering if it is necessary to add that as well. Or, are we getting into something we should stay away from?

TRAVIS PITTS: Well, I don't exactly understand. The law requires all liens be recorded with the Department. The only one that's an exception is the commercial lien where you have an inventory But, we don't recognize other liens.

RICHARD WEINER: My question is, if in fact the seller is aware of any liens that have not been...are we saying claims...Actually, I have the old version here. Here is the new version.

JOHN TENNYSON: "Any lawsuits filed against the seller threatening to or affecting this real property." I guess that's the same thing.

RICHARD WEINER: I was just concerned about the fact that there may be some liens not on record.

JOHN TENNYSON: Ok, anything else? We have 8 items, is my understanding, yes?

RON KINGSTON: So, just...there are two reasons why you would come back and visit this section, one of which is, to see how it all lays out as we've discussed including the signature block line and explanation line, etc., as we've discussed, but should there be a new development concerning disclosure of common area

RON KINGSTON:

problems, which we seem to be deferring until the December 4 hearing, that is the language that WMA and GSMOL attempted to work out this morning.

JOHN TENNYSON: Well, if they are going to have the park owner be responsible for...if the seller is deferring to the park owner, if that language is accepted, there wouldn't be any need for common area requirement in here. Mr. Sams.

JIM SAMS: Maybe I should give some details on that so it is a little more evident.

JOHN TENNYSON: Details on what?

JIM SAMS: On his question here about the common area and the seller relationship disclosing.

JOHN TENNYSON: Do we need to get into that or are we going to defer that until the end?

JIM SAMS: Ok.

RICHARD WEINER: Just on the block of signatures is what you are talking about now, right? You are talking about the block...

JOHN TENNYSON: Let's not get into the block, yet. What I want to establish is, other than this common area business, is everybody satisfied with, and I'll read them over again, 1 through 8. Is there anything else we need to put in there or whatever? Let me go over them quickly again. It includes the five things that are in front of you, there, typewritten, with minor changes with regard to the fuel and calling it a home, not a mobile or manufactured home. Then, Number 6 will be, "Damage to the home or structures being sold with the home from fire, earthquakes, floods or landslides." Number 7 will be, "Any notices of abatement or citations against the home or accessory structures sold with the home." Number 8, "Lawsuits affecting the home or accessory structures sold with the home." That's it. Ok. Now, do we want to go to the signature block?

RON KINGSTON: The one before that, John, just said to be ascertained...

JOHN TENNYSON: Yes. I've already got that. Ok, now we're down to "Seller certifies that the information herein is true and correct." This is from form 1102.6. "...to the best of the seller's knowledge as of the date signed by the seller." And then, you have the seller, or sellers and the date.

RICHARD WEINER: At this point, I would like to go back to CMHI's form for the signatures.

JOHN TENNYSON: Ok, does everyone have that? 1102.6, Roman numeral number 3. Ok?

RICHARD WEINER: By the way, there really should be, for some reason...let's see, revised that there is just a one and a three instead of a two in the Code section. The Code Section has a Roman numeral one, and it doesn't have a Roman numeral two.

JOHN TENNYSON: That's because this is the pocket section to the Code. They only put in the pocket the new changes, I believe.

RON KINGSTON: If you actually look at 1102.6 after seller's information, page 2 at the very top will have a Roman numeral 2 on it. Inadvertently, somehow it wasn't copied, but that's where Roman numeral 2 does appear.

JOHN TENNYSON: Oh, right up here. That's where it should be.

RICHARD WEINER: If we didn't have it on a form that we could use, it seems to me would could just use the two as it is in the CMHI form as listing dealers, inspection disclosure, just say listing agents inspection disclosure and that that could be Roman numeral 2.

JOHN TENNYSON: You want everything under number 1 until we get to below the signature blocks and then number 2?

RICHARD WEINER: Oh, I see. We have a 2 now, ok.

JOHN TENNYSON: Yes, we put a 2 in, which I think is consistent with 1102.6. Is everybody on board?

RON KINGSTON: Let's call it Roman numeral 3 here, for a minute. Roman numeral 3 would lead off with "agents, inspection disclosures..." In large part, this sentence is pretty much the same as 1102.6 with the exception that you would refer to the "home" versus the "property" in existing law. And then, I guess I have a question of the form after the word "inquiry," which on CMHI's form is on line 3 towards the end of the line. See where it reads, "in conjunction with that inquiry." And then, you say, "agent" and that's never been used before. So, I think what you really just need to do is model this thing after 1102.6, except you don't use the word "property," you use the word "home." Is that....

RICHARD WEINER: I think the reason I would...well, I shouldn't speak for CMHI, but I think what they have done is, instead of the two blocks that are in the existing form, 1102.6 form, they have just...this representative of the two...instead of the two blocks to check, this was...they have a comma with a line, which...

JOHN TENNYSON: Right, they just organized it differently. Instead of using boxes, they have put spaces.

RON KINGSTON: There is a pretty big difference about noting the following items. There are no items for disclosure or there...I mean, our experience was the check boxes seemed to work really well because our agents were constantly not knowing how to respond to this. With a check box, it just says, "Well, I've got to do one or the other." This former form...the format that you have now we specifically changed by statute because of the massive confusion that was out in the field. So, this is just a point between dealer and broker. We found this works really well. Real well. Because then they just know what is prominently displayed.

RICHARD WEINER: I think you could that, or either way. I don't really care. The only thing is in terms of the nomenclature it seems...I think the format he uses listing -- he has listing dealers -- but if you said "listing agents inspection disclosure" on the first line, rather than just "agents."

RON KINGSTON: Actually, it's not really a listing agent inspection, it really should be "an agent's inspection."

RICHARD WEINER: No, because you have two separate ones. He has one for listing and one for selling.

RON KINGSTON: That's a vast expansion and a change in the law today.

RICHARD WEINER: Because you just have agency inspection requirement today, an agent's inspection.

DENISE DELMATIER: Who was the agent representing?

RON KINGSTON: Always the seller. Always the seller. You have an agency relationship.

RICHARD WEINER: Well, you may in fact have some selling, what would be termed the agent representing, listing and selling, that's really the same one, representing the purchaser, representing the buyer.

RON KINGSTON: You always have an agency relationship with the seller and a fair dealing requirement to the buyer.

RICHARD WEINER: But you may have two dealers involved in the sale and that's why there should be...

JOHN TENNYSON: Maybe we should leave two spaces for agents, then.

RON KINGSTON: John, maybe the best thing to do is for the two of us to get together after the meeting before December 4 instead of dragging everybody through this, we will sit down and work it out.

JOHN TENNYSON: Well, what is the problem? Quite frankly, I don't see a problem.

RICHARD WEINER: I don't see one either. Just put "listing agent's inspection disclosure" with the statements and then "buying agent's inspection disclosure." You cover all...he has listing, itself, which is not, which is not, they are the same. You are talking about the agent representing the listing, registered owner in the first instance, and in the second, representing the buyer. So, you have Roman numeral 3 and 4.

JOHN TENNYSON: Why is the buyer's -- pardon my ignorance -- why is the buyer's agent responsible for disclosure?

RICHARD WEINER: Well, maybe he isn't. But, there may be some instances where...

RON KINGSTON: I don't know where that would arise because the buyer...the selling agent is the one who actually has worked with the seller to assist in determining price, has provided a tremendous amount of document in convention and statutory provision as well as judicial decision, has always let that rest on the selling agent, and that is where it should be. It should be completed only if the seller is represented by an agent in this transaction. And that agent is very clear...I, we have a very, very strong opinion on how this should be laid out unless you want to really change all agency laws, which I don't think is the intent of this bill.

JOHN TENNYSON: Mr. Pitts.

TRAVIS PITTS: Mr. Chairman, we agreed again that stated early on in this meeting to maintain as much continuity to an existing law and current law. I would like very much for this to be patterned after existing law, to where it is just the selling agent. Don't bring in all these other parties.

RICHARD WEINER: Look at 1102.6, then. You should cross out the word, "broker" and just use the word "agent."

OTIS ORSBURN: Mr. Tennyson, if I may, if you take a look at it, all that has been changed is that one is called "listing/dealer" and one is called "agent/broker" representing seller. It's the same thing, and if we went to 1102.6 and used it, your satisfying the same requirements as what is on the CMHI, so I would be in agreement that we just go to 1102.6 and indicate what they are stating.

JOHN TENNYSON: So, the only change would be the word "home" for "property."

RICHARD WEINER: You also have this agent, cross out the word broker...

JOHN TENNYSON: But, that on...you're working off the older version.

RON KINGSTON: 1102.6 is copied and has no reference to broker? I'm not on that second page. I'm trying to, following Mr. Tennyson's lead, I'm trying to work through these sentences, each sentence at a time. Where it says, "agents inspection disclosure"...Roman numeral 3, "agent's inspection disclosure." I don't assume there is any problem. And then, the next sentence which is in parens "to be completed only if the seller is represented by an agent in this transaction." I don't see that there is any disagreement there. "The undersigned, based on the above inquiry of the sellers are to be the condition of the property" (in this case it would read "home") "of the home and based on a reasonably competent, diligent inspection of the home in conjunction with that inquiry states the follows:" and then there are two check boxes both for agents. So, the only change that technically happens is change "property" to "home."

JOHN TENNYSON: Is everybody with us so far, then? All right, flip over 1102.6.

RON KINGSTON: Then, on the top of that you delete the word "broker" on that first signature line and then over where it says by, it says, "associate licensee or broker's signature?" There you would put "associate agent." How do you deal with that?

OTIS ORSBURN: Just put in the agent. Just like we have done all along.

TRAVIS PITTS: It would be my recommendation that we use "agent" as defined in 1804.6 later, because we don't have anything like an associate license.

RICHARD WEINER: Just cross out that word altogether because this might be an example of dealer's name printed in there and "by" would be the signature of whoever the sales person was.

RON KINGSTON: Just by "agent" then.

RICHARD WEINER: You have "agent by agent." I'm not sure if you need that.

RON KINGSTON: You need to print it. Why don't we just say, "Please print and then signature." Delete the words "associate licensee or broker" and just put signature.

GROUP: Ok. Yep. Right.

DENISE DELMATIER: Is that four?

JOHN TENNYSON: No, right above four.

RICHARD WEINER: Go with the next one.

JOHN TENNYSON: Roman numeral 4.

RON KINGSTON: Delete the work "property" and put in the word "home," on that third line, there. And then make the same change. Delete the words "associate, licensee or broker." Do signature.

JOHN TENNYSON: Ok, everyone following us? Roman numeral 4 on 1102.6. Ok, Roman numeral 5.

RON KINGSTON: In the second line you delete the word, "property" and insert "home." Twice.

JOHN TENNYSON: Ok, now we're down to this recission business, is that correct?

RON KINGSTON: Yes. And then you get down to that last sentence.

JOHN TENNYSON: Ok, an agent instead of real estate broker?

RON KINGSTON: Actually, it should be delete "a real estate broker" and put "an agent."

JOHN TENNYSON: Right.

RICHARD WEINER: Do you have a copy of the Code Section?

JOHN TENNYSON: The new one? It should be in your packet. We were looking at it this morning.

RON KINGSTON: Yes, we are going to have to refer to a definition of agent here because that last sentence will throw everybody off.

JOHN TENNYSON: Ok, does that take care of the form except for this common area stuff, that issue that we set aside? Wait a minute. We're not ready to go yet.

RICHARD WEINER: No, I'm not ready. I'm not sure that we have the definition, that we have the copy of the Code section itself, 1102.3.

JOHN TENNYSON: Point 6, you mean?

RICHARD WEINER: No, point 3.

JOHN TENNYSON: Oh, you're looking for point 3. We can get it for you.

RICHARD WEINER: Well, no, the problem is that it is not written into the law in terms of the manufactured/mobilehome.

OTIS ORSBURN: No, that particular section does not apply.

RICHARD WEINER: Yes, that section is not applicable to manufactured homes.

JOHN TENNYSON: The decision is not applicable to manufactured homes.

RICHARD WEINER: Right.

JOHN TENNYSON: Should it be? Or is that the...

RICHARD WEINER: That's...right, there I think you need not do more than we are willing to undertake.

RON KINGSTON: At least in that case, I would suggest each of the representatives bring their own counsel to this. We can talk about this one and only issue all day long. This is a very, very interesting discussion.

TRAVIS PITTS: My recommendation is that we don't go there. We are not there now, so we don't go there.

RICHARD WEINER: And that we leave it off the form. It's got to be...sale of manufactured homes because it isn't in fact what the law says.

RON KINGSTON: For mobilehomes?

JOHN TENNYSON: Manufactured or mobilehomes.

RICHARD WEINER: The .... transfer of real property.

RON KINGSTON: Let's talk about this just for a minute so that we make sure that we have a pretty good...a better grasp than we currently have on it now. If, let's say I give Denise a statement saying...she makes an offer to purchase my mobilehome for $45,000 and a few weeks later I give her this mobilehome TDS, which reveals that the heater doesn't work, the air conditioner is marginal. Should she have a right to rescind, based on that information? The purpose of the TDS is to assist the parties and guide them through common problem areas in the conveyance of the property, which in large part has to do with the desirability of purchasing the property. Denise will want to know is there a problem with the heater, and this document helps facilitate that discussion and her decision to get there.

If you don't have some type of right of recission, it will be put into every contract and Denise will then go out marketing and making an offer against my house, and Tami's house and John's mobilehome and several others, and she will write in the contract that she has a three-week right of recission without penalty.
And, it will cause each of the sellers to tie up their mobilehomes for that duration and all of a sudden she could just cancel each of the contracts. The purpose of the 3-day right of recission is very, very important here, where the buyers and the sellers have a fair and honest dealing. Denise, on one hand, wants to get her best deal, but Ron, or Tami or John want to be able to sell their home to an honest person who wants to buy their mobilehome and not tie it up so they can't sell it to any one else.

RICHARD WEINER: I can't argue with you, except that the way the Code section reads, and I certainly am not prepared to say if it's good or bad, is that this is the transfer of any real property, that's why this has not been made applicable to manufactured homes over the years because it talks about transfer of real property. That's the way it puts it. I am not prepared to agree that we are going to put this bit of, even though it's a home, of personal property under that section without a lot of discussion.

RON KINGSTON: The Eastern v. Strasburger case, which gave rise to this area which was decided in the mid 80's, was a case involving the conveyance of real

RON KINGSTON:

property. And, the two bills that followed that case attempted to limit and clarify only to that case. We didn't want it to apply to mobilehomes at that stage of the game because that wasn't the immediate issue at hand. We needed to resolve it for transfer of the real property. Now, the only question I guess I have is in one point in time if you give this stuff a disclosure statement, it will tie up the buyer and seller and you're going to involve some litigation. You may want some finality to it. You may want some finality as to the importance of this document.

JOHN TENNYSON: Mr. Pitts.

TRAVIS PITTS: Mr. Chairman, the only thing Ron said that I agree with is we could bring our attorneys in and debate this for three days. It is not current law. I do not propose that we attempt to make it current law, because we will never get our task done. It does not apply. It should not be on the form.

JOHN TENNYSON: Any other comments on this? Yes, Mr. Sams.

JIM SAMS: I am just drawing your attention to the fact that any purchase, the purchaser has a period of time in which he can rescind his purchase, and to my understanding, you have a waiting period under which you have a chance to rethink your position and I can see where it could cause some problems, but I don't know of any right now that would cause any problems, but I am wondering if we should retain that 3-day...

JOHN TENNYSON: Well, I don't believe it applies to mobilehomes.

JIM SAMS: Well, could it be applicable to mobilehomes?

JOHN TENNYSON: It doesn't apply to automobiles.

RON KINGSTON: No, there is no recission under automobiles. There is no recission under most personalty. The only recission rights that exist under current law is in the conveyance of real property for pursuant to RSPA, Real Estate Settlement Procedures Act, pursuant 1102 as to the conditions of the property, there are procedures...

RICHARD WEINER: With home improvement contracts there are some statutory 3-day...

JOHN TENNYSON: Door-to-door sales.

RON KINGSTON: There are a number of recission agreements. For the most part, they deal with pressure.

JOHN TENNYSON: What other comments do we have on this? I think it is going to be a set-aside issue. Ok. Mr. Orsburn.

OTIS ORSBURN: My comment is that I agree with Mr. Kingston regarding his thoughts about the 3 day recission, but it's not a law that applies currently, so we can't be applying to our form something that is not current law. So, it is a moot issue on whether it goes on or not. It is not applicable to manufactured homes.

RON KINGSTON: So, you could actually write it by contract if you wanted to.

OTIS ORSBURN: Right, absolutely, but for us to put it on a disclosure statement when it's not a requirement of law and make it a requirement by putting it on here when it is not a law, that's not what we are here for.

JOHN TENNYSON: Ok, we have some other issues to discuss, and I might suggest that Mr. Kingston and the representatives from the other dealers and multiple listing might want to get together on this issue and to see if there is a way to resolve it before the next meeting.

RICHARD WEINER: I'm not sure we need another meeting, that's why we are here now. Regarding other things, the last sentence on the form says, "real estate broker." We should add "real estate broker or mobilehome dealer."

JOHN TENNYSON: We were going to put "an agent" is qualified to advise on manufactured homes. Mr. Kingston.

RON KINGSTON: John, with regard to...if you just say "agent," I wonder if that confuses the public. At this stage of the game, I wonder if we do say. "real estate broker or mobilehome dealer is qualified to..."and you can't use real estate in this case, because it isn't real property.

RICHARD WEINER: We put manufactured/mobilehomes. That is probably a good idea, at this point, to go...

JOHN TENNYSON: Do you want to put "a mobilehome dealer or real estate broker?"

RICHARD WEINER: Is qualified to advise on...

JOHN TENNYSON: Manufactured housing/mobilehomes.

RICHARD WEINER: Right.

JOHN TENNYSON: We are at the end of the form, as it is. Now, we had some set aside issues from last time. I don't know, many of these are tied into the WMA/GSMOL proposal. I don't know if you want to talk about any of these things. From my notes, the set aside issues with regard to Section B involve things like sewer, sprinklers. Things like this were brought up before. Does anybody care about those or did we resolve Section B as far as everybody is concerned?

RON KINGSTON: I have a question about sprinklers. If a resident installs a small garden and puts sprinklers in there and they are responsible, should they disclose the condition of the sprinklers? Or if they, maybe, plant a tree? No, but if you have a sprinkler system that the resident has installed to maintain their own garden and there is a problem with it, should they disclose it?

JOHN TENNYSON: Is that much of a problem? I wouldn't think there would be too many that would make that kind of ...

RICHARD WEINER: Just use where it says "other."

TRAVIS PITTS: It's never been a problem in the past. If you want to get technical, we would hold that the sprinkler system belongs to the park. So, go talk to the park about...

JIM SAMS: If you are talking about "B" on our draft, as far as I'm concerned, that is fine as is.

JOHN TENNYSON: You're happy.

JIM SAMS: Yes.

JOHN TENNYSON: All right, then we will move on. I'd like to skip down to Mobilehome Residency Law disclosure. I think we have already taken care of that, if I'm not mistaken under Roman numeral one, where we talked about disclosure law and you might want to look at this, that and the other. So, hopefully, that's taken care of.

We have this local government TDS, and I'd like to do that last. I'd like to get into definition of "agent and seller," under Health & Safety Code Section 18046 or whatever section we chose to designate. Travis, I believe you were the one who suggested we come up with definitions for this purpose and put those in either this code section or some other section. And, we passed out, I believe, a copy of

JOHN TENNYSON:

18046. Does everybody have that? The problem with putting it in 18046, quite frankly, as far as I am concerned, is that I'm not sure it quite fits. Maybe we can put it in 18046.1 or something like that.

TRAVIS PITTS: That's fine, Mr. Chairman. The point was that at the last meeting we were hung up on those definitions, and I suggested that a single change to the Health & Safety Code would resolve all the problems we had been having with what is an "agent," what is a "sales person," what is a "dealer." That could be resolved here and it would say "only for the purposes of this Section.," meaning disclosure, here are the definitions. And then, agent means real estate broker, HCD licensed dealer, whatever. We would put all the definitions there in one place.

JOHN TENNYSON: Yes, and then we also had to come up with a definition of "seller" because there was some concern about whether a bank is a seller...

TRAVIS PITTS: Or in the event of a foreclosure, may include "financial institution"...

RON KINGSTON: Pursuant to this, you will have the usual list of exemptions under 1102.6.

RICHARD WEINER: Right, foreclosures, probates.

RON KINGSTON: Foreclosures, order of the court, all sorts of ...there are at least half a dozen exemptions.

TRAVIS PITTS: So, what I would propose to do, and that's based on the assumption that we would have another meeting, is have some time to go through and give your staff our cut at what that definitional section will be.

JOHN TENNYSON: All right.

RICHARD WEINER: It seems to me that the only thing that we are really concerned about at this point, there is already a definition of agent, broker and sales person, and there is a definition of Realtor, broker. I'm not sure that we should tinker with those. The only issue was, as far as I was concerned, was to make sure that when we are talking about the disclosure statement, that because seller had traditionally been thought of by HCD as the dealer and not the registered owner of the home, that we made sure that for the purpose of this section that we are only talking about the registered owner and not about the agent. When we use

RICHARD WEINER:

the word "seller" we are talking about the registered owner of the home, and other than that, I don't think we need any other definition, that we need to define "agent" anywhere.

TRAVIS PITTS: We don't? That's fine, if that is clear.

JOHN TENNYSON: Well, why don't you tinker with that and try to get it to us in two weeks and then we'll put it together in a package and send it out to the people.

RICHARD WEINER: If we vote on that, I don't know why we have to have another meeting. Assuming for the moment that we resolved other issues...

RON KINGSTON: I think what we probably should do is...Mr. Tennyson, I'm sure can put another draft together. There have been so many amendments that have been made and so many changes, I think in fairness we need to look at that plus the two other issues, one will be the definition of "agent..."see how that dovetails with this issue, as well as looking at the time of day, now...

JOHN TENNYSON: Well, we can go till 5 o'clock. That's what we originally agreed upon.

RICHARD WEINER: If we go till 5 o'clock, I thought if we are doing that, why don't we just knock this out and finish it?

JOHN TENNYSON: Well, on the definition of the agent and the seller, your view is that your only concern is the definition of the seller and to clarify that the seller is the registered owner and not the agent. That's all you care about?

RICHARD WEINER: That's all I care about, and I don't think we should try to redefine those terms that ...

JOHN TENNYSON: Then, we also have to say that for purposes of 1102.6(b) or this form, that an agent is a...

RICHARD WEINER: ...broker or dealer or their sales people as defined in the various code sections.

JOHN TENNYSON: Yes, and that is what he is going to work on. That shouldn't be too difficult. All right, then we are down to two issues. This local government TDS, is that still an issue?

RON KINGSTON: Let me mention to the members why the local TDS came about, and I'm going to suggest that we leave that alone and not do anything about it.

JOHN TENNYSON: Is anyone else but Mr. Kingston concerned about that?

TRAVIS PITTS: I second his motion.

JOHN TENNYSON: Do we need to discuss it then?

GROUP: No need to.

JOHN TENNYSON: All right, then we will cross it off the list. All right, now as I understand it, assuming that the draft that we put together here as staff is consistent with the desires of the Task Force, we are down to two issues. One issue is the GSMOL/WMA proposal on the information concerning the park property and referral back to the park management, whatever you want to call that issue, common area issue, and this issue with regard to, I call it the recission issue. Is that correct? Are there any other that I have forgotten about? There's a third issue. Denise.

DENISE DELMATIER: Yes, the draft that we have before us as proposed to be amended and brought around the dais here, reflects GSMOL's interests as far as it goes, that, of course is contingent upon the agreement reached earlier today with WMA, so assuming that the agreement stands and incorporated into this new draft, then we are satisfied. However, if there are additional liabilities associated with the seller, then there are additional specifications that we would like to see included in the...

JOHN TENNYSON: That's part of the common area issue?

DENISE DELMATIER: Correct.

JOHN TENNYSON: Other than that, are there any other issues?

RON KINGSTON: The common area defining liability, define agent/seller...

JOHN TENNYSON: This whole area of the GSMOL/WMA proposal, I think, relate to liability, and, the 1102.3 issue, recission. Is there anything else? All right. I don't know if we are going to be able to resolve it, but let's go back through the...Well, what is the desire of the Task Force on dealing with these two issues? Do you prefer to adjourn now and come back on

JOHN TENNYSON:

December 4 or would you like to try to slog through it in the next hour and see if some resolution can be made?

RON KINGSTON: I don't mind meeting one more time because I think these two issues are so critically important that I think each party should go back to their principals and have a chance to dialog this thing out. We now have the language and my motion still stands, I guess, and suggest that we get drafts back to you within two weeks for alternatives and Elizabeth West suggested that you, in turn, circulate those to committee members for comment and be prepared to deliberate them and make some type of decision on December 4.

JOHN TENNYSON: Ok, who are going to be the parties that are going to be making these proposals? Yourself, I assume?

RON KINGSTON: Yes.

JOHN TENNYSON: WMA and GSMOL together. Mr. Weiner.

RICHARD WEINER: It seems to me we can to the extent that there has to be rewriting, of course that will be taking place, what John is going to do, on these two issues, it seems to be we can try to go through them. It is my understanding that whatever the majority decides will be what is within it. That may not be acceptable to the various groups. I assume that neither of those two issues, and certainly not the three day recission, is a deal buster, but maybe you are saying it is. I know that from the dealers' point of view, they are not going to agree, while standing on one foot, to say that they will agree to change the law to allow a three-day right of recission on the sale of a manufactured home. I don't know if you are saying that you have no deal if that isn't written into the agreement, into the form.

RON KINGSTON: Quite frankly, I don't know what our position is concerning a three-day right of recission because I've never asked that question of my clients. As to the liability issue, there are a sufficient number of questions that have arisen at this stage of the game that I feel I need to go back and seek further policy guidance because I will not be able to vote in favor of how it is laid out right now. I don't know exactly what they want or if they will compromise.

JOHN TENNYSON: Procedurally, the wishes of the chairman, that's not me, it is Senator Craven, I'm just acting, is to resolve all of these without taking a vote on specific issues unless we cannot agree in which case we will have to take a vote for a majority in that case. But, only after every effort has been made to try to resolve this by consensus. That is his desire, which I think, makes sense. Yes, Denise.

DENISE DELMATIER: Mr. Chairman, can I ask a technical question. Since I do not have this information before me but as an advocate I would like to count votes, can you remind me who are the voting members of the Task Force?

JOHN TENNYSON: Well, there is one for each organization or their representative or substitute. There would be Mr. Henning, GSMOL; Mr. Hennessy for CMRAA; Mr. Kingston, for CA Association of Realtors; Ms. McLees for WMA; Mr. Orsburn for CMHI; Mr. Pitts for HCD; Mr. Weiner for Multiple Listing; Ms. West for the Assembly; and Senator Craven, or myself, I guess as the substitute, for the Senate. That is nine votes.

DENISE DELMATIER: Who is the representative for the California Park Owners Alliance?

JOHN TENNYSON: They were not included. The reason they were not included was that we weren't aware that they had a representative, and they didn't come forth to indicate that they wanted to be represented until after the Task Force was put together. Mr. Leathers showed up at the first meeting, but did not -- and I asked him if he wanted to see if we could arrange to have him included -- but he did not indicate a preference one way or the other, so we didn't pursue it. He didn't show up to this meeting.

JIM SAMS: Well, I personally would like to see us just go ahead and see what we can resolve and discuss it while we already have this fresh in our minds.

JOHN TENNYSON: Today, you mean?

JIM SAMS: Yes, today. I mean, what's 5 o'clock. It's just another hour. We could get a lot of discussion done in an hour and maybe we will even have a better understanding of where we stand, even if we have to have another meeting. I think the hour could be well spent.

JOHN TENNYSON: I guess we'll have to take a vote on what we are going to do here. Anyone else want to comment on whether to adjourn till December 4 or continue through the next hour? Mr. Pitts.

TRAVIS PITTS: Mr. Chairman, is there any hope of resolving the remaining issues?

JOHN TENNYSON: I don't know. I hope so.

TRAVIS PITTS: Well, I agree with Mr. Kingston. I don't believe there is any hope without his checking with his members that he seems to be able deal with the issue.

RICHARD WEINER: The liability issue or the 3-day recission?

RON KINGSTON: Both. And, that's what I am trying to do and be as gracious as I can today. I'd rather...if you will give me some time, I have some flexibility. If you force me to vote today, I don't have much choice. But, according to Mr. Tennyson's admonishment, he would rather try to negotiate it out, the issues out, than vote on it. It is the will of the committee, what you want to do?

RICHARD WEINER: It is a practical matter, the liability issue. I realize that this was really a discussion between GSMOL and WMA and I don't have any vested interest in it. My comments about adding the wording seems to me is that it is a mistake to do so, and I said that before and I don't know if you agree with that. I would, if push came to shove, I wouldn't vote at all because it's not really an issue. I suppose at this point, it is an issue between GSMOL and WMA, which they have agreed to certain wording on. I have no objection to that except I don't think it really belongs in the form. It might be a mistake to leave it in there in the form that the compromise suggested. If push came to shove, I would just not vote at all and if that is the compromise, I would have no problem leaving it in there, although it is probably a mistake to do so.

JOHN TENNYSON: Ok, at this point we'll vote on whether to continue till 5 o'clock and voting to continue till 5 doesn't foreclose another meeting, it just means that we are going to continue the discussion till 5 to see if we can further narrow the issue. So, we'll vote on whether to continue till 5 o'clock. Secretary, will you please call the roll?

SECRETARY: Mr. Sams - GSMOL - aye; Mr. Kingston - CAR - abstain; Ms. Miller - WMA - aye; Mr. Orsburn - CMHI - aye; Mr. Pitts - HCD - abstain; Mr. Weiner - Multiple Listing - aye; Mr. Tennyson - Senate - aye. Five - aye; two - abstain.

JOHN TENNYSON: All right, we'll continue till 5 o'clock. WMA and GSMOL, if you want to ahead with your liability issue.

DENISE DELMATIER: Well, Mr. Chairman, I think we presented our arguments in favor. I'm not sure that there is anything left to be said as far as the arguments in favor of the proposal. It's one that GSMOL feels strongly about and the rest of the agreement is contingent upon inclusion of that provision. I probably guess, and Tami, you can jump in here, but I would probably guess that from the park owners' perspective a similar scenario is true, that there are probably some things that park owners would prefer to see in or out if this agreement were not to go forward. So, it is a very important provision for GSMOL. I would actually concur with the Realtors in that I think we ought to take a vote at the next meeting

DENISE DELMATIER:

on this, certainly from the perspective that we have an absent member who represents the residents. And, I would assume that that is a very, very important issue to the other resident group.

JOHN TENNYSON: Mr. Pitts.

TRAVIS PITTS: Mr. Chairman, if I could try and reach a middle ground here. I think the problem is that that agreement which we all would hold is a good agreement, doesn't belong in the real estate disclosure form. Of course, we are talking about disclosure as opposed to liability here. Would there be an objection from the parties to the agreement to putting another provision in the Health & Safety Code that basically said that with respect to the sale of manufactured home in the park, the seller would not be liable for the condition of the park.

DENISE DELMATIER: Within the Health & Safety Code as opposed to:..

TRAVIS PITTS: Yes, it would be a provision of the Health and Safety Code with respect to the sale transactions of manufactured homes, but a statement about liability wouldn't appear in the transfer disclosure statement as a disclosure.

JOHN TENNYSON: Other than failure to disclose.

TRAVIS PITTS: Right, failure to disclose but it would protect the substance of the agreement without the problem everyone else has with...

DENISE DELMATIER: As an amendment to this proposed bill.

TRAVIS PITTS: It would be in the bill.

DENISE DELMATIER: That would be fine.

JOHN TENNYSON: Mr. Sams.

JIM SAMS: That would be dependent, actually, too, on whether WMA would support that so that when we come to the point of getting the legislation introduced if it would move through in a swift manner because we are talking about the next year putting this in a Statute. Is that correct? It has to go through the procedure.

JOHN TENNYSON: That's correct.

JIM SAMS: So, what we are doing, in effect, is delaying it with the understanding that if we were to agree, and I know you have to give a provisional agreement like I do, if that seems to be something that would not be a problem as far as you can see.

TAMI MILLER: It is difficult for me to comment on that right now. I would really have to take that back if we are going to depart from what we have.

DENISE DELMATIER: I believe that it's just a matter of ...

JOHN TENNYSON: How is it different? It is really more of form than substance.

DENISE DELMATIER: Exactly.

TAMI MILLER: Well, to me putting something in the Health & Safety Code us different from something on the disclosure statement.

JOHN TENNYSON: Mr. Weiner.

RICHARD WEINER: This disclosure statement is going in to a Code Section.

TAMI MILLER: I understand that but this is a whole new concept that I haven't even discussed with the client, so I....

DENISE DELMATIER: Sure, we would have to. This is all provisional. We, both of us, need to take this proposed agreement back to our respective parties and obviously we need to make sure that we are on point here, but assuming that conceptually we are on point with our respective parties, then it's form over substance, it seems to me that putting it in the Health & Safety Code as opposed to in this statement itself, I don't see any problem.

JOHN TENNYSON: Mr. Kingston.

RON KINGSTON: A few hours ago, I mentioned to you that you need to change the law concerning liability, and it doesn't belong in this particular Code Section. As a matter of civil liability, it belongs in the Civil Code, not the Health & Safety Code, but that's a technical matter. The second thing, and that's easily accomplished, but I guess I would observe that just in regard to the conceptual matter, if you did create this liability shield, if you did exculpate the seller and the agent from duties to disclose the common area, you would say that this creates no...that this form creates no affirmative duty to disclose conditions concerning the common area. This is the reason why. If you just said you created the liability shield, period, you would create a liability shield even for the person who made a misrepresentation as to the condition of the park, if they voluntarily decided to

RON KINGSTON:

undertake that. And, that will most assuredly run into all sorts of problems in the Legislature. Once again, if you create the liability shield, you would say that pursuant to this code section, 1102.6(d), no affirmative duty is created to, of the seller, or his or her agent, to report conditions concerning the common area of the park.

TAMI MILLER: It's not just common area. It's park property.

RON KINGSTON: Ok, park property. That will be fine. So, you would obviate other legal entanglements that you would otherwise create. In addition, I would suggest if you walk down this path, that you are going to need to repeat that phraseology in this disclosure statement and the reason for that is because I think the seller and the buyer, who are largely unsophisticated parties, will have ever present in their mind, whether or not they are to make some type of disclosures concerning, "Gee, they know there is some problem with the park. Do they are do they not?" If you put it right before the statement, right before them telling them what their duties are, in this regard, it will help facilitate the disclosure. It will not frustrate the disclosure.

JOHN TENNYSON: Yes, Denise.

DENISE DELMATIER: Travis, let me try and get clarification because Mr. Kingston made a couple of comments that obviously we couldn't support and would oppose the language that he just suggested. But, he did raise some points for me, and I want to be sure that we're agreeing to the same thing, or that what I heard you say is the same thing that I interpreted. And, I wrote down, as far as what Mr. Kingston first earlier today recommended for inclusion in our proposed language, I wrote down "the seller or his or her agent shall not be required to disclose or be liable for failure to disclose to the buyer conditions of the park property, including condition of the lot." Period. And that is where we break the three clauses. So that the disclosure requirements would be in this disclosure statement, or the exclusions for disclosure requirements. And then, what we would propose to put in Health & Safety or Civil Code, "the seller shall not be liable to the buyer for the conditions of the park property, including the condition of the lot." Is that what you are suggesting?

TRAVIS PITTS: That's my proposal.

DENISE DELMATIER: Ok. That would be acceptable to us.

TRAVIS PITTS: We would retain the same thing that we already agreed to with respect to the disclosure with no obligation for disclosure on the part of the seller.

DENISE DELMATIER: With no liability for failure to disclose.

TRAVIS PITTS: No liability for failure to disclose but we would have a separate provision which upholds the agreement you made with WMA having to do with liability of seller's for the park's property.

DENISE DELMATIER: That would be fine.

RON KINGSTON: Is that an affirmative duty to disclose or just the duty to disclose? Now, here's the nuance or difference.

JOHN TENNYSON: Fraud is the difference.

RON KINGSTON: Yes. By the statute it doesn't create an affirmative duty to disclose, that I think is the intent, and I think that is the way you would phrase it.

TRAVIS PITTS: Or liability for failure to disclose.

DENISE DELMATIER: Or shall be liable for failure to disclose.

RON KINGSTON: But, if you are asked...

TRAVIS PITTS: If you lie, that's fraud.

DENISE DELMATIER: But we have a statement here, "seller certifies that the information herein is true and correct." So, there is the fraud protection.

TRAVIS PITTS: I don't have a problem. I'm trying to understand. He brought this up before and it went by me. Lying to somebody is different than whether or not you have an affirmative duty to disclose. If you lie, that's fraud. It has nothing to do with whether I have an obligation to disclose to you or whether you have any way to come back on me if I failed to disclose to you. That's what we are covering, not that I said, "John, this is a purple mobilehome," and it turned out to be green.

JOHN TENNYSON: Well, I would think it would only involve...I think there is a problem there with fraud, so I think you are talking about basically situations where you don't ask and you don't have to tell. But, if you are asked and you lie, this wouldn't cover that.

DENISE DELMATIER: That's right, and you would be in violation of "seller certifies the information herein is true and correct."

JOHN TENNYSON: That's not the big issue. The big issue, as I understand it, is this liability for the park owner's property. Isn't that the major difference or concern that we have?

RICHARD WEINER: As I understand it, we have agreed on the language aside from this issue of liability. We have agreed on the language for the failure to disclose.

DENISE DELMATIER: I thought that to be true earlier in the day.

JOHN TENNYSON: Is that correct? Or?

DENISE DELMATIER: Well, there seems to be some revisiting of that agreement.

JIM SAMS: We did have the condition of the lot as well, and I think that was taken care of by her statement to Travis and her question. As far as I can see, we're close together on this as far as taking care of it with the form and also statute.

JOHN TENNYSON: Well, some of the parties have indicated they would have to check with their clients.

JIM SAMS: Well, we could go back and check with our people in the interim, and then bring this forward at the next meeting.

DENISE DELMATIER: The issue is really of most import between our respective parties. And, if we have agreement procedurally, essentially I think the issue for HCD is more a procedural issue rather than a substantive issue. If we have agreement there, we can go back and check with our parties, come back to staff and say, "Yes, we agree." And there is no reason for a future meeting.

RON KINGSTON: There is if you are concerned about the trial lawyers.

JOHN TENNYSON: Well, Mr. Kingston has a different view on whether there is a need for another meeting. Ok, Mr. Orsburn, do you want to say anything with regard to your proposal where you attempted to simplify the language some?

OTIS ORSBURN: I had brought that information up just to try and establish again, just disclosure versus establishing liabilities. And, it's the two groups that

OTIS ORSBURN:

need to get together to decide what's acceptable to both of them, and as an agent selling the homes within the communities, we can do it either way. I'm just hoping by the time it's said and done it's an equal sharing and not one organization taking advantage of another and costing us some industry problems later on.

DENISE DELMATIER: Well, with that statement, then, I would like to make a substitute motion, and that is to accept the proposal that Travis outlined and to have our two respective parties go back to their respective advisory groups and to respond to staff with an answer and if the answer is affirmative from both of our parties, we have agreement and don't need another meeting.

JOHN TENNYSON: Well, first of all, procedurally, Mr. Sams is your representative, so he would have to make the motion.

DENISE DELMATIER: Excuse me, yes, Mr. Sams. I defer to Mr. Sams.

JOHN TENNYSON: Secondly, I would rather not get into parliamentary procedure. We can vote on whether to have another meeting or not, I suppose, but right now, I would like to keep this on the level of seeing whether we can conceivably narrow the issue, which I think we are working on, although I would like to hear more from Mr. Kingston on that. So, we will take that idea under submission. Yes, Mr. Weiner.

RICHARD WEINER: I think the language that we worked on this morning is appropriate. It is more inclusive and I think that regarding the issue of disclosure, I would concur with the language as we amended it finally before we had this argument about the liability, and I think it should be separated, as Travis suggested. So, I would support that.

JOHN TENNYSON: Ok, anything further on this issue? With regard to the other issue was there anything further to discuss on that? The recission issue, 1102.3? Any ideas on how to resolve that?

RICHARD WEINER: Is that the code section that has to do with real property or to all transactions?

JOHN TENNYSON: I don't have a copy of the Section.

RON KINGSTON: As I recall, it's all real property.

RICHARD WEINER: Yes, I think it is all real property.

RON KINGSTON: And, today a real estate broker has to make an inspection of the mobilehome but the seller does not.

RICHARD WEINER: It's residential. This code section says it is residential. It is only subject to transfer of real property subject to this Article. This Article says disclosure upon transfer of residential property. Again, this is a huge issue, the right of recission. Rarely enacted. And, I don't think we ought to tackle it. I would submit that it would certainly be applicable if the manufactured home is attached to the realty and was real estate. Otherwise, I would submit it is personal property. The law does not read now that it is subject to that 3-day right of recission and I think this will blow the deal, if we attempt to put it in there.

JOHN TENNYSON: Mr. Kingston.

RON KINGSTON: As I said before, I don't know what the policy of my client is if this comes out. I just don't know. I cannot respond positively or negatively in that regard. I could argue both sides of it fairly easily.

JOHN TENNYSON: But you think that they will be of the view that it should be included even though it is not a requirement for personal property?

RON KINGSTON: I really don't know. That's just something we have not talked about. I usually have a pretty good handle on where they are on positions, but this matter has not been discussed.

JOHN TENNYSON: Well, it appears that we have run out of discussion. So, there will be a meeting on December 4 that we will notify you of the...unless there is a strong objection to that, at this point, I don't see how we can move forward. I don't expect to resolve these two issues any further today. Mr. Weiner.

RICHARD WEINER: I would only propose this. If after you have taken a consensus, talked to your constituency, and they have said that they don't mind leaving the law the way it is, I don't see any reason to have to meet on that issue.

JOHN TENNYSON: On 1102.3, you are talking about.

RICHARD WEINER: Right, on the recission. On the other issue...

JOHN TENNYSON: And, you'll let me know.

RON KINGSTON: Oh, absolutely.

RICHARD WEINER: Again, as far as I'm concerned, if the two parties agree, if GSMOL and WMA agree on that language, again, I... it would seem to me that it could be submitted to the other parties to see if they have any objection to having a separate section for liability and, if that's the case, there is no reason, necessarily, to have a meeting, if the others agree, that would be part of a separate code section.

JOHN TENNYSON: In other words, you would support the language that was agreed to earlier with regard to failure to disclose, but not the liability for the common areas, if they take care of that problem in the separate code section, if that's appropriate.

RICHARD WEINER: Right. I wouldn't necessarily say that I would stand up and vote yes, but on a separate code section. I would neither support nor not support it. I would not object to it being included in the bill...

JOHN TENNYSON: Of course, you would want to see it first.

RICHARD WEINER: Right.

JOHN TENNYSON: And, what is your position on that, Mr. Orsburn?

OTIS ORSBURN: I agree.

JOHN TENNYSON: And Mr. Pitts, I assume.

DENISE DELMATIER: Agree.

JOHN TENNYSON: And, Mr. Kingston, you object to the separate code section, or your not...

RON KINGSTON: Oh, well, I guess I've expressed...if you're going to do it, you need to place it...you need to change the law as follows. One, you need to enact or propose to enact a separate, new Civil Code Section. As to the liability shield that you are creating...and number 2 of which is, I would strongly recommend that you need to reiterate that in this disclosure form, but for no other reason but to provide clarity to the parties of the transaction so they know that there is no duty to disclose...

JOHN TENNYSON: Wait a minute, now, we aren't talking about duty to disclose, we're talking about liability of the selling homeowner for the park property, I thought. But, the disclosure issue is something else.

RON KINGSTON: This is all in connection with...this is the question. Does a seller have the duty to disclose park property problems? And the response by WMA and GSMOL is no. The question, therefore is, how do we accomplish that? The response was to propose to add a new Civil Code section exculpating the seller and agent from the duty to disclose park problem issues. Correct?

JOHN TENNYSON: No, no, no. That is not my understanding.

RICHARD WEINER: No, I understood that we had worked out the language, as suggested by you on how to accomplish failure to disclose. We specifically worked on that language at the bottom of...

JOHN TENNYSON: Let's go back a minute. I want to be sure everybody is on the same wave length because there is no sense coming to a third meeting and we are still not working from the same script. Ok. After this morning's meeting, there was a lunch break and I went to the office and put this together based upon what I thought was the language from this morning, which was on this second draft sheet. Does everybody have that in front of you? It says, "The seller or his or her agent shall not be required to disclose or be liable to the buyer for conditions of the park property including the condition of the lot." Then, Mr. Kingston pointed out that WMA and GSMOL were not addressing the issue of failure to disclose. That the wording in here, in his view did not address what he thought, and frankly, what I thought, and maybe some others, was what you were trying to achieve this morning and that was to provide that you are not, because in the context of what we're working on, we're talking about disclosure, so at least I was of the view that what you were talking was the seller/agent shall not be required to disclose or be liable for failure to disclose these matters. Ok? So, then he had suggested this failure to disclose language and then that's when you came up with, "Oh, no, no, no. You left out this other element, liability for park property." Are you with me?

DENISE DELMATIER: Correct.

RICHARD WEINER: So, the wording would be in the last two lines, "...required to disclose or be liable for failure to disclose to the buyer, conditions of the park property including the condition of the lot."

DENISE DELMATIER: Perfect. That's part of it.

JOHN TENNYSON: Then, there was some difference of opinion or discussion, you had suggested then, or Jeri, I can't remember who it was, that you add another sentence to the effect that the seller or his or her agent shall not be liable to the buyer for conditions for the park property including the condition of the lot.

DENISE DELMATIER: Perfect.

JOHN TENNYSON: We address that third element. Ok. Then, there was some concern or discussion with regard to that, and that is where it all sort of broke down, and then we ended up putting it over. And, now Mr. Pitts has come up with the suggestion that this liability for the park property or the condition of the lot issue not be put in the disclosure, but rather be put in a separate, perhaps, Civil Code Section. So, that's where we are now, as I understand it.

GROUP: That's correct.

RICHARD WEINER: I don't know if that language at least, forgetting about this issue of the liability, if the language is agreeable on the last two lines, "...required to disclose or be liable to the buyer for conditions of the park property including the condition of the lot."

PAUL DEIRO: And the distinction being the disclosure form is about disclosure. The separate code section sentence is not.

JOHN TENNYSON: Now, that still doesn't address what you raised about fraud.

DENISE DELMATIER: And, we're not attempting to address fraud.

JOHN TENNYSON: But, he feels that you should clarify that, as I understand it.

RON KINGSTON: Just by broaching the subject you do. There is no question. It is inescapable. You do it whether you like it or not. Bury your head in the sand, it's still there. Come up, it's still there. See, that's why I just ask the question from the point of clarification. How do you want to address it?

DENISE DELMATIER: Existing law stands on its own to address fraud.

RICHARD WEINER: Well, there is no question, we may be changing existing law for some reason. We may be doing something...

RON KINGSTON: Actually, we do modify the Statutes a lot because you are creating...do you or do you not create a affirmative duty to disclose? Any time you create a liability shield, you do modify the ordinance.

RICHARD WEINER: There's a reason for modifying. And it is that the purpose of this whole disclosure statement was to try to have the seller of the home responsible only for the home and not for the conditions of the park which is why we traveled that road in the first place.

JOHN TENNYSON: Ok, so you have this issue of affirmative on the disclosure and then you have this issue of the liability for the park property, as I see it. Is that correct?

DENISE DELMATIER: At this point, I don't think we have to have unanimous consensus on the issue about liability or conditions of park property, but it seems to me that we do have...

JOHN TENNYSON: And?

DENISE DELMATIER: And, I would urge inclusion based upon our ability to go back and check with our respective folks and come back and give you an affirmative answer and we don't need to meet.

JIM SAMS: And, as a representative of GSMOL, that is my position.

RICHARD WEINER: If you have gotten back to John with the proposal that both of you have agreed on that may be forwarded to everybody, and subject to speaking to everybody determine whether or not another meeting is necessary.

JOHN TENNYSON: Well, I'm not optimistic that's going to work out too well.

RICHARD WEINER: Well, set the meeting date and we'll see if we need it. But, I would try to do without a meeting, if possible.

JOHN TENNYSON: Ok, December 4 is the date, 10 am, and we'll notify you if it is necessary, and it probably will be, of the place. Anything else? Meeting adjourned.

MEETING ADJOURNED AT 4:35 pm.

# California Legislature

## Senate Select Committee on Mobile and Manufactured Homes

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**Mobilehome - Manufactured Home**
**Resale Disclosure Form Task Force**
**Thursday, December 4, 1997**
**Room 112, State Capitol**
**10 am**

## AGENDA

I. 10 AM - Opening Remarks by Chairman and Members

II. Review of Draft form developed on October 28th and proposed Health and Safety Code Section amendments ... fine tune

III. Discussion and Vote on park property liability issue

IV. Discussion and Vote on three-day right of recission issue

V. Additional or other issues

VI. Closing remarks by Chairman

VII. Adjourn by 1 pm

# LEGISLATIVE TASK FORCE ON MANUFACTURED HOME & MOBILEHOME RESALE DISCLOSURE TRANSCRIPT

State Capitol, Room 112
December 4, 1997
Third Meeting

JOHN TENNYSON: Good morning. We'll try to get started, although some of our representatives aren't here yet. The representatives from CMRAA will not be here. They've sent a letter expressing their views, a copy of which I believe is before you. If not, we'll get you a copy. You see an agenda in front of you, here. The schedule today, if you agree to it, is to review the draft that we sent out about 10 days ago of the form as the Task Force worked on it on October 28th, with the exception of the two issues which we will discuss later today -- the recession issue and the so-called park liability issue -- and fine tune anything that people find may be a problem on that form, as well as proposed amendments to the Health & Safety Code which Mr. Pitts has worked on at the request of the Task Force.

Then, we will move on to the two issues that were left hanging last time, again, Roman numerals three and four and if necessary, if we can't resolve those, we'll have to take a vote on them and go forth accordingly. Then, Roman numeral five, any additional issues that may come up or added matters, that would be the appropriate time. And finally, I will close with remarks which will be directed towards how this is going to be put together in bill form and the report of the Task Force and so forth.

I talked to Senator Craven last night, and he is still under the weather, unfortunately. His desire is to move to conclusion on this matter, even if we can't resolve everything. As Mr. Pitts has mentioned a couple of times, Senator Craven also said, "We can't solve all the world's problems in this form." And, if there are other problems that need to be worked out, that will either have to take place during the legislative process or at a later time in future years. I'm sure that, as he pointed out to me over the phone, the existing TDS for conventional real estate has not remained static over the last ten years and probably this won't either, as new problems develop over future years, and we become aware of things that, perhaps, we cannot think of right now.

So with that in mind, again, I would like to admonish everyone to keep it short and to the point so we can adjourn by 1 o'clock or before. This room is going to be used for another meeting this afternoon, and I don't think we need to drag it on till 5 o'clock like we did last time. We have Burt McChesney with us from the California Association of Realtors who is sitting in for Ron today. And, I believe Richard Weiner will be here as soon as the fog lifts, representing Multiple Listing. I believe we have everyone else. At this point, does anyone else want to say anything in terms of opening remarks in sort of a general

JOHN TENNYSON

sense about where we are going, and so forth? Well, then, we'll move forward. If everyone, and if you didn't bring your packet with you or didn't get one in the mail -- Mr. Hennessy says that he didn't get his packet. And apparently, some people didn't get theirs. Hopefully, everyone got one. Did everyone get the packet in the mail last week? Ok. If you can turn to the two documents -- the proposed Health & Safety Code amendments and the October 28th Task Force Draft -- and we'll work through that as quickly as we can.

We'll start with the draft. Again, on October 28, we went into considerable detail, as those of you who were here may recall, and we did make some of the changes that were suggested. For example, on page 2 we changed capital letter "A", disclosure of what the home contains, we changed it from four columns to three columns and tried to make those columns consistent as you read from left to right. We incorporated all the other recommendations of the Task Force and we, also, put the asterisk in for the hot tub locking covers, water heater anchored, braced or strapped, automatic garage door opener, spa locking safety covers and bedroom window quick release mechanism, referencing the appropriate Code sections. Basically, everything but the two issues, Roman numeral 3 and 4 on your agenda.

Welcome, Liz. We are working on the form. If you look at your agenda, you can see we are going to work with the form that was handed out and then we will get into the two set aside issues. So, does anyone want to bring up any technical points with regard to what has been drafted so far? Any recommendations for changes, etc.? Burt?

BURT McCHESNEY: First, on page 2 in Seller's Information, the boldface statement, "...representations of the agents, if any, as defined in Section 18046..." That only defines mobilehome dealers as agents, not real estate agents or lawyers, or others who may act as agents.

JOHN TENNYSON: Right, well, as you look at your other handout, proposed amendments to the Health & Safety Codes, Mr. Pitts has been kind enough to run a first draft by us of the in 18046 that would be necessary to reference what a seller and what an agent are for purposes of this form and for purposes of 1102 (b), and maybe this would be the appropriate time to get into that proposed definition. Mr. Sams.

JIM SAMS: I would point out just a minor thing here on subsection C...

JOHN TENNYSON: On the form, now, you are talking about?

JIM SAMS: Yes, on the first page. There is a typo there. It says, "...by subject..." instead of "be subject."

JOHN TENNYSON: I'm afraid I'm not following you.

DENISE DELMATIER: It is actually on the proposed changed to the Health Code.

JIM SAMS: Yes, it is on the Health and Safety Code proposed changes, page 1. On section (c) it says, "...the sale of used manufactured homes and mobilehomes by an agent shall by subject..."

JOHN TENNYSON: "...shall be subject..." That's a typo. Thank you. Anything? GSMOL? WMA? Anybody else? Jeri.

JERI McLEES: John, as I understand it - I'm a little confused - under 2 when you talk about "...as defined in Section 18046..." if we accept that definition as...I think that should resolve...

BURT McCHESNEY: Well, I don't know that it does because this language here only then defines agents as dealers and real estate agents, and there are other people who can act as agents for buyers and sellers. So, do we need a definition there at all?

JERI McLEES: I think that we believe that we do. Maybe what we need to do is when we get to that definition add those other entities as part of that definition in 18046 so it is an all encompassing type of thing, so that in the disclosure form we aren't having to list 20 different code sections to make sure that we cover everybody.

BURT McCHESNEY: I'm not sure you need to do a reference to define an agent in that section.

JIM SAMS: I believe that GSMOL would like to see it done, and then when you refer to that you automatically get that interpretation.

JOHN TENNYSON: I think the question came up previously in regard to what is a seller and it was suggested that...Mr. Weiner is not here, representing Multiple Listing. He is the one who brought that issue up and was concerned about banks upon foreclosure and other entities being defined for purposes of disclosure itself and that's why (unfortunately, he's not here yet) instead of trying to list all these different entities in the form, it was suggested that perhaps a reference to a code section which would define those parties would be more appropriate. Mr. Pitts, do you have any comment on that?

TRAVIS PITTS: Burt, at the last meeting it came up that as we are requiring the completion of this form of the agent's portion of the transfer disclosure form, the Health & Safety Code had no definition of agent. So, I was asked to incorporate, in 18046, the definition of an agent to include HCD licensees and real estate licensees. So, that's what I have tried to do.

BURT McCHESNEY: I guess our concern is that there are other people who could act as agents who wouldn't fit into that definition.

TRAVIS PITTS: That's true. Are they subject to the disclosure requirements?

BURT McCHESNEY: No.

TRAVIS PITTS: Not as I recall. Therefore, they are not an agent as defined in Section 18025...

BURT McCHESNEY: Are you requiring the agent to complete, use this form to complete or meet their disclosure obligation?

TRAVIS PITTS: That would be my understanding.

BURT McCHESNEY: But, only with respect to their disclosure obligations which are different than the seller's disclosure obligations.

TRAVIS PITTS: It would be my understanding that the intent of this legislation is to specify the seller's disclosure obligations, as well as the agent's disclosure obligations with respect to the sale of a used manufactured home subject to registration with HCD.

BURT McCHESNEY: Ok.

JOHN TENNYSON: Ok, anything else on this form? Jeri?

JERI McLEES: I have some just minor, very technical things that I thought I should just pass them along to Louise, or...

JOHN TENNYSON: Well, why don't you just go through them now?

JERI McLEES: Ok, they are really grammatical. On page one, the first paragraph, third line, but after "...including (comma) but not limited to (comma)..." and then as you list those different items, I think you need a semicolon instead of a comma in-between each of those items. And then, in the second to the last line, it says "...and park and.." there is a comma and I think it should be "...and park and/or lot..."

JOHN TENNYSON: Where are you now?

JERI McLEES: The second to the last line of that first paragraph. It starts with "...agreement or lease..."

JOHN TENNYSON: On the first page?

JERI McLEES: The first page. Under Roman numeral I...

JOHN TENNYSON: Oh, down below here. All right.

JERI McLEES: The second to the last line, you have "...regulations; and park and 'slash' or lot inspection reports..." And, then, on the very top of the next page, the very first sentence, there is just a typo where there is no space between "even and though". And, that was all I found.

JOHN TENNYSON: Ok. Any comments with regard to the items listed in "A?" It is pretty much all the items that are in the existing form for real property except for those that don't apply to mobilehomes in a mobilehome park because they aren't part of the home. Otis.

OTIS ORSBURN: In the footnotes, it looks like we've gotten to where the sentence starts "The..." and the very tail end and there was supposed to be more commentary that identifies the asterisk above.

JOHN TENNYSON: It is on the next page and we probably should have said "continued on next page."

OTIS ORSBURN: Oh, at the bottom. I see.

JOHN TENNYSON: Mr. Pitts.

TRAVIS PITTS: John, going to the last statement on five I am troubled by that statement. "A manufactured home/mobilehome dealer or real estate broker is qualified to provide advice on a manufactured home/mobilehome." Advice on the sale?

JOHN TENNYSON: Well, I believe that was...we went over that last time. That was lifted from the existing language in 1102.6, I believe. Let me double check here. It says, "A real estate broker is qualified to advise on real estate. If you desire legal advice, consult your attorney." This one says, "A manufactured home/mobilehome dealer or real estate broker is qualified to provide advice...", I suppose you could say "on the sale" if that is more clear.

BURT McCHESNEY: We share that concern of what exactly are we being made qualified to advise about.

JOHN TENNYSON: Well, I'm not sure it is clear under existing law, either, to be honest. So, shall we put in "advice on the sale of a manufactured home/mobilehome?"

TRAVIS PITTS: That would be clearer to us what is intended.

JOHN TENNYSON: All right. And, of course, Mr. Weiner insisted that last sentence be included, and here he is now. Ok, to catch you up on what we are doing, you can see by the agenda, is we are starting out with the form that was sent in the mail and we are going through and making technical changes, commas, and minor stuff, basically. I do want to come back to a point that Burt McChesney, who is sitting in for Ron for the California Association of Realtors, to your right, made a few minutes ago. As you can see by the agenda, we are going to go through this again to work out any technical problems and then we will go into the two major issues that were left hanging last time, just to bring you up to speed. So, other than a few minor changes that have been recommended by Ms. McLees, commas and semicolons and things like that, the major change that was just proposed is on the last page of the form, to clarify, at the bottom where it says, "A manufactured home/mobilehome dealer or a real estate agent is qualified to provide advice on a manufactured home..." we are going to put in, at the request of the Task Force, to make it more clear, "... 'on the sale' of a manufactured home/mobilehome...". Ok? So, that brings you up to speed.

Now, I would like to go back to the issue Mr. McChesney brought up with regard to the necessity, on the first page of the form, third paragraph where it says, "It is not a warranty of any kind..."and so forth and so on. His concern is "It is not a warranty of any kind by the seller(s), as defined in Section 18046 of the Health & Safety Code..." Of course, as you recall, Mr. Pitts drafted a definition, of which, I believe, we sent you a copy. Mr. McChesney questions whether we need to define "seller" or "agent" for purposes of this form, and I think you were one of the people that had suggested that we needed to address this problem before. Do you want to reiterate?

RICHARD WEINER: I think we do have to define it because there is a concept in manufactured housing sales, as far as licensees of the Department of Housing are concerned, that the dealer is, in fact, the seller of manufactured home for most purposes and that is why we have to...later, I think we'll go over the proposed changes in the Code Section, right Travis, are we going to do that?

JOHN TENNYSON: We are going to do that simultaneously with this form. Where are we on our agenda, here? Roman numeral 2.

RICHARD WEINER: Ok. I have some comments on that, too, but I figure we are not getting into that.

JOHN TENNYSON: We will momentarily. Mr. McChesney.

BURT McCHESNEY: Our concern, Mr. Weiner, is that if you define an agent here as either a dealer or sales person, others, other people who act as agents are not included so, do you need to do this definition of an agent in this form? The duties of...

RICHARD WEINER: Well, as far as I am concerned, we need a definition of "seller."

BURT McCHESNEY: But, I don't know that you need a definition of an agent. A real estate agent's duties are clearly defined elsewhere in the code and duties of dealers are clearly defined elsewhere in the code. You just need to distinguish what is a seller from an agent.

JOHN TENNYSON: I think, those who brought this up, if I recall correctly - we can go back in the transcript - had a concern about banks being sellers. Wasn't that the point that you had and then they had a foreclosure, or you were concerned about them being construed as sellers for purposes of disclosure?

RICHARD WEINER: Well, you know, looking at the whole I was just...for the purpose of the disclosure statement...the disclosure, as I understood it, was to be given to all sellers not just even...

BURT McCHESNEY: The disclosure goes to buyers.

RICHARD WEINER: No, in terms of whose giving it, it is to be given even in a sale where there is no agent involved, as I understood what...is that correct or am I incorrect?

JOHN TENNYSON: That is correct. In my understanding, that was the intent of the legislation.

RICHARD WEINER: I thought that, also, and therefore, I had some problems when we got to, as an example, it says at the end of that definition of part B, 18046, small b, it says it defines it as only if it is offered for sale through an agent. What if there is no agent? It seems to me that presented a problem in definitions altogether. I don't see why you...we're trying to say, I think, in defining and using the term "agent" is that this only means for the purposes of the disclosure, either someone licensed by the Department of Housing or someone licensed by the Department of Real Estate. That's why we needed that as opposed to a bank or someone else that was selling under a foreclosure. I thought it was appropriate to have it in there, I'm not sure why. I think it clarifies the situation as to who the parties are that can make these...I have a problem with the term " seller," though, where it's only in sub (b).

JOHN TENNYSON: Mr. Pitts.

TRAVIS PITTS: I would propose in the definition sub (b), last line, that we put a period after "sale" and strike through "an agent." Would that satisfy it?

JOHN TENNYSON: Is everybody with us as to where we are? We are on the proposed Health and Safety Code amendments. Is everybody following us?

BURT McCHESNEY: Is that going to solve your concern, or do you then need a definition of agent here?

RICHARD WEINER: I think it clarifies that the only agents that are covered by the disclosure statements are licensees of the Department of Housing or the Department of Real Estate. I'm not sure why we would want to eliminate them.

BURT McCHESNEY: Well, let me ask you a question. Under the residential TDS, the obligation to complete the residential TDS is solely that of the seller, not that of the agent. The agent has an obligation to conduct, under Civil Code Section 2079, a diligent visual inspection and the TDS provides a format for that agent at the end to satisfy the disclosure obligations that are created by 2079. The agent isn't obligated to fill it out, but can complete that obligation in some other fashion. So, my understanding is that this form likewise would be the obligation of the seller of the mobilehome and not that seller's agents, be they dealers or real estate persons, because those dealers and salespersons have a separate obligation created by 2079 or in 18046, one that we created a couple of years ago.

RICHARD WEINER: That's a different problem, too, I think. It creates a problem as to whether or not there should be a change as proposed by the Department of Housing to "require" the use, as in subsection (d). It seems to me that it made it easier if you have an agent or salesperson, "may" rather than "shall." The reason, Travis, I think it is important is because somewhere in this whole procedure, I think, if there is an exception, in real estate, it's fairly clearly defined that there are exceptions as to whether or not this disclosure statement should be used. If there is a foreclosure or if there is a probate sale, I think if we require the dealer to use this statement...we do require them to make the diligent inspection of the home, as a Realtor does, too.

But, in a situation where there is no seller in the sense that the sale is not required as to one that would use the form, it is probably better to have the word "may" rather than "shall" because then you find the situation where only the dealer or salesperson is required to sign the form, and that's not a comparable situation in real estate. In other words, if there's a foreclosure, as I understand it, the Realtor is required to conduct the inspection, but not required to fill out the disclosure statement. It could be on a separate form. It seems to me that we ought to have the same comparable possibility for a dealership.

JOHN TENNYSON: In other words, the word "shall" in sub (d) would foreclose the use of any other type of substitute form that might be used under other types of circumstances.

BURT McCHESNEY: And which are commonly used.

JOHN TENNYSON: Mr. Pitts.

TRAVIS PITTS: Mr. Tennyson, and I respectfully understand your concern, but you have to remember in manufactured housing under current law it is a criminal act to sell a non-complying manufactured home or mobilehome, so we are moving from criminal activity to simple disclosure, which I would think that the dealers and salespersons would strongly embrace. I am hearing what you are saying but if we change compliance with disclosure to "may" and if you want to, then I want to change 18025 to where it says if you don't, you are subject to criminal penalties. You have a choice, criminal penalties or disclosure, but not out of both liabilities because we are still fairly heavily involved in consumer protection at HCD, and this would create an absolute loophole where you could sell "as is" with no liability whatsoever.

JOHN TENNYSON: Mr. McChesney.

BURT McCHESNEY: Under the real estate law, the Civil Code, Section 2079, the real estate broker, salesperson is under an absolute obligation to conduct that investigation, and disclose what he or she discovers and what they know. They then have multiple options of how to provide that disclosure, but they have the obligation to do it. As I understood the crafting of 18046 that created a copy almost verbatim from 2079, creating a similar obligation for a dealer. That they have to do the inspection and disclose what they find out. What the permissive language does is to allow whichever form to use to complete that obligation, either to use the TDS or to use some other disclosure document that may be appropriate in different kinds of circumstances. Where, for instances, you don't have a TDS obligation.

TRAVIS PITTS: If there is another form of disclosure, then I want it described. I want to know what it is that is to be disclosed to the consumer because we still have an enforcement responsibility. And, again, we're coming off of a criminal liability down to something that, my concern is, is going to get down to an "as is" sale. Then I would have no recourse against an agent because I don't know since they "may" fill out the TDS.

JOHN TENNYSON: Mr. Weiner.

RICHARD WEINER: I guess the only reason that I wanted to change it, Travis, was that this sentence says and this is the way the law reads now. A dealer may discharge that duty. In other words, if he doesn't use the form as the law stands now, he is in trouble. He can discharge his duty by filling out the form. That's the way the law is, even as we sit here right now. I'm not sure why we have to change it. And, the only concern I have is that you'll have a situation where in the sale by a dealer or salesperson, that the form will be used even though there is no seller, in that traditional sense. Nobody will be signing the form for the seller. The bank won't sign it. As I understand it, the heirs don't have to sign it. Would we want a situation where the only person that signed the form is the dealer or salesperson?

JOHN TENNYSON: May I interrupt just a second. We are going to give Travis an advantage to think of an answer. A technical thing, for those of you who are not familiar with our microphone system, you need to push the white button so that we can record all of your comments properly and we can transcribe them and so forth. Ok? When you finish talking, you can shut it off or leave it on, whichever you wish. With that aside, Mr. Pitts.

TRAVIS PITTS: Mr. Tennyson, in its most simplistic form I want either criminal liability or a descriptive method of avoiding criminal liability. I don't want "may" because where do I go if you don't fill it out? If you don't fill out the disclosure form there is no enforcement opportunity at all for someone at HCD against a dealer who has now sold a home "as is" and has chosen not to fill out the form?

RICHARD WEINER: What do you have right now? It says "may," it doesn't say "shall."

TRAVIS PITTS: Under current law, you may get out from under criminal liability by completing this form. Now, what I proposed in these was to take totally out from under criminal liability if we use this form. I can go back to the option if you comply with 18046 then you than you can avoid criminal liability. If you do not comply with 18046, then you are subject to criminal liability. But, that doesn't address Burt's issue which says that there are other ways other than the TDS to provide disclosure. If there are other ways, than I want them defined so I know exactly what they are.

RICHARD WEINER: I'm not sure where it is in the code section, but there is something specifically that says there shall be a disclosure but without setting out a form.

BURT McCHESNEY: 18046 and Civil Code Section 2079, which is the one that covers real estate licensees, creates an absolute duty regardless of who the seller is. If you are acting as an agent to do the inspection and provide the disclosure. It doesn't specify how that disclosure is to be conveyed, it just is required to be done. There are a number of transactions in which a TDS is not required. A TDS is only required, basically, when you have a regular sale, not a foreclosure. Banks don't have to do them. Foreclosures, probates, lots of circumstances where you don't have to do a TDS, but where a real estate agent is involved, they still have the duty to disclose to buyers the results of their inspection. And, there is no TDS. An agent isn't required to do a TDS. Only certain sellers are required to do it. So, by requiring in these circumstances that you shall use that form may be inappropriate, because the rest of the form is going to be blank. And yet, on the 5th or 6th page, of a lengthy form of a disclosure...

RICHARD WEINER: Travis, where was that taken out about the criminal liability? Where was that removed from?

TRAVIS PITTS: That was removed from 18025.

RICHARD WEINER: That was all changed last year, is that correct?

TRAVIS PITTS: It was amended last year, and we went along with it knowing that Senator Craven's legislation would do the clean-up. That legislation last year, all it said was that you can avoid criminal liability if you are an HCD licensee and you fill out the agent portion of the TDS. But, that was only to last for a year, till we could fix this.

RICHARD WEINER: Section 1102.1 says, "In transfers not subject to this Article (and it lists all of them), agents may make required disclosures in a separate writing." It seems to me that we may run into a little difficulty where dealers and their agents, by the Department of Housing, who are going to have to use this form even though the seller isn't signing it in a situation where it is required to be given because there are 10 or 12 exceptions. And, Realtors are not going to be using that form, or are you requiring them to be using it, as well. I guess not, because you are only talking about the duty of a dealer not the duty of the...there would be a different duty for a dealer than there will be for a Realtor in terms of using the form. "D" only covers dealers, not Realtors.

TRAVIS PITTS: That's correct and "C" covers Realtors who already have 2079.

RICHARD WEINER: But, they don't have to use the form if there isn't a seller. If the form doesn't have to be given, they have to use some other kind of separate form.

JOHN TENNYSON: What other forms are there that could be listed here which would satisfy Mr. Pitts' concerns?

BURT McCHESNEY: "D."

RICHARD WEINER: "D" doesn't cover it.

BURT McCHESNEY: Or sales person.

RICHARD WEINER: But, that's only somebody licensed under HCD. You're covered under "C."

TRAVIS PITTS: Mr. Weiner, as I read what I proposed here it says, "A dealer or salesperson shall discharge this duty by completing the agent's portion of the Transfer Disclosure Statement," which is contained in about one third of page 4. That's a problem? Or, would you rather go back to criminal liability? Either one.

JOHN TENNYSON: Ms. McLees.

JERI McLEES: I think the problem is not the disclosure itself, it is the fact that that particular form is going to be several pages long and is not have anything on it. And, I think what I am hearing is what we want to be able to say is we can use that seller's disclosure form or something which is a reasonable equivalent for them to discharge their duty. For example, in the Public Utilities Code, when we prepare a billing for the master meter system, we are required to have that billing (I don't have it right in front of me) be substantially the same as if the billing came from PG&E.

And that's what you want, Travis, I believe, is the disclosure...nobody is arguing that they shouldn't disclose. Nobody is arguing that it shouldn't be in writing. I think we all agree that it should be in writing and it should be disclosed. But, whether using this 3 or 4 page seller TDS form which is in quadruplet for one paragraph is what, I think, the point is. Unless I'm missing it completely. So, let me just make a suggestion. You could say, "A dealer or sales person 'shall' discharge that duty (because you want them to discharge it) by completing the agent's portion of the Transfer Disclosure Statement or a statement which contains the substantial and the same amount of information." Or whatever. You can almost pull it out of that Public Utilities Code language, which is very, very clear. It has to pretty much match what PG&E's or SMUD's bills are.

BURT McCHESNEY: So, you still get a written disclosure.

JERI McLEES: So, you still get a written disclosure. I think we all agree with that. It's just that they don't always use this particular TDS. They may use something that contains exactly the same kind of information and it has be signed and it must be delivered to the buyer.

JOHN TENNYSON: Mr. Pitts.

TRAVIS PITTS: That's acceptable, as long as it is clear that there is an obligation to disclose.

JOHN TENNYSON: All right, what would the language be then? It would be, "transfer disclosure statement that is for the seller to prepare for the purchaser pursuant to Civil Code 1102 or a substantially equivalent written disclosure statement"?

RICHARD WEINER: You could even say, if you wanted to limit it, Travis, of where the written disclosure is not required under 1102.1 that a substantially equivalent statement could be used. I'm sorry, 1102.2. In other words, only in that situation where we won't have a TDS required.

JERI McLEES: That's even a better idea. That really covers everybody then, no matter, and I don't feel...

TRAVIS PITTS: That's fine, as long as we know what the words...

JERI McLEES: And, John, I do think 739.5 of the Public Utilities Code is the language...it's good language.

JOHN TENNYSON: Well, let's get this nailed down. So, then, after Civil Code we put "...or a substantially equivalent written disclosure statement signed by the seller."

JERI McLEES: I think what Richard is saying, and I agree with him, you have a period, and then say, "If there is no TDS required, dealer or salesperson shall discharge that duty by completing a statement which contains..."

RICHARD WEINER: If you could use just that same sentence "...a dealer or salesperson shall discharge..." and then at the end of it, "...unless no transfer disclosure statement is required, in which case..."

JERI McLEES: "...in which case a written disclosure containing substantially equivalent language shall be provided." That's pretty rough, John, but I think that's about it.

RICHARD WEINER: That would leave the word "shall" in there. And then we only except it out when the TDS is not required.

JOHN TENNYSON: Otis.

OTIS ORSBURN: Mr. Tennyson, I believe, Travis, that you don't want the statements to become out of line with what is being stated here when they come up with their own wording. And, I might suggest that maybe we just say that "...or an exact reproduction of Roman numerals III and IV when there is no TDS required." That way we aren't having to come up with variable on the verbiage. It just says an exact reproduction of those two sections.

JOHN TENNYSON: So, instead of saying. "... substantially equivalent..." you would want an exact reproduction of Roman numerals III and IV of the TDS.

JERI McLEES: Do you want to put III, IV and V because that's where the acknowledgment of receipt...don't we want to have the buyer acknowledge receipt?

OTIS ORSBURN: Yes.

JOHN TENNYSON: Ms. Delmatier.

DENISE DELMATIER: I was just going to suggest...I have the same concern that Mr. Orsburn had in using the term "substantially equivalent." It is close to but it is not the

same as or it's not necessarily the functional equivalent, so I was going to suggest maybe come up with...but that serves the same purpose. I think "substantially equivalent" leaves it a little bit too vague as far as close to but no cigar.

RICHARD WEINER: I think you had better add something to the end, too, which shall be delivered by the dealer or sales person to the buyer or prospective purchaser.

JOHN TENNYSON: Ok, anything else on that? Does that satisfy your concerns, Mr. Pitts?

TRAVIS PITTS: Yes, sir.

RICHARD WEINER: We haven't answered the other question as to whether or not to leave in the definition of agent. Are you talking about 18046?

BURT McCHESNEY: On the TDS itself?

JOHN TENNYSON: We won't take it out of 18046, we'll take it out of the TDS report.

JERI McLEES: I thought Burt's question was whether it should be in the TDS not whether it should be in 18046.

JOHN TENNYSON: Well, it's only put into 18046 in order to serve the purposes of the TDS, as I understand it. Isn't that correct, Mr. Pitts?

TRAVIS PITTS: Well, it was for the purpose of the TDS and for the purpose of the criminal liability currently stated in 18025. Only an agent can get out from under criminal liability by complying with 18046. What is an agent? I have an AG's opinion that says anyone who represents a seller is an agent. You remember that one. You guys were in court on it. So, for the purposes of the Section, I wanted to make it very clear what we are talking about. "An agent is..." it's either a real estate person, a real estate licensee or an HCD licensee. Not the whole world.

RICHARD WEINER: Right. I think it clarifies the situation.

TRAVIS PITTS: And, it's only for the purpose of two sections in the Health and Safety Code. It doesn't attempt to undermine anything on the real estate licensing exam.

JOHN TENNYSON: All right, anything else on that? Anything else on the proposed Health and Safety Code language?

BURT McCHESNEY: Something might come up in our later discussion, the very last line in "F" , the last couple lines in "F" relate to the other issues that we are going to talk about.

JOHN TENNYSON: Mr. Weiner.

RICHARD WEINER: I have a problem with that not being broad enough in its exclusion, not clear enough that we are excluding the mobilehome park from that obligation. It seems to me if we add a sentence at the end of the...I have tried to do it a number of ways but haven't really come up with anything that is quite satisfactory, but to add something at the end of "F" to make it clear that if the home is in a mobilehome park that the inspection that is to be performed does not include the mobilehome park.

JOHN TENNYSON: Well, perhaps we should, Mr. Weiner, defer this issue till we have resolved, if we can, the issue under Roman numeral 3 on your agenda.

RICHARD WEINER: Ok.

JOHN TENNYSON: Mr. Orsburn.

OTIS ORSBURN: Mr. Tennyson, on "E" was that only meant to be directed to just dealers or sales persons? I thought that maybe that should be expanded to include Realtors.

JOHN TENNYSON: This parallels existing law in Civil Code...

RICHARD WEINER: They have their own section.

BURT McCHESNEY: Yeah.

JOHN TENNYSON: Is it 2079 or is it...?

RICHARD WEINER: Travis, why did you feel it was better to take this out of 18046.1 and put it in 18046. This was exactly what was in 18046.1? (e)?

JOHN TENNYSON: Yes, it was taken out of .1 and ...

TRAVIS PITTS: I simply tried to put them all in one section so there is only one place to look.

RICHARD WEINER: Ok.

JOHN TENNYSON: It was just a matter of trying to make the Codes easier. Any other problem with that? Any other issue? Ms. McLees?

JERI McLEES: In sub (b), and I know I missed the last part of the last meeting and it may have been resolved, when a seller is the lawful owner of the home, offering the home for sale through an agent...

JOHN TENNYSON: We're taking too many...

JERI McLEES: The "lawful owner of the home" is bothersome to me. The lawful owner could be the legal owner, the bank, or the registered owner who is in general terms the seller. I thought what we were saying when the legal owner was selling the home he would not be doing those same kinds of disclosures. It was really the registered owner of the home.

JOHN TENNYSON: Mr. Pitts.

TRAVIS PITTS: I was attempting to use as few words as possible to define seller and had no intention of obligating the bank to complete a TDS. I would accept whatever recommendation you had that would make this clear as to what the seller is.

JERI McLEES: I guess my only concern would be generally you could call it the registered owner and there would be no problem. But, often times when one inherits the home, not talking about the Department of Housing titling policies right now, but for six or eight months we have no idea who is the lawful owner. They aren't the registered owner. I am a little betwixt and between, as well. But, I don't think we want to use the word "lawful" because that does, at least, look to me like that would be the bank and not the person who truly is the owner.

JOHN TENNYSON: Mr. McChesney.

BURT McCHESNEY: Well, maybe we, as a suggestion, should make a reference here somehow to the exemptions under 1102.2 who has to do a TDS. Pick up that same list of exceptions, A through J, existing exemptions as to who has to do a TDS.

RICHARD WEINER: I don't think you have to worry about it, because it is covered in back and I don't think anybody would have to do a TDS if they were exempted out in the Civil Code. Is there any situation, Travis, where it could be other than the registered owner that we would worry about giving the TDS?

JERI McLEES: Often, in real life.

TRAVIS PITTS: Not the TDS, though. Often you have the sale by other than the registered owner.

JERI McLEES: Let's give an example.

JOHN TENNYSON: Well, her example, if I may cut this short, is where someone dies and the registered owner is dead and the person...

RICHARD WEINER: That is what happens under the Civil Code. They don't have to...they are not required to give that disclosure. That is one of the exceptions under 1102.

JOHN TENNYSON: 1102, right.

RICHARD WEINER: So, they wouldn't have to give that.

JERI McLEES: I'm not sure I like that.

JOHN TENNYSON: Well, are you talking about a situation where the person inherits it and then turns around and sells it before registration is cleared or title is cleared? or what?

JERI McLEES: That's a battle at all times. If that person inherits it, and they can even take lawful possession of it, for some reason, and then sell it, and they are not the lawful owner because they are not the registered owner, you know, the paperwork is being transferred. I thought we wanted to use the TDS, you know, in those instances, but maybe I'm...

JOHN TENNYSON: Whereas, the exemption applies in a case where you are inheriting it in a transfer as opposed to the inherited selling it after they get it.

RICHARD WEINER: I think under existing law the inheritee is probably exempt from, on conventional housing, is exempt from giving that statement.

TRAVIS PITTS: Mr. Tennyson, I think what we are trying to avoid here is -- Mr. Orsburn has taken three homes in trade and they are sitting on his lot -- putting in statute that we require disclosure by a registered owner, the registered owner of record is now in Arkansas, we are creating an impossibility. That was my thinking, so somehow it was the person who was lawfully entitled to offer the home for sale, however you can define that.

JERI McLEES: What if you said, "... means the entity in lawful possession of the home." That's not necessarily living in it.

RICHARD WEINER: But, that may not be the person authorized to sell it. I looked at that word this morning, too, and the more I looked at it the more I thought maybe we'd better leave it lawful rather than...because, if somebody is exempted out under the Civil Code from giving the statement, I don't think we are empowered to change that by what we're going here. And, therefore, if they don't have to give the statement then they don't have to give the statement. I don't think we should expand that obligation. So, the "lawful owner" probably is a good word to use.

JERI McLEES: Ok, so let's use Otis' example or the same example of what happens to us as park owners when we become owners of these homes for whatever reason. What you are saying is that we would not be required to give this TDS because of the exemptions in 1102(b) although we are the lawful owner of the home because we have a legitimate bill of sale or trade, or whatever.

RICHARD WEINER: I think you would be required to give...if it's in the dealer's inventory and sitting on...

JERI McLEES: But, I'm just little miss park owner, I'm not a dealer. I'm here with this home and I'm going to sell it.

JOHN TENNYSON: But, if you are selling it again, then you are going to, as the seller, you are going to have to furnish the TDS.

JERI McLEES: I just want to make sure it is clear. That's what I think we should be doing.

BURT McCHESNEY: The law provides, with respect to this issue, a transfer by a fiduciary in the course of the administration of a decedent's estate, don't have to do this. And, transfers pursuant to a court order, a probate court, don't have to do a TDS. So, if you been heir to the property, you've taken it, and you are going to resell it, you are going to have to do a TDS.

JOHN TENNYSON: But, the executor doesn't have to do it.

BURT McCHESNEY: But, the executor doesn't have to do it, when you take it from them.

JERI McLEES: Ok, and, just because I don't have the Code Section in front of me where it says... I don't see anywhere in here a reference to the exemptions spelled out in 2079. Maybe that's where I'm running into the problem. Or, 1102, whatever it may be. Because we are defining in 18046, we're saying the seller is lawful in offering the mobilehome or manufactured home for sale. I would look at that as any seller, and I think what you are saying is except those that are exempted by 1102.2. Maybe that would be a

little bit clearer so that we are cross-referencing again, but I think that is what we are doing with the entire section. That would make me a little bit more comfortable, than leave "lawful" as it is, because I defer to Mr. Weiner.

JOHN TENNYSON: Mr. Orsburn.

OTIS ORSBURN: I agree that we need some type of a reference and I believe that Code Section should be referenced as to the exemptions, otherwise, it's left wide open as to who is required and who is not.

JOHN TENNYSON: The seller does not include those exemptions found in 1102.2. In essence adding another sentence on there, which would be referencing 1102.

RICHARD WEINER: Is that also true of an agent?

JOHN TENNYSON: Mr. Pitts, do you have any comment on that? on this 1102.2 business?

TRAVIS PITTS: No, I was just thinking how to incorporate it in the first line, "a seller for the purposes of Section 18025, 1102(b)"...I can't think fast enough.

JOHN TENNYSON: We'll work on it later, but that's...

TRAVIS PITTS: So, you want the exceptions of 1102.2.

JOHN TENNYSON: Mr. McChesney.

BURT McCHESNEY: I think a person would expect the agent, it is my understanding, with respect to our real estate agents, 2079 requires them to do their inspections regardless of who the seller is. 2079 obligates us to disclose, to do the visual inspection and to disclose. That was the point we were talking about earlier, as a dealer.

RICHARD WEINER: As with the dealer, also.

BURT McCHESNEY: So, it doesn't matter, the 1102.2 exceptions don't apply to dealers and agents. They only apply to certain sellers.

JOHN TENNYSON: But dealers and agents wouldn't be involved in some of these transactions, anyway. Where you are the executor, for example.

BURT McCHESNEY: You would very likely have an executor selling the property through an agent, or foreclosure sales. Very common. So, we have to go and do a visual inspection, but the seller doesn't have to provide the TDS. So, I don't think your question is a concern.

RICHARD WEINER: So, it should be then just part of (b).

BURT McCHESNEY: Right, that's who 1102.2 affects.

JOHN TENNYSON: Ok, have we exhausted that subject? Anything else along these proposed Health and Safety Code amendments? or on the form? Mr. McChesney.

BURT McCHESNEY: I just wanted to mention with respect to "C" on the form, on page 3, that we have some concerns that relate to the other issue when we talk about it, in terms of this list of things to be disclosed.

JOHN TENNYSON: In other words, you feel there should be a more inclusive list.

BURT McCHESNEY: Right.

JOHN TENNYSON: Mr. Kingston went over this with us last time and seemed to be satisfied with it.

BURT McCHESNEY: Well, it relates back to the question of what's the seller's obligations to disclose with respect to the form, on off-site issues.

JOHN TENNYSON: Ok, anything else? We'll set that aside then, and on the agenda we'll proceed on to Roman numeral number III, discussion on the park property liability issue. To set the stage here, for this issue, for those of you who weren't here or to get everybody up to speed, what we're talking about here, and I guess we'll have to go back and reference it on the form here, we're talking about the first page, third paragraph, where it starts out, "It is not a warranty of any kind..." and so forth and so on, and the park owners and the residents, at least GSMOL, have come up with some language which they have agreed to in part, and that is the language, if you'll look on the handout we sent out December 1 -- does everyone have that memo on park property liability issue? -- that language in capital letters has been agreed to basically.

The second sentence, "If the home is or will be located in a park as defined in Section 798.6 of the Civil Code, any inquiries regarding the condition of the park property including the lot, as defined in Section 18210 of the Health and Safety Code, and conditions of tenancy shall be directed to the park management. The seller or his or her agent shall not be required to disclose or be liable for failure to disclose to the buyer (maybe that should be prospective purchaser) conditions of the park property including

that of the lot." They have agreed to that language, to that point. Is there any discussion on that language as far as I read it? Do you want to put in the words "prospective purchaser" instead of buyer?

JIM SAMS: Where are you talking about?

RICHARD WEINER: On the third paragraph, next to the last line.

JIM SAMS: You're talking about the capitalized...

JOHN TENNYSON: What we're talking about is in the capitalized language. We're down to the second line from the bottom where it says "...disclose to the buyer..." Should be say "disclose to prospective purchaser" because that's what we're talking about here, we're not talking about, necessarily, the person who buys it.

JIM SAMS: I see no problem with that.

JOHN TENNYSON: Ok. Now, Mr. McChesney.

BURT McCHESNEY: The language that you're talking about is the last sentence in the bold, all caps, which is, "The seller or his or her agent shall not be required to disclose or be liable for failure to disclose to the perspective purchaser conditions of the park property including the condition of the lot." Our concern is that, and Ron and I have shared this in the past, is that I don't think you are going to be able to sell this to the members of the Legislature, Consumers' Union and the trial lawyers. We will oppose it. We've talked to some of our folks. They have concerns. We have a Board meeting coming up in January. We'll have to take this language to them as it purports to exempt us from liability. We're not certain, one, if you can achieve it legislatively, nor are we certain our folks want, given our history of wanting disclosure, that we want to be attached to language that exempts us from this disclosure obligation. So, ...

JOHN TENNYSON: So, you would oppose this language.

BURT McCHESNEY: I'm not saying we'll oppose it. We'll have to take it to our folks in January because in conversations with the leadership of our committees, they have great reservations about an exemption from disclosure of things you know affect the value of the property.

JOHN TENNYSON: Mr. Weiner.

RICHARD WEINER: I remembered that this was a heated part of the discussion last time when Ron raised the same issue. I think the difficulty from the dealer's point of view is that the legislation really, as I understood it, was intended to cover the home and not the area outside the home and that's why I think the language was crafted for that purpose because we didn't want to get into a situation where the registered owner was making representations or not making representations with regard to what was going on in the mobilehome park itself. And, I think that was the reason it was crafted the way it was. And, as I understood the legislation, even the intent of the legislation originally, was to exempt registered owners or dealers or salespeople or Realtors from having to worry about the condition of the park itself, and that was why the language was put the way it was.

JOHN TENNYSON: Mr. Sams.

JIM SAMS: I might follow that up to explain that we all recognize the uniqueness of mobilehome property ownership, dual ownership, property and mobilehome ownership. And, our concern, of course, basically, here, which we thought we had worked out with the parks was we do not want to set up a situation here where we are going to have finger pointing on one side or the other except in a case where the park owner would be responsible to disclose, and this is what GSMOL is trying to work out here. We feel that the park owner has a duty to disclose any deficiencies in the property and so that's the reason why even though you were not here at the time, we are saying this is a necessary part of that. That there should be an exemption from liability of us to report on the park owner, and the park owner, by the same token, not be liable to disclose on the mobilehome.

JOHN TENNYSON: Mr. Weiner.

RICHARD WEINER: The only question I have and this is a legitimate point and we have to face it, if the legislation comes to a committee and the committee says no we don't like this sentence because the trial lawyers, or whoever it is, says this is not good, is the industry willing to live with the disclosure statement if that sentence is stricken. Are we willing, therefore, to...does that mean that we're subjecting the registered owner to the possibility of having to worry about disclosure of problems in the mobilehome park.

JOHN TENNYSON: Mr. Pitts.

TRAVIS PITTS: It would be my opinion that if the registered owner of a manufactured home attempted to disclose on real property that is not under their ownership or control, they are opening themselves to all manner of liability.

JOHN TENNYSON: Mr. McChesney.

BURT McCHESNEY: A couple of points. One, what the TDS requires is for sellers to disclose what they know. If they don't know something, then they aren't obligated to disclose it, that is what the history and experience under the TDS has been for real property. What we're saying here is what I think it is going to be a difficult sell to the Legislature is that sellers and their agents who know things that affect the value of the property, including the lot, are exempt and barred from having to disclose them to a prospective buyer.

DENISE DELMATIER: That's not...

BURT McCHESNEY: That's what it says, "The seller or his or her agent shall not be required to disclose or be liable for failure to disclose to the buyer conditions of the park property, including the condition of the lot." There are factors of the park property and the lot that will affect the value of property, of the home itself. And, what we're trying to sell to the Legislature is that you have clear knowledge of conditions affecting the value of the property and you are liable to disclose those. I think that is a difficult sell. The residential, real property sellers now have an obligation under a variety of circumstances to disclose conditions they know, off site, that affect the value of the property. If they don't know them, they don't have an obligation. They don't have an obligation, and it is statutorily clear, to research and do off-site inspections to discover things. There's no obligation to discover, but there is an obligation to disclose anything that you know that affects the value of the property.

JOHN TENNYSON: Ms. Delmatier.

DENISE DELMATIER: We, of course, had this lengthy discussion at the last meeting, Burt, and this issue was debated at length, of course. But, let me just point what we discussed last time and why I take issue with the characterization of what this language says or doesn't say. The language says, "...shall not be required to disclose." And, so, I would take exception to the characterization that this statement bars or prohibits anything. It merely says you are not required to disclose.

BURT McCHESNEY: But it is a dramatic departure from what real property sellers have.

JIM SAMS: I think, again, you are overlooking something here which is unique in our situation. When you start disclosing something that you have no control over and which may be only a periodic problem -- for instances, we have in the Northern Zone, cases where we have flooding on a temporary basis or standing water during certain periods of time -- I think that we are not at liberty to be exposing the problems with the park and then expect the park owner to say, "Well, I'm not going to say that they need electrical wiring in their system." We're trying to keep court action out of this as much as we can,

and have it defined in here that you are not going to be held liable because you are not saying what is wrong with someone else's property.

DENISE DELMATIER: I wasn't quite finished. I think Mr. Pitts made an excellent point, and obviously that's the concern of both the homeowners and both the homeowners and the property owners. We did have a lengthy discussion on this matter. I don't think we're going to come to consensus on this item as far as the interest of Burt's clients, and I would suggest that we just take a vote on it.

JOHN TENNYSON: Mr. Weiner:

RICHARD WEINER: One other thing, we did in fact, have a whole reference to all other kinds of disclosure possibilities, including going to the park itself, which is what we had hoped to be able to at least refer anybody to, and therefore, not have to worry about having the homeowners discuss what was wrong with the park.

DENISE DELMATIER: I think I should add, to your questions, Mr. Weiner, as far as addressing the industry, I wasn't quite sure who you were referring to when you said...

RICHARD WEINER: I'm talking about everybody except the Realtors.

DENISE DELMATIER: Certainly, from GSMOL's perspective, minus this language, yes, GSMOL would oppose the bill.

JOHN TENNYSON: Ok, Mr. McChesney.

BURT McCHESNEY: Just a couple of quick points. To give you an example of the kind of circumstance that affect real property where the disclosure duty is on the seller of real property and why we think this will create for you a difficult situation. If I'm buying your house and I tell you I work nights and I need to sleep during the day, is this a quiet neighborhood. And, I disclose to you what effect therefore the value of the property to me. And you know there is a noisy school, a noisy factory, a noisy anything nearby you have an obligation to disclose that and if you don't, you are liable. Those are off-site things. If I can't access my driveway half the year because it is flooded down the street, and you know that condition, you have an obligation to disclose that to me, in real property.

So, I think you are going to have a tough sell saying you are under no obligation, maybe it is not a bar from, but under no obligation to disclose things you know about the property. Withholding what our position is, because we have to take it to our membership because

BURT McCHESNEY

this may be a bottom line issue for us of it, may not be. If this language were to stay as is, we're exempt. That may be ok. We're not convinced you are going to get the Legislature to buy this. We are concerned that on a sale they will burden the agents and dealers but not the seller. Then we are in an even worse spot. If the Legislature comes in and says we will exempt the seller from an obligation to disclose but not the dealer, who are allegedly the professionals and should know things that maybe they don't know. So, I'm not going to oppose it at this point, but have to reserve to take it to our folks.

JOHN TENNYSON: Mr. Pitts and then Mr. Sams and then we need to wrap this up.

TRAVIS PITTS: Two points. Yours earlier that this is not a perfect system and we need to get something on the record. We're not going to bring up this issue. Your point, well taken. This is a dramatic departure from real property. A manufactured home is personal property. That's a rather dramatic departure. Well, if it isn't, then these don't apply. It's a combination sale, right? So, we're talking about the sale of personal property where the person who is selling has no control, right, title or interest to the underlying real property. This is a dramatic departure and I believe it justifies being different with respect to what can be disclosed.

JIM SAMS: I was just going to point out in the third line from the bottom in the capitalized portion, "... any inquiries regarding condition of the park property, including the lot...", and it goes on, then it says "... shall be directed to the park management." I think brings to the attention the fact that we are saying anything you want to know about the lot you go to the people who own the lot.

BURT McCHESNEY: Are they under any obligation to disclose anything?

JIM SAMS: Well, they are under the obligation or they then become liable by the fact that they didn't.

BURT McCHESNEY: Do they?

JIM SAMS: That's my understanding.

BURT McCHESNEY: Where does a park owner become liable for failing to disclose to a buyer of a coach to which they have no contractual relationship?

JIM SAMS: But, that mobilehome is going to be resting on the land which they own, therefore, any conditions that exist on that land that has a deleterious effect on the property above, I feel that makes them liable.

RICHARD WEINER: He is only liable if he answers something untruthfully. If he doesn't answer at all, he...

JOHN TENNYSON: I don't think the park owner would have any legal liability. Anything else here? All right. I think we are going to have to take this to a vote. I don't know how else to conclude these points or we are never going to make it by one o'clock. So, what we'll do then is take this step by step and address the question of whether the Task Force wishes to adopt, starting with "It is not a warranty..." all the way down to "...condition of the lot." Is everybody with us? What we have been discussing?

JIM SAMS: Does that include the amendment " to prospective buyer" in that language?

JOHN TENNYSON: "Prospective purchasers." All right, madam secretary, do you want to read the names of the representatives of each group?

SECRETARY: Mr. McChesney -

RICHARD WEINER: I'm sorry, one thing. We have used "prospective buyers" in another, rather than "purchasers" in another section of the...do you want to change all the "purchasers" to "prospective buyers"?

JOHN TENNYSON: Yes, we'll do that. Ok, go ahead.

SECRETARY: Mr. McChesney - abstain; Ms. McLees - aye; Mr. Orsburn - aye; Mr. Pitts - aye; Mr. Sams - aye; Mr. Weiner - yes; Ms. West - abstain; and Mr. Tennyson- aye. We have six ayes and two abstains and one absentee.

JOHN TENNYSON: Ok. Next, GSMOL is suggesting that in addition to the language that the Task Force has adopted, with the language that you can see in Roman Numeral II in the handout sent to you on December 1, they want to add, "The seller or his or her agent shall not be liable to the buyer for conditions of the park property including the condition of the lot." And, then, in addition to that, WMA wants to add a clause after "lot" to say, "unless those conditions were caused by an act or omission of the seller." So, I would start by asking GSMOL to present their case in favor of their language on this issue. This is the issue of whether or not the seller or agent should be liable for the conditions of the property. We've already talked about disclosure. This is something else. This goes beyond that. Go ahead.

JIM SAMS: Of course, we are in favor of the proposed language we had. This is where we differ from WMA. After polling the board of directors of GSMOL and consulting with Mr. Priest, who is our corporate counsel, we were advised not to accept "...unless those conditions were caused by an act or omission of the seller." One of the reasons being that you are already defining the fact that the person who owns the mobilehome is actually

having to defend the fact that there is a problem under his mobilehome, and I know in many cases where park owners would not take the responsibility. They would want to say that it was caused by the person who lived there. This sets up the probability of a court case. There is no like language that says that if a park has a tree (and we aren't going to belabor that) but the tree which has rubbed on the mobilehome for a period of time and the park would not take care of it or has in some way damaged the mobilehome, they in a like manner would be held liable to the people who own the mobilehome. So, we have to say that we feel that the amendment to the Civil Code would be complete without adding the WMA language and we very strongly oppose the addition of that language.

JOHN TENNYSON: Ok, WMA. Ms. McLees.

JERI McLEES: Before I proceed, I am a little confused, Jim, about your last statement. Are you saying not to put this language in at all between our two proposals or just stop where we just voted?

JIM SAMS: I'd say that it would read that we introduced it up to "...the condition of the lot," and would not include your language.

JERI McLEES: Or yours?

JOHN TENNYSON: No.

JERI McLEES: Just his. That's where I was confused.

JIM SAMS: We're talking about the Code section.

JERI McLEES: So, we're still in sync as to what our disagreement is. Before I proceed, I just want to make sure.

JIM SAMS: We just oppose your additional language.

JERI McLEES: Ok.

JOHN TENNYSON: Before we go further, your suggestion here is, I'm not sure I'm clear on this, is to add this sentence to the form or to put it in a separate Code section?

JERI McLEES: A separate Code section.

JIM SAMS: Well, our position is that it should go in the Code to...

JOHN TENNYSON: Not on the form?

JIM SAMS: No, no. That's absolutely true. It would go in the Code.

JOHN TENNYSON: Go ahead.

JERI McLEES: Before I proceed, I think one of the things that we want to change in either instance is to pull "his or her agent" out and make that a separate sentence with similar language. For example, it would say "The seller shall not be liable to the buyer for conditions of the park property including the conditions of the lot" And, parenthetically, add the WMA language, but setting that aside for just a moment, and then would say "The agent could not be liable to the buyer for conditions of the park property including the condition of the lot." Because the agent certainly should not have that liability for conditions that are caused by the seller. I believe that CAR...I think Ron Kingston asked that we do that and I think that is appropriate language, no matter what.

Then, we get into our concern as to whether the seller has a liability for actions taken during his tenancy, not prior to his tenancies, but during his tenancy which affected the lot to create some kind of liability. For example, if he is the third purchaser of the home on the lot there is by chance a drainage problem or something that was created by a prior purchaser we are not addressing that issue. What we are doing is we are saying he installed a cement sidewalk which he knows impedes the lot drainage and is selling the home in the fall when there is not that problem, but he personally installed it himself during the term of his tenancy and therefore is not disclosing the information. That's the kind of thing we are trying to address by having this very specific language that he does have a liability if it is caused specifically by him. The same thing if you inherited a Weeping Willow. You would not have a liability. If you installed a Weeping Willow that you know was going to go into the very old sewage line then there would be a liability. Those are the two questions that we are trying to address.

JOHN TENNYSON: Ok, let me ask you this. You are talking about a separate Code section that has nothing to do with the Code section that will enact this form. I guess the implication is that this Code section would be added to the same bill? Is this what your desiring, the two groups? Whatever the formal language turns out to be?

DENISE DELMATIER: Yes.

JOHN TENNYSON: Without this separate Code section being in the bill, which will enact this mobilehome/manufactured home disclosure form, can you live with the disclosure form anyway?

JIM SAMS: Well, if you will pardon me for saying so, I believe Mr. Pitts had suggested that we should have this in a Code in order for this to be specifically a statute. Now, if

JIM SAMS

I'm mistaken you can correct me, and that's the reason GSMOL was concerned about it was because we are not sure that the form by itself will stand as a legal statute and I'm sure it doesn't. So, therefore, we feel that we need this added language in the Code, which would specify this.

JOHN TENNYSON: Could you pursue that through separate legislation?

JIM SAMS: We could if it's not adopted today, I'm sure, but I think since we are doing the job here, I think that we should do as complete a job as we can.

JOHN TENNYSON: Well, the only thing I'm trying to do is avoid a lot of the unnecessary rhetoric. If this can be done in a separate bill then I'm not sure this Task Force needs to address this issue at all and deal with things that actually relate to this form, per se. That's my only point.

JIM SAMS: One point that I might make in relation to your comment and that is that when she says these things are happening, remember that the park owner is in ultimate control of the park area, and you have to get permission before you make changes, and if they made changes and were not given permission, then, of course, that would be a court case, anyway.

JOHN TENNYSON: Mr. Weiner.

RICHARD WEINER: I quite agree with what Mr. Tennyson said which I think was said last time, that since this really doesn't have anything to do with the issue of disclosure, that it really should be separate. As long as it's not on the form I have no opinion as to which...it's up to you to fight that out. But, in terms of which of the particular languages to you, I don't think is really relevant to this committee if it is not going to be on the form itself.

JOHN TENNYSON: I would propose that we take vote on the issue of whether this language, whatever form this liability exemption language takes, whether it is WMA or GSMOL or some negotiated middle ground, whether that should be included in the same bill as the disclosure form. Any discussion on that suggestion? Mr. Pitts.

TRAVIS PITTS: Mr. Chairman, I would like to see it in a separate piece of legislation because if we were to go with the WMA proposal it would put HCD in a position of opposition to something that we really believe in and that's the disclosure. So, I would like to keep them as separate issues.

JOHN TENNYSON: In separate bills?

TRAVIS PITTS: Yes.

JOHN TENNYSON: Any other comment by anyone else on the panel? Mr. Sams.

JIM SAMS: Well, I would only say that if the Task Force is not willing to give us our language without the amended part from WMA that we would prefer not to carry forward for this particular Task Force and address it with different legislation, if that's the feeling of the Task Force, and we do not want to have the language that's proposed by WMA in the law.

JOHN TENNYSON: Ms. McLees.

JERI McLEES: I think in the interest of achieving our ultimate goal, which is to have a TDS form and a disclosure for us to do anything other than just leave this out completely would be not in the best interest of the Task Force or the consumer, so I concur that. If we agree that neither said language comes in to this bill, or this disclosure form, than we can go forward with that and decide to work out this other issue as a different piece of legislation or continuing dialogue, whichever.

JOHN TENNYSON: So, in other words, it doesn't make or break your support for, as far as you know, for a bill that would enact the TDS?

JERI McLEES: As far as I know, that's correct, as long as we have the other language that is in the form, the other disclosure language that is here.

JOHN TENNYSON : How about GSMOL on that point?

JIM SAMS: I probably should qualify support or opposition until I have a chance to check with the Board. I, like the gentleman there, would have to check and make sure because our discussion did not include dropping this particular portion for the Civil Code...

JOHN TENNYSON: It did not?

JIM SAMS: It did not. The vote was on keeping our language so therefore, I must check. Then, we can come back with other legislation, if necessary, so I will have to put that on the back burner temporarily until I do that poll.

JOHN TENNYSON: Any other comments? Ms. Delmatier.

DENISE DELMATIER: Is it your intent to have a vote of the committee on the question should the liability then be in the bill?

JOHN TENNYSON: Yes.

DENISE DELMATIER: Thank you.

JOHN TENNYSON: Any other comment on that? Ok, the proposal is to not include the liability issue within the bill that would enact the TDS so, if you are an "aye" vote, that means your voting to keep this liability issue out of the legislation which enacts the TDS form. A "no" vote means that you want to have it included in the same bill as a Code Section in the same bill. Is everybody clear on that?

JIM SAMS: Well, we're talking about this liability as not amended, or are we talking about the liability as WMA amended it? I want that clear.

JOHN TENNYSON: If it turns out that there are more "no" votes, the "no" votes carry the day. That means, then we'll get into the discussion of which of these amended proposals we are going to...and then, we'll have to vote on that. What I'm trying to do here is circumvent a more lengthy discussion, because if there is no point in including this in the bill to begin with, then this is a purely academic exercise and we'll be here...well, we'll probably have to have another Task Force meeting, actually, since we have to be out of here by one o'clock. So, that is what the intent here is.

DENISE DELMATIER: May I make a suggestion in facilitating the board consideration, GSMOL board consideration on the bill, that would be helpful for making that decision. I think it would probably be a positive one. I think it would be more helpful to have a vote on the GSMOL proposed amendment by the committee.

JOHN TENNYSON: Ok. Any comment on that ? Mr. Weiner.
RICHARD WEINER: I tend to agree with Mr. Tennyson. I think we could go on for a long time in deciding which of the two proposals to support. It seems to me preferable since it really isn't appropriately a portion of this committee, as I understand our task, to decide about this issue, that it not be part of the bill and just go about our own proposal.

JOHN TENNYSON: Any other commentary? Mr. Deiro.

PAUL DEIRO: I would suggest that we take a vote.

JOHN TENNYSON: Take a vote what, then?

PAUL DEIRO: Both "A" and "B", both WMA's proposal and GSMOL's proposal on voting on one or the other.

JOHN TENNYSON: Ok, that's essentially what we would be doing by voting on my proposal.

PAUL DEIRO: Correct.

JOHN TENNYSON: Mr. McChesney, anything? Mr. Pitts, anything? Ok.

SECRETARY: Mr. McChesney, aye; Ms. McLees, aye; Mr. Orsburn, aye; Mr. Pitts, aye; Mr. Sams, no; Mr. Weiner, aye; Ms. West, aye; Mr. Tennyson, aye. Seven, ayes; one, no; and one absentee.

JOHN TENNYSON: Ok. Let's move now to Roman numeral IV, which is a discussion on the three-day recission issue. Where we left off last time was that representatives of dealers and multiple listing were to talk with the California Association of Realtors, and I don't know if that ever happened. Who wants to start since it's this side of the table that's basically involved in this discussion. Mr. McChesney.

BURT McCHESNEY: In talking with Ron about this issue yesterday, our position is that absent the three-day right of recission we are opposed to the proposal. It has to have a three-day right of recission.

JOHN TENNYSON: In other words, it is a make or break for the whole thing.

BURT McCHESNEY: Make or break for us.

JOHN TENNYSON: Do you want to explain why?

BURT McCHESNEY: The purpose of the disclosure statement is to provide information to the buyer about the condition and then enable them some time frame in which to make the decision as to whether to proceed with the transaction, if we cut that time frame down to a reasonable amount of time, because open ended is too long. No time frame is too short. Three days has worked very well in the real property world for years and we believe it ought to continue.

JOHN TENNYSON: How long has the three-day recission for conventional real property been in effect?

BURT McCHESNEY: Since the TDS was created.

JOHN TENNYSON: It was created at the same time?

BURT McCHESNEY: Right.

JOHN TENNYSON: For that purpose?

BURT McCHESNEY: For that purpose. To give the buyer the opportunity to...

JOHN TENNYSON: Not for any consumer rights separate and apart from the TDS like you get on door to door sales, for example?

BURT McCHESNEY: No.

JOHN TENNYSON: Mr. Weiner.

RICHARD WEINER: I had a long discussion with Ron about this and also brought this to CML's attention to a point. They are definitely against the expansion of or to include the three day notice for several reasons. One is that the law, now, does not so provide. The basis for inclusion in the current TDS form that Realtors use is 1102.3 of the Civil Code. This was not amended in any way by the Legislature. It specifically talks about real property. It does not talk about houses. In concept, I understand and am not really terribly bothered by the idea that there should be a three-day recission. I think that is important and so, it isn't just opposing it to oppose it. But, I don't think the Legislature wanted us to enact any kind of legislation except to further the purposes of the bill which required that there be a TDS for manufactured housing. 1102.3 was not amended, does not cover personal property, does not cover manufactured homes and therefore, we would oppose including that in the bill.

JOHN TENNYSON: Is that a make or break issue for you as well, if it is in the bill?

RICHARD WEINER: At this point, I would have to reserve judgment on that. I would definitely say that if it is to be included in the form, that 1102.3 has got to be changed, as well, because it has got to cover more than real property.

JOHN TENNYSON: So, you are not in concrete, apparently, your feet are not in concrete on this issue?

RICHARD WEINER: They are in wet cement.

JOHN TENNYSON: Ms. McLees.

JERI McLEES: May I ask a question? Currently, when you are selling a manufactured house how long does the buyer have after they sign the contract to rescind? Is there a time period?

OTIS ORSBURN: There hasn't been.

JERI McLEES: There has not. So, if I sign the contract with you to buy this Fleetwood, that's a contract. So, we really would be expanding the law dramatically in this Task Force, and I would suggest very similar to the vote we just took, the expansion beyond our scope should not be addressed in this particular vehicle, but maybe be addressed in a

JERI McLEES

different vehicle if CAR feels strongly that personal property needs to have a 72 hour recission. I think that's an issue that could be fought out beyond this Task Force.

JOHN TENNYSON: Mr. Orsburn.

OTIS ORSBURN: I agree with Ms. McLees' statements in that I feel it is a Civil Code issue that needs to be changed, or if it can be changed, but that it shouldn't cloud what we are doing here on our disclosure statement in that if the Association of Realtors feels that it should be changed, they can change it as we are doing with the other provisions, and so I would be opposed to having it, also, on the form.

JOHN TENNYSON: Is that a deal breaker for you, for your group?

OTIS ORSBURN: It's not a deal breaker but it's that a majority of people in our group do not want to expand the law because the purpose was disclosure, not expanding the law.

JOHN TENNYSON: Ok. Any other comment on this issue? Mr. Pitts.

TRAVIS PITTS: Mr. Tennyson, the problem with the Transfer Disclosure Statement and there being no time frame for its delivery, is it can be delivered well after an offer was made. It is my understanding that in our shifting from criminal liability to disclosure that a well informed buyer and seller would be able to negotiate issues that were disclosed as opposed to holding someone criminally liable for the failure of a manufactured home to comply. They can't negotiate something they don't know about, so if they have made the offer and then get the disclosure statement three weeks later, therein lies the failure of the whole disclosure. What's the point?

JOHN TENNYSON: Ms. McLees.

JERI McLEES: The point is not that the disclosure should be made prior to the sale, the point is, as I understand it, current law does not give a specific three-day notice of recission which in real property it does, in personal property, it does not. I would entertain the thought deferring to the people who are selling if we wanted to make sure that there was language in the disclosure form that the disclosure must be given prior to the consummation of the sale, I don't have a problem with that. I think the concern is that you are expanding the law to a 72-hour recission, which we don't have currently. It appears to me off the top of my head that a simple disclosure or a simple requirement that this must be given to the prospective buyer before it becomes a completed sale is appropriate to put it in our form. Because you are right, if every ne'er-do-well seller is going to wait for the three weeks, then it's all been taken care of. But I think, and I'm looking at Richard and Otis, I think that our concern is the expansion of the signing of the

contract time, which shouldn't be addressed here. It is not the fact that the prospective buyer should get the disclosure prior to the end of the sale. Maybe you do it...usually an offer to purchase, contingent upon various disclosures. I think that is right in the real estate law. And, if those contingencies are not met, then the offer to purchase is void. Can I ask Otis if that sounds like something we could live with so that the buyer is aware that this disclosure has to occur?

JOHN TENNYSON: Mr. Orsburn, do you want to answer that?

OTIS ORSBURN: I would agree with Travis on the notice of time. I know there are two issues here, now. The first issue is when is that given to the people? And, shortly thereafter an offer being made is when they should be receiving it. And, we would probably, and I am guessing for the people that I represent, we would probably support a subsequent bill for a three-day recission once we've been able to hash out particulars to it. But, I think that we should still keep it outside of the disclosure statement so that we can move it forward. I think I answered your question.

JOHN TENNYSON: Ok, Mr. McChesney.

BURT McCHESNEY: The law requires that it be done as soon as practical before the transfer of title, as soon as practical before the execution of the contract and the sales transaction. So, the practice has been, in real estate, when you have a prospective purchaser before they even execute the purchase agreement, that they deliver a TDS and they are commonly handed out when people are getting their first look at the property before they have agreed to buy it. The law requires if the TDS is not given until after the contract has been entered into then you have this right to rescind once you have gotten the disclosure of the condition of the property. If the TDS is before the execution of the contract, you don't have the three-day right to rescind. If you get it after, then you do.

So, it is the burden upon the seller and the seller's agents, our guys take it upon themselves, to get that TDS at the earliest possible time, even before a contract has been entered into, and then there is no three-day right to rescind. So, the three-day right to rescind only applies if you don't get the TDS till after you do the contract. So, it becomes a practice for dealers and agents and sellers to get the TDS out there and get full disclosure. The purpose is for people, buyers, to have a fair understanding of the condition of the property and value of the property, so that they negotiate on even terms.

JOHN TENNYSON: So, it's not a strict three-day right, it is only if the TDS isn't delivered till after the contract is executed.

BURT McCHESNEY: Right. So you execute the contract, but you don't know the condition of the property.

JOHN TENNYSON: And, that's in 1102.3, right?

BURT McCHESNEY: 1102.3.

JOHN TENNYSON: Mr. Pitts.

TRAVIS PITTS: It would be acceptable to us if the requirement to deliver the transfer disclosure statement prior to the acceptance of an offer, prior to the execution of the contract, just as long as it is prior to. Then, we don't have to deal with the three-day right of recission in this context, but I do believe that it has to be in hands of the prospective purchaser before they can make a qualified or legitimate offer.

JOHN TENNYSON: Any comment on that? Mr. Orsburn.

OTIS ORSBURN: My comment is that acceptance of the offer doesn't necessitate the completion of the contract, whereas close of escrow does. And, there are many cases when you are dealing in multiple listings that you don't have access to that disclosure statement because it is in another office, so it would be as soon as practical after is accepted that the disclosure statement would be transferred. But, it is almost impossible before an offer is accepted to be able to get that paperwork back and forth before the contract...

JOHN TENNYSON: What was your comment?

TRAVIS PITTS: Travis Pitts, Mr. Tennyson. Before a contract is executed.

JOHN TENNYSON: Oh. Mr. Weiner.

RICHARD WEINER: There are different contracts that are executed, if you are talking about the purchase order. I guess one of the difficulties, Travis, is whether or not we can have some disparity between what exists in manufactured housing and in real estate in regard to how, as a practical matter, these transactions take place. And, I think maybe you should separate it out. I would prefer not to have the three-day right of recission. It is not a deal breaker to me to have it or not. I think there should be some requirement for delivery of the disclosure statement, in any event, regardless of whether it is included or not, whether or not we have this three-day right of recission. As to when it should be delivered, it's difficult because there are many different situations as to when these contracts are signed. As soon as practicable is what the law now says. If we don't do

anything, this isn't included. In fact, even if it is included, that's what the code section says, the 1102.3. And that's a problem because we're not really subject to 1102.3. So, maybe there has to be some amendment of that. There isn't any requirement to deliver it in any time line, except as 1102.3 talks about.

JOHN TENNYSON: Well, let me ask...go ahead, Mr. Pitts.

TRAVIS PITTS: But, Mr. Tennyson, in my opinion it was not the intention of the Legislature to make the disclosure meaningless. Therefore, it has to be delivered in a appropriate time to where it can be acted upon. If it is not, I think 1102.3 is the ultimate answer because it gives you the flexibility of either providing it to the prospective buyer so that it can be negotiated as part of the sales price or if you can't do that, then there is a three-day right of recission later. If that three-day right of recission isn't acceptable, then I think we have to require that the disclosure be delivered prior to the obligation of the purchaser, in whatever form you wish to choose to take that.

JOHN TENNYSON: Mr. McChesney, do you have a comment on what Mr. Pitts said here about referring to the purchaser?

BURT McCHESNEY: We're very comfortable with the way 1102.3 works now, as soon as practical or if it doesn't come till after the contract is signed, we give a three-day right to rescind, now that you have had disclosure of the real conditions of the property. So, we are very comfortable with that. I don't have the power to say that we accept mandatory disclosure before the contract, because then you are into a whole restructuring of the way the business is conducted.

JOHN TENNYSON: Mr. Weiner.

RICHARD WEINER: As a practical matter, the right of recission exists any time there is misrepresentation, no matter whether it occurs in a month, with the exception of the statute of limitations, no matter when it occurs. This is only a question of how automatic it is.

BURT McCHESNEY: It means you have misrepresentation, you just don't have disclosure.

RICHARD WEINER: Right, this is just this one, and in this instance there is no question that it expands the law. We have to have some time limit on that.

BURT McCHESNEY: And, this doesn't affect any other conditions that may be in the contract.

RICHARD WEINER: Right.

BURT McCHESNEY: Which are subject to financing, subject to subsequent inspections by others. This is just the first shot we have given the disclosure and now I discover a whole bunch of things you didn't tell me about the property.

RICHARD WEINER: The only problem with the way 1102.3 reads now, if we extended it to include transfer of manufactured homes as well as real property, there are several sub sections in that Code Section that I'm not sure are not going to create problems. "A" says in case of the sales, as soon as practical after transfer of title.

GROUP: Before the transfer.

RICHARD WEINER: Before the transfer of title. "B", the case of transfer by a real property sales contract won't be applicable if it is not under a real property sales contract. There are contracts similar in manufactured homes as well.

JOHN TENNYSON: Well, you can design a separate subsection to 1102.3 to deal with mobile and manufactured homes, I think, couldn't you? If you are talking about some of these things not applying, I'm not at liberty here, today, to try to draft that, ad hoc. Ok, any other comment? GSMOL? Well, it looks like we are going to have to take a vote on this issue. Yes, Mr. Weiner.

RICHARD WEINER: In light of the fact that there are a lot of comments by people in the industry with regard to the practicality of when it should be delivered, I would prefer to eliminate it at this point subject to the possibility of...

JOHN TENNYSON: Eliminate what?

RICHARD WEINER: Eliminate the three-day right of recission and eliminate it from the form. Not doing anything to the Code Section 1102.3 subject to the possibility of coming back to the committee with some language that will be acceptable to the manufactured housing segment of ...

JOHN TENNYSON: Well, this is supposedly the last Task Force meeting and we have to have a report to the Legislature by January 1. It doesn't foreclose that any bill that would include this form that's introduced couldn't be changed by the Legislature. They don't have to pay any attention to what the Task Force suggests. We are just making our recommendations. Unless the Task Force wishes to have another meeting before January 1. What's the desire of the Task Force on this issue?

RICHARD WEINER: Travis, what do you think? I think it is problematic to just include this in the bill without a change in 1102.3 because 1102.3 does not cover transfer of a manufactured home.

JOHN TENNYSON: Mr. Pitts.

TRAVIS PITTS: I understand that, and I am not wedded to a three-day right of recission. All I am asking is that the legislative intent for disclosure be carried out by making that disclosure prior to obligating the purchaser. That's it. Very simple. I do not believe the Legislature intended this to be a gimmick to get out from under liability to where it would be delivered after the obligation to purchase. It simply has to come before the prospective purchaser becomes obligated. That's very simple.

BURT McCHESNEY: We are comfortable with amendments to 1102.3, but amendments that make it clear what the obligation is with respect to manufactured housing if it's consistent with the current structure of 1102.3. I can't go so far as where Travis wants to go which is a statutory obligation to provide in advance..

JOHN TENNYSON: I think that is a substitute for recission.

BURT McCHESNEY: I can't accept that at this point.

JOHN TENNYSON: Ok. Mr. Weiner wants us to have another meeting on an issue...

RICHARD WEINER: No, I really don't.

JOHN TENNYSON: But, some means of having further input then on some way to work out what Mr. Pitts suggested. Is that correct, some language? But, Mr. McChesney is not...

RICHARD WEINER: There is a problem with the way that 1102.3 reads in a number of instances with regard to using it in a traditional sale of a manufactured home by a manufactured home dealer and it's not simply to add the words "any housing as defined..." wherever, as opposed to the words, "real property." I don't think that will, necessarily, cure the problem. I do agree with Travis that we should probably have somewhere in this legislation the requirement to deliver it at a particular point without getting into the question whether or not there is a three-day right of recission. Unfortunately, there isn't any place in the legislation now that requires the specific delivery except under 1102.3.

JOHN TENNYSON: Ms. Delmatier.

DENISE DELMATIER: I think Mr. Pitts has a legitimate point in that all this is for not and all of our efforts and discussions are for not, if you don't add some sort of legitimacy to when this thing gets transmitted to a prospective buyer. Is the requirement, Mr. Tennyson, for purposes of getting a report to the Legislature January 1 or it is...

MR. TENNYSON: Yes.

DENISE DELMATIER: It is January 1, statutorily. I was thinking that maybe Mr. Pitts could draft some language that encompasses that concept because I think I am hearing a lot of support for that concept by the committee members. It may not be a part of the official report, but certainly maybe after they come back on the 5th could have a quick little meeting just to take a poll of committee members as far as that language and have that added on.

JOHN TENNYSON: Well, Mr. McChesney's point, of course, is that what... I think we are all striving here for is to assure that the prospective purchasers have this disclosure before they are committed unalterably. And, there are two different methods here, as I understand it. There is the existing law which is in 1102.3, to which real property is subject, where you either deliver it before the contract or if it isn't until afterwards, you have three days to rescind. Or, there is the suggestion that Mr. Pitts has made that maybe there is some way Mr. Weiner would like to figure out or fashion some language to the effect that not necessarily a three-day right of recission, but rather the TDS has to be delivered before the contract is signed, basically. That's my understanding of this discussion. So, either way, either approach would address that. It's what approach we use. Am I outlining the issue sufficiently, I hope? Mr. McChesney.

BURT McCHESNEY: I think that Mr. Pitts' suggestion, while it gets to the problem, creates other problems in practical effect in terms of how do you handle these transactions. So, what he would suggest, then, is three days before you execute a contract you accept an offer of purchase but you have to deliver the TDS, rather than provide the flexibility that this system provides.

JOHN TENNYSON: Ok, I understand. Ms. McLees.

JERI McLEES: I concur with Travis that we need to have something and I want us to have the bill on January 1. In Roman numeral II, of the statement that we have already resolved, it, by inference says that prospective buyers have to have this information to decide whether or not to purchase the subject home. And, it seems to me we set aside the three day, issue in some other legislative vehicle but in the seller's information, "...seller hereby authorizes any agent to provide a copy of the statement to any person or agency in connection with any actual or anticipated sale..." Am I being so simplistic when I just say that seller or his or her agent must provide this form prior to the presentation of the title, or prior to the closure of the sale. So, we aren't worried about the offers to purchase and

contracts because, remember, this is going to apply a lot of times when there is just two individuals who are not agents. That puts everybody on notice that it has to happen in advance and then we can argue outside whether all the other provisions of the Civil Code Section should apply to the sale of manufactured housing. But till then, the consumer is protected.

JOHN TENNYSON: I'm not following your last statement, "all the other civil code provisions?"

JERI McLEES: The provisions of 1102.3 that we are all a little bit concerned about without looking at in depth. That's why we don't want to, necessarily, just say that that's acceptable. And, yet, what we really want to do is to put the seller on notice that he or she must provide this disclosure prior to the transfer of the title.

JOHN TENNYSON: Mr. Weiner.

RICHARD WEINER: I'm really sorry we didn't grasp this issue earlier because it really is a problem. Even looking at 1102.3 which is the only place in the Code that talks about delivery of the statement. We have a problem with all of the sub parts. As an example, in the case of a sale, it says, "...as soon as practicable before transfer of title." Well, transfer of title, is a relatively easy matter in real property because that really is the same time when escrow closes, which is not true in a manufactured housing sale. Legally, transfer of title takes place a long time after and if you are talking about a sale between a buyer and a seller who are not, it's not a dealer sale, there isn't even an escrow. So, I think language does have to be crafted aside from whether or not there is a three-day right of recission. Language does have to be crafted as to when this TDS is delivered and I don't think it is sufficient, quite frankly, to put it in the form itself, in answer to what you said before. I think it has got to be written into a Code section. Maybe this is the place to put it, but it has to be written into a Code section as to when it is to be delivered.

JOHN TENNYSON: Well, regardless of whether the three-day recission is in the form or not, yes, we will have to modify 1102.3 or create a new section to address that issue for some of the unique problems of the sales of mobile and manufactured homes. How that will be done, at this point, I'm not sure. Mr. Sams.

JIM SAMS: I just wanted to indicate that I think that Mr. Pitts' proposal is acceptable and, in my view, that it is done at a very timely point and I'm not so sure that flexibility would work as well for us.

JOHN TENNYSON: Ms. Delmatier.

DENISE DELMATIER: One other suggestion, as far as procedure. Maybe we could have folks prepare language and circulate it before January 1 and as we were going to do on the GSMOL and WMA language, I think we could get some resolution through the telephone by January 1 and have it included as part of the official report if there is enough support for, and I think there probably is, for that language.

JOHN TENNYSON: Well, my reading is that the Realtors aren't going to support the bill unless the three-day recission is in it. Is that correct?

BURT McCHESNEY: Unless the three-day recission is done fairly comparable to the way it is done in 1102.3. Again, our problem with Travis' suggestion, which is fine, is that it creates as many problems as it is perceived to be in 1102.3. When is before the contract and how are you going to do that in the operation of a business to make sure it gets done three days before the acceptance of an offer, which is the definition of a contract, here, that we are comfortable with. So, using 1102.3 as your structure, yes it needs to be amended to reflect a reference to manufactured home, but it gives you the flexibility that people need to meet real world business and sales transactions that everybody understands, all the professionals understand that I've got to get this TDS to the buyer because they have a three-day right to rescind as soon as they receive it. So, the earlier I get it to them, the quicker this transaction can move forward.

And, if it works out that they show the buyer the place and they say that they want it, here's our offer, you've got a deal, then give them the TDS then and you can move forward, you know you really can't do anything for three days. But, you don't interrupt the flow of the transaction. So, we have to do some minor tweaking, agreed, to 1102.3 to fit in manufactured homes, but we think it's the best way and it has a history of working well in these kinds of transactions.

JOHN TENNYSON: Ok, let's have an informal poll to see where we are. The people who have a vote on this Task Force, how many would favor the approach of including the three-day right of recission on the form as it more or less appears on the existing form for real property, as well as some changes, tweaking, to 1102.3 to make sure that it fits manufactured home sales. How many would favor that approach? Is that a hand, or...

TRAVIS PITTS: I am trying to make sure that I understand. May I make a comment before you ask me to vote?

JOHN TENNYSON: Yes. Well, this is an informal poll, not an official vote.

TRAVIS PITTS: I think we've done a lot of good work and we've gone a long ways and there are some issues that will not be resolved by January 1 and that we will continue to work on through the legislative process. I am perfectly willing to move the recommendation of the Task Force with this as an unresolved issue. But, I still believe the

intent of the Legislature for disclosure meant that it had some meaning. Therefore, it has to be delivered in time for a reaction by the purchaser, whether that's the three-day right of recission, is not a concern. Either way is fine.

JOHN TENNYSON: I think that we have established that the majority of people here want to create some mechanism to protect the prospective purchaser in this regard and be sure that they receive the TDS. How that's done is what we are discussing. So, those who informally would favor the approach as Mr. McChesney has outlined it. In other words, basically, the three-day right of recission as is currently used, with some minor tweaking to that Code section including, that in the bill. An informal poll. Mr. McChesney. All right. How many would favor Mr. Pitts' approach if that can be worked out, in which there would not be the three-day right of recission, necessarily, but would be some language which would, as I understand it, assure that the buyer receives the TDS before he or she is unalterably committed to the contract? Five. Ok, what we'll try to do, on this issue, is take Ms. Delmatier's suggestion and see if we can get the parties together on the phone within the next week and then report back to me a week from today on whether some progress can be made on some language or whether any agreement can be made. And, if it can't then we'll have to leave this as an unresolved issue.

RICHARD WEINER: May I suggest that whatever language we use that if it turns out that whatever language we use should be capable of adding a three-day right of recission so that it can fit into the bill if ultimately it is decided, as an example, by the Legislature, that we have to have this three-day right of recission. As it stands now, 1102.3 is impossible to work with in the format that we have, so if we can at least try to draft the language so that it's possible to include the three-day right of recission in there, just plop it in, at the end. I think that would be the best thing you could do.

JOHN TENNYSON: If we can't resolve it this other way, you mean?

RICHARD WEINER: Right.

JOHN TENNYSON: Well, how many are in favor of that approach?

RICHARD WEINER: I don't know that it is any different than the approach that we had before. At least to have it available to...

JOHN TENNYSON: So, if we can't resolve this within the next week?

RICHARD WEINER: Well, we've got to resolve this. I mean, there is no mechanism now for delivery or requirement of delivery of this TDS. We've got to do that. That's

one thing, issue that has to be written into the Code and has to be written into the form as well. Then, the separate question as to whether or not there is a three-day right of recission seems to me is a separate issue if the group decides that it has to be written into the form then it has to be in the Code and in the form as well.

JOHN TENNYSON: I don't see it as a separate issue. I think it is a means of achieving that.

RICHARD WEINER: Well, it's an addition. I think we could write a Code Section that doesn't have three-day right of recission.

JOHN TENNYSON: I'm sure we could, but I think we are talking about the same issue and the issue is basically that the consumer or buyer gets the TDS one way or the other whether it's through a recission mechanism or whether it's before they sign the contract. Ok. Ms. McLees.

JERI McLEES: Perhaps I'm being simplistic again. What if we just said that the buyer shall get his TDS prior to the completion of the sale and if he doesn't get it, then the sale is null and void.

JOHN TENNYSON: What is completion of the sale?

JERI McLEES: When he takes possession, I guess, you know. That addresses, I believe, the issue of ...

JOHN TENNYSON: That the contract is not valid?

JERI McLEES: Yeah.

JOHN TENNYSON: That may be more than a three-day right of recission.

JERI McLEES: It puts the burden on the seller who, or his agent, wants to make the deal.

BURT McCHESNEY: But, that also gets to Travis' point and that moots the whole value of the disclosure. If you avoided the whole transaction by operation of law because you failed to give the TDS, that's not what is current; the transaction can go forward. It's liability that attaches to the failure to disclose. The transaction can go forward. So, we've had this transaction run a 30-day, 60-day course, and now the day before they sign the final papers to close escrow, you now provide the TDS and the buyer discovers a

whole bunch of stuff that he didn't know and has no practical way to address those issues because the thing is supposed to close. I think that is a problem for us.

JERI McLEES: I just said I was being simplistic.

JOHN TENNYSON: Mr. Orsburn.

OTIS ORSBURN: As opposed to Mr. Weiner's feet in wet cement, I feel like I am in quicksand. The more than I'm hearing about the three-day recission and my personal beliefs, I think that it would help to limit the liabilities of the agents when there is a time line by which somebody must rescind or be obligated, and I know I'm changing my coat here, but I think in the essence of attempting to resolve this and get this going forward without a lot of controversy that when we do have our phone conversations to determine what the verbiage is to be, we look at something that does limit the time versus just leaving it open-ended. And, if we need to tweak the Code section to apply it to manufactured housing, I think that we should look at that and not look at it as a last resort but look at it as a decision that we've made and that is what we are going to do. So, I'm just indicating to everybody that I feel that the three-day recission probably is not something we can avoid and that would include the notice that Mr. Pitts has also recommended.

JOHN TENNYSON: Ok. Well, what I'd like to do is to request that Mr. Orsburn, Mr. Weiner, and Mr. McChesney or Mr. Kingston, whichever, to in the next few days or early next week get together and see what can be worked out and then report to me and we'll have a conference call of the entire Task Force, and I don't know, maybe Ms. McLees on behalf of the park owners, do you want to be involved in there?

JERI McLEES: I don't think so. Let them craft it.

JOHN TENNYSON: Is this a big issue that's going to be of major import to WMA?

JERI McLEES: Obviously it is of import, but I think it's of more import to the agents even though many of us are selling homes, I'm kind of like Otis in my personal belief. I have no problem with a 72-hour right of recission. I think that is a legitimate thing to do. Just the language to make it occur.

JOHN TENNYSON: How about GSMOL?

JIM SAMS: Yes, I would like to be a part of it, but I do have a problem. I will be out of town to a Board meeting from the 9th through the 11th.

JOHN TENNYSON: Ok, but you'll have an opportunity to discuss it when we have the conference call of the whole Task Force. So, I think it is primarily an issue now among the dealers and the multiple listing and the Realtors.

RICHARD WEINER: And, the Department of Housing, as well. I think that is a crucial part of it.

JOHN TENNYSON: Do you want to be a part of that, then of the initial...all right, four of you, then. And then, report back to me and we'll set up a conference call a week from today. So, you need to some, if it's possible, or you might just report to me that it can't be resolved, I don't know. But, I'd like to have something by, say, Tuesday or Wednesday morning. If I could impose that mandate.

RICHARD WEINER: You're talking about something as among...

JOHN TENNYSON: Among the three or four of you, yes. And, then we'll have a conference call next Thursday of the whole Task Force. You won't be here next Thursday.

JIM SAMS: Next Thursday is the 11th and I'll be out of town. I wonder if I could possibly, would it be legal for you to have her on the conference call?

JOHN TENNYSON: Sure. As your alternate? You won't be here, either.

DENISE DELMATIER: How about the 12th?

JOHN TENNYSON: I can't do it on the 12th. I'm having minor surgery.

JIM SAMS: If the Task Force and chairman would permit that, I think she could very well convey to me the meaning of this discussion. Would you be willing to do that?

JOHN TENNYSON: How about Monday for the conference call? Not next Monday, the Monday after that.

GROUP DISCUSSION

JOHN TENNYSON: The 15th for the Task Force conference call. Say one o'clock on the 15th? Is that a possibility? No. How about 11 o'clock? The 15th is not a good day for you at all?

OTIS ORSBURN: I'm doing touring of sites on that day, or it would either be early in the morning or late in the afternoon.

JOHN TENNYSON: How about the 16th, Tuesday.

JERI McLEES: He said he could do early morning or late afternoon. Let's go back to the 15th. How about the morning?

JOHN TENNYSON: How about 8:30 am. on the 15th? Ok, then we'll give you till next Thursday, a week from today to get something to me.

Now, on the agenda, that brings us to additional or other issues. Mr. Weiner.

RICHARD WEINER: Yeah, on the Health & Safety Code, subsection F, 18046.

JOHN TENNYSON: Ok, as I understand that, you want more specific language limiting...

RICHARD WEINER: I want there to be more language, if possible, to make sure...as I read it, it's a very long sentence, but that's the way it goes, I guess. It doesn't seem to me to be limiting enough in terms of the inspection with regard to, and maybe this is an issue we are going to have it out with the Realtors again, what kind of an inspection there has to be regarding something other than the home itself. Here is the language you had, the language you liked. Where it says on the third line, "...nor an affirmative inspection of areas off the site of the manufactured home." I don't know what the term "site of the manufactured home" is. That's the part that bothers me.

JOHN TENNYSON: Ms McLees.

JERI McLEES: When I read that I agreed with you, Richard, and I think maybe the easy way to do it is that we talk about if the home is within a PUD or condo it doesn't include an inspection of more than the home and accessory, but if we just put it that if the home is within a mobilehome park, as defined by whatever that Section number is, which is what we really are saying in our whole disclosure, I think that covers it.

RICHARD WEINER: Ok, I was just going to add a sentence, but I think we are on the same track.

JERI McLEES: I was trying to keep it as... If it is in any kind of development other than just real property, in a mobilehome park, or whatever, it only includes an inspection of the home and the accessory structures because again that is all that is being sold.

BURT McCHESNEY: In terms of the agent's inspection.

JERI McLEES: Right. The agent's inspections.

JOHN TENNYSON: Well, why don't we just, instead of saying what it doesn't include why don't you just say what it does include? To include only the manufactured home/mobilehome and the accessory structures being sold with the home. Mr. McChesney.

BURT McCHESNEY: I think it is important that you do include the language about off-site inspections. You want to make sure that you aren't creating a duty, an implied duty, to do any investigation. This language is important.

JOHN TENNYSON: The site being the lot, Mr. Pitts?

TRAVIS PITTS: It was my intention to again get as much of 27.9 as I could to make it comparable. And, site, to me, meant the lot. If that would be more descriptive, we could use...

RICHARD WEINER: I have a suggestion. What if we ended the first sentence before the word "and" on the fourth line and put in a new sentence, "If the home is located within a mobilehome park or..." and then just go ahead "...within a planned unit development." The only problem is that the sentence doesn't make sense.

JERI McLEES: No, it does, Richard. If you say, "If the home is within a PUD, a mobilehome park, etc. the inspection does not include..."

RICHARD WEINER: You have to have the word "inspection."

JERI McLEES: Right, so after Business and Professions Code, the second time, after the B&P code, you can say "...the inspection does not include an inspection of more than the home and accessory buildings or structures that are being offered for sale."

JOHN TENNYSON: Ok, so you put in after "home" on the fourth line you put a period. Then, you strike out "and" and you say, "If the home is within a mobilehome park as defined in Civil Code Section 798.6 or within a planned unit development...," and so forth and so on, then after this business with the Business and Professions Code, the second one, you say, "The inspection does not include..." The third Business and Professions Code, I mean, "...the inspection does not include an inspection of more than the home and accessory buildings." Is that correct?

JERI McLEES: Yes, I think that is what we are trying to do.

JOHN TENNYSON: Mr. McChesney, do you want to come on board on this?

BURT McCHESNEY: Yes.

RICHARD WEINER: The inspections should be performed ...does not include... That's right, that's right.

JOHN TENNYSON: Ok. I'll work with Mr. Pitts on that. Anything else? Any other issues to be discussed? One issue that came to my attention that we have not discussed -- and I will just throw it out for whatever it's worth -- there has been concern voiced to our committee over the last few years about sales of manufactured homes that are on the vehicle license fee, which are still a majority of the homes. And, what happens in some cases is that the agent or the dealer or sales person will convince the seller to switch the home from the VLF to the local property taxes. And, what happens is that because it takes a period of time for the records to be transferred, or whatever, I don't know what technically is involved, Mr. Pitts, you can probably tell me, but apparently it takes some period of time. But, the buyer in checking, if they check, under current law discovers that the home is on the VLF and assumes it's $139 a year, or whatever it is, taxes.

The contract is consummated and the buyer takes possession and is in the home for a month or two and here comes the Assessor. And now they find their taxes are two or three times higher than they thought they were going to be, and they aren't very happy about it. Should there be some disclosure as to whether or not a VLF home has been switched at the time of being offered for sale? Is that an issue that anybody thinks is important? We have received, probably, a dozen complaints about that in the last four or five years. Mr. Pitts?

TRAVIS PITTS: I believe it is important to disclose whether it is subject to local property tax or vehicle license fee. I think that is a very important part of the disclosure. What happens in the same complaints that you get, we get, is an issue of people trying to have their cake and eat it, too. They change from VLF to local property taxation to avoid the payment of use tax in the initial sale, and everybody is happy until they find out what the penalty is when the Assessor comes.

JOHN TENNYSON: Yes, but the buyer doesn't know that it lowers the price, as I understand it, of the home to reflect that the fact that sales tax doesn't have to be...

TRAVIS PITTS: The buyer is exceedingly happy at that point, but unhappy later.

JOHN TENNYSON: But, the buyer isn't aware of the circumstances. That this is just the selling price, not that...

TRAVIS PITTS: That's right, and it's an irreversible... where if the buyer bought the home thinking it was $40 a year and then they find it is irreversible, then it becomes a major problem. They may not have factored in $400 in property tax in their budget.

JOHN TENNYSON: So, even if they do save sales tax whether they know it or not, and they live there for five or six or ten years, the additional property taxes will more than make up for what they saved on their sales tax.

TRAVIS PITTS: One time it took about seven years for it to break even.

RICHARD WEINER: I believe we have to leave the parties where they are. One of the difficulties is when we try to write that into the disclosure statement, I'm not sure when that... that you are putting down that it is subject to local property taxes or not, sometimes that transformation takes place right in the middle of the sale so that I think it is going to be confusing the factors if it is in the disclosure statement, and I think the parties really do know a lot more about what is happening than they let on when they complain. They are trying to save the money on the front end and then discover that at the rear end it is more expensive. I think we have to leave the parties where they are and not try to worry about it in this form.

JOHN TENNYSON: Any other comments? Mr. Sams.

JIM SAMS: I do have a concern, as well. Some of the people who buy the mobilehomes after two or three years will find that a very definite problem and if they have not realized they are going to be having property tax rather than vehicle tax. It could very heavily impact their financial situation so I would want to consider that, at to consider it and discuss it at some point and see if we couldn't include that kind of thing in the form.

JOHN TENNYSON: Put it for future thought, perhaps. Anything else? Yes, Mr. McChesney.

BURT McCHESNEY: I want to expand just a little bit on what Mr. Weiner suggested that if this TDS as a practice becomes that it's delivered before the consummation of the transaction, then long before the close of escrow when these tax decisions may be made we then have to back date the TDS. The TDS is for disclosure of the physical characteristics of the property, not for potential tax consequences that the buyer and seller may agree to later on. And which prospective buyers may not buy the property have no effect on it. So, I don't think it is appropriate in this form.

JOHN TENNYSON: Ok. Anything else? Any other issues to be brought up? All right, real quickly in terms of the format, if the Task Force can agree on the approach with regard to this three-day right of recission, or some substitute, we will try to do that over the phone. If we cannot, then we will just leave it out of the form. The report will be made to the Legislature in terms of the transcripts and they will be bound along with the proposed form and the proposed changes to the Health and Safety Code, and a draft bill will also be included in that report by January 1st. If anybody would like to make a minority report, if you will, or object to...I guess Mr. Hennessy had some concerns that he

JOHN TENNYSON

wants to voice independently, those who are members of the Task Force are welcome to do so, but you need to get those to me before Christmas. In terms of what will happen after that, a bill will be introduced. I am not sure who will carry it, at this point, whether it will be Senator Craven or somebody else. The records of the tapes will be stored by us and will eventually go to Archives once this committee -- we don't know what the future of the committee is going to be after this next year -- so if you have any interest in this issue in the future, you will need to go to the State Archives to retrieve the tapes of these three Task Force meetings. Any question or comments as we close?

THE GROUP: Thank you very much. Good job. As always. Thank you, John.

JOHN TENNYSON: Thank you. The meeting is adjourned.

# APPENDIX

(Related Materials and Information)

JANUARY 5, 1998

# Senate Bill No. 384

## CHAPTER 71

An act to amend Section 1102 of the Civil Code, and to amend Section 18160 of the Health and Safety Code, relating to housing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 14, 1997. Filed with Secretary of State July 14, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

SB 384, Craven. Housing: manufactured homes and mobilehomes.

Existing law makes provisions for the disclosure of specified information upon the transfer of residential real property applicable to the resale of a manufactured home or mobilehome, as defined, on or after January 1, 1999.

This bill would provide that the disclosure requirements would apply to the manufactured home or mobilehome if they are classified as personal property.

Existing law also expresses the intent of the Legislature that the Senate and Assembly jointly appoint an advisory task force, as specified, and requires the task force to report its findings and recommendations to the Legislature no later than July 1, 1997.

This bill would instead require the task force to report its findings no later than January 1, 1998.

This bill would provide that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 1102 of the Civil Code is amended to read:

1102. (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) This article shall be applicable to the resale on or after January 1, 1999, of a manufactured home, as defined in Section 18007 of the Health and Safety Code, which is classified as personal property, or a mobilehome, as defined in Section 18008 of the Health and Safety Code, which is classified as personal property.

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

SEC. 2. Section 18160 of the Health and Safety Code is amended to read:

18160. (a) It is the intent of the Legislature in enacting the requirements of subdivision (b) of Section 1102 of the Civil Code, relating to disclosure in the resale of manufactured homes and mobilehomes, that the Senate and the Assembly jointly appoint an advisory task force, composed of representatives of mobilehome owners, mobilehome park owners, mobilehome dealers, real estate brokers, the Department of Housing and Community Development, and other organizations or persons knowledgeable about manufactured homes and mobilehomes, to review and propose modifications or additions to Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil Code, including changes to the disclosure form set forth in Section 1102.6 of the Civil Code that may be necessary to make Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil Code fully applicable to manufactured homes or mobilehomes, which are not classified as real property. The advisory task force shall, no later than January 1, 1998, report its findings and recommendations to the Legislature.

(b) This chapter shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify that real estate disclosure requirements are currently, rather than on or after January 1, 1999, applicable to mobilehomes and manufactured homes which are classified as real property, it is necessary that this act take effect immediately.

O

# Senate Bill No. 1704

## CHAPTER 677

An act to amend Section 1102 of the Civil Code, and to amend Section 18424 of, and to add and repeal Chapter 10 (commencing with Section 18160) of Part 2 of Division 13 of the Health and Safety Code, relating to housing.

[Approved by Governor September 20, 1996. Filed with Secretary of State September 23, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1704, Craven. Housing: manufactured homes and mobilehomes.

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 resale of a manufactured home or mobilehome, as defined, on or after January 1, 1999. The bill would also express the intent of the Legislature that the Senate and Assembly jointly appoint an advisory task force, as specified. The bill would require the task force to report its findings and recommendations to the Legislature no later than July 1, 1997.

This bill would specify that the provisions relating to the advisory task force would remain in effect only until January 1, 1999, and as of that date are repealed, unless a later enacted statute, which is enacted before that date, deletes or extends that date.

Existing law requires the Department of Housing and Community Development, or any city, county, or city and county that has assumed responsibility for the enforcement of specified provisions of existing law regarding mobilehomes and mobilehome parks, to enter and inspect all mobilehome parks at least once every 7 years to ensure enforcement of these provisions. Existing law, until January 1, 1997, requires that enforcement agency, after it determines that a mobilehome park is in violation of these provisions, to issue a notice to correct the violation or notice of violation, as specified.

This bill would extend the repeal of the notice requirement until January 1, 1999. By increasing the duties of local officials, 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. Section 1102 of the Civil Code is amended to read:

1102. (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) This article shall be applicable to the resale on or after January 1, 1999, of a manufactured home, as defined in Section 18007 of the Health and Safety Code, or a mobilehome, as defined in Section 18008 of the Health and Safety Code.

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

SEC. 2. Chapter 10 (commencing with Section 18160) is added to Part 2 of Division 13 of the Health and Safety Code, to read:

CHAPTER 10. MANUFACTURED HOME AND MOBILEHOME DISCLOSURE TASK FORCE

18160. (a) It is the intent of the Legislature in enacting the requirements of subdivision (b) of Section 1102 of the Civil Code, relating to disclosure in the resale of manufactured homes and mobilehomes, that the Senate and the Assembly jointly appoint an advisory task force, composed of representatives of mobilehome owners, mobilehome park owners, mobilehome dealers, real estate brokers, the Department of Housing and Community Development, and other organizations or persons knowledgeable about manufactured homes and mobilehomes, to review and propose modifications or additions to Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil Code, including changes to the disclosure form set forth in Section 1102.6 of the Civil Code that may be necessary to make Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil Code fully applicable to manufactured homes or mobilehomes, which are not defined as real property. The advisory task force shall, no later than July 1, 1997, report its findings and recommendations to the Legislature.

(b) This chapter shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 3. Section 18424 of the Health and Safety Code is amended to read:

18424. This chapter shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

O

CHAPTER 812

An act to amend Section 10177.2 of the Business and Professions Code, to amend Section 2079 of the Civil Code, and 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, 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 provides that it is the duty of a real estate broker or salesperson to a prospective purchaser of residential real property comprising 1 to 4 residential dwelling units, including a manufactured home, to make an inspection of, and disclosure regarding, the property.

This bill would revise this provision to instead provide that the real estate broker or salesperson has this duty to a prospective purchaser of residential real property or a manufactured home.

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. It would also make the sale of these homes by a real estate broker or licensed salesperson subject to the inspection and disclosure requirements imposed on the broker or salesperson.

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.

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

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

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

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

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

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

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

SEC. 2. Section 2079 of the Civil Code is amended to read:

2079. (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, or 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 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.

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

18025. (a) Except as provided in subdivisions (b) , (c), and (d), 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.).

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

(d) The sale of used manufactured homes and mobilehomes by a real estate broker or salesperson licensed under Division 4 (commencing with Section 10000) of the Business and Professions Code shall be subject to Section 2079 of the Civil Code.

SEC. 4. Section 18046 is added to the Health and Safety Code, to read:

18046. It is the duty of a dealer licensed under this chapter to a prospective purchaser of a used manufactured home to conduct a reasonably competent and diligent visual inspection of the home offered for sale and to disclose to that prospective purchaser all facts

materially affecting the value or desirability of the home that an investigation would reveal, if that dealer has a written contract with the seller to find or obtain a purchaser or is a dealer who acts in cooperation with others to find and obtain a purchaser. A dealer may discharge this duty by completing the agent's portion of the transfer disclosure statement that a seller prepares and delivers to a purchaser pursuant to Section 1102 of the Civil Code.

SEC. 5. Section 18046.1 is added to the Health and Safety Code, to read:

18046.1. The standard of care owed by a dealer to a purchaser under this part is 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 license under this chapter.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

Current Real Estate Disclosure Form
as of 7/1/97

**§ 1102.6. Disclosure form**

*Text of section operative July 1, 1997.*

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:

_____
_____
_____

II

SELLER'S INFORMATION

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

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

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

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

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

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

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

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

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

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

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

1. Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, and contaminated soil or water on the subject property ___Yes ___No
2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property ___Yes ___No
3. Any encroachments, easements or similar matters that may affect your interest in the subject property ___Yes ___No
4. Room additions, structural modifications, or other alterations or repairs made without necessary permits ___Yes ___No
5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes ___Yes ___No
6. Fill (compacted or otherwise) on the property or any portion thereof ___Yes ___No
7. Any settling from any cause, or slippage, sliding, or other soil problems ___Yes ___No
8. Flooding, drainage or grading problems ___Yes ___No
9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides ___Yes ___No
10. Any zoning violations, nonconforming uses, violations of "setback" requirements ___Yes ___No
11. Neighborhood noise problems or other nuisances ___Yes ___No
12. CC&R's or other deed restrictions or obligations ___Yes ___No
13. Homeowners' Association which has any authority over the subject property ___Yes ___No
14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas coowned in undivided interest with others) ___Yes ___No
15. Any notices of abatement or citations against the property ___Yes ___No
16. Any lawsuits by or against the seller threatening to or affecting this real property, including any lawsuits alleging a defect or deficiency in this real property or "common areas" (facilities such as pools, tennis courts, walkways, or other areas coowned in undivided interest with others) ___Yes ___No

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

_____

_____

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

Seller_____ Date_____

Seller_____ Date_____

III [1]

AGENT'S INSPECTION DISCLOSURE

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

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

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

_____

_____

_____

_____

Agent (Broker Representing Seller) _____ By _____ Date _____
(Please Print) (Associate Licensee or Broker–Signature)

IV

AGENT'S INSPECTION DISCLOSURE

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

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

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

_____

_____

_____

_____

Agent (Broker obtaining the Offer) _____ By _____ Date _____
(Please Print) (Associate Licensee or Broker–Signature)

V

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

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

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

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

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

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

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

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

1 Enrolled bill contains no II

# CMRAA



CALIFORNIA MOBILEHOME RESOURCE ACTION ASSOCIATION
3381 Stevens Creek Blvd., Suite 210, San Jose, CA 95117

January 5, 1998

Mr. John G. Tennyson, Consultant
Senate Select Committee on Mobile
& Manufactured Homes
California State Legislature
1020 N Street, Room 520
Sacramento, CA 95814

Re: Mobilehome/Manufactured Home
Disclosure Task Force

Dear John:

As President of CMRAA, I am responding to your most recent FAX after coordination with my organizations.

As we expressed at the first meeting in September, CMRAA has no disagreement with any of the wording which has been proposed. We do feel that not enough language has been proposed on one critical issue!

CMRAA's position has been, and will always be, that the park owner must take the responsibility of disclosing those items, facts or conditions of which it has unique knowledge, such as whether an HCD citation is pending or what the maximum amps for the space might be. A park owner is charged with control and responsibility over such issues, and stands to derive a substantial rental income from the purchaser. It makes no sense for the park to say that it is not involved in the sale, and thus has no duty of disclosure. The park is involved, like it or not.

The issue of the park owner disclosure has been only briefly addressed in the draft which CMRAA has received. We find the language "agreed upon" by GSMOL and WMA to be far too vague and unspecific to be of much value. The entire issue is summarized in two sentences, which are buried in the first paragraph. There is nothing to call the reader's attention to them. CMRAA was not consulted by either GSMOL or WMA about their "agreement". If we had been, we would have recommended different language.

CMRAA believes that a separate heading number should be created to specifically set forth a list of items for which neither the seller or the agents are responsible to disclose. The buyer should be specifically directed to the park owner for any disclosure as to the same. This would include health and safety issues, drainage, utility hookups, etc.

If this is the best that the Task Force is willing to do, then it will pass on without CMRAA's complete stamp of approval. We will advise and alert our members to pay particular attention to the park's duty of disclosure. We understand and acknowledge that some progress

has been made. But it will also be our goal to recommend passage of more specific legislation in the future which completes the task for which this Committee was originally formed or we will support our members in the courts should they be damaged by park owner non-disclosures.

As always, it was our privilege to participate on the task force. Please call me with any comments.

Best regards,

DAVE HENNESSY, President

TENNYSON.Ds1

**937-S**

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