

Condominium or Other Common Interest Development Disclosures

INTRODUCTION

Condominiums, community apartment projects, stock cooperatives, and planned developments are the various types of common interest developments. They are unique in that when a buyer purchases a unit in one of these developments, the buyer typically is also purchasing a pro-rata share of the common area (or the buyer has an interest in the association that owns the common area). In either case that usually means that the buyer will be required to make monthly payments, known as regular assessments, to pay for the maintenance of the common area. Furthermore, if the buyer is purchasing a unit in an older development, it is possible that the association may decide it needs additional funds to replace a roof or repair the plumbing. In other words, the buyer may be required to pay for special assessments.

In addition, common interest developments may have special rules and regulations such as architectural requirements, limitations on pets, and permissible age restrictions (i.e., senior housing).

Thus, the unique aspects of common interest developments create disclosure requirements, in addition to those required in the transfer of other residential properties.

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

Q 1. *Where can the disclosure obligations regarding common interest developments be found?*

A Most of the statutes affecting common interest developments can be found in California Civil Code Sections 1350-1376 (Davis-Stirling Act), California Business and Professions Code Sections 11000 *et seq.* (Subdivided Lands Law) and "SB800" (California Civil Code Sections 895 *et seq.*) In particular, for listed disclosure requirements see California Civil Code Section 1368 (resale) and California Business and Professions Code Section 11018.6 (new subdivision), and California Civil Code Section 1134 (conversions).

Q 2. *What disclosures/documents should be given to a buyer of a unit in a new common interest development?*

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

Advisability of Title Insurance - This is required when no title insurance is issued. This is typically disclosed by the escrow agent. (Cal. Civ. Code § 1057.6)

Agency Disclosure and Confirmation - This is not required if there is a public report or the subdivision is exempt from a public report by California Business and Professions Code Section 11010.4 (see Question 3 below) (Cal. Civ. Code §§ 2079.6, 2079.14)

Area of Potential Flooding (One of the six required zone disclosures on the Natural Hazard Disclosure Statement) (Cal. Civ. Code § 1103.2)

Blanket Encumbrance - If the common interest development is subject to a Blanket Encumbrance, (See Question 4) but the project is not subject to the Subdivided Lands Law (i.e., fewer than five separate units in the project), then the owner (subdivider) may not sell, or lease for a term exceeding five years, without providing the buyer with a notice containing the language described in California Civil Code Section 1133. (Cal. Civ. Code § 1133(a))

Broker's Statutory Duty to Inspect the Property - This is not required if there is a public report or the subdivision is exempt from a public report by California Business and Professions Code Section 11010.4 (see Question 3 below) (Cal. Civ. Code § 2079, 2079.6)

Earthquake Fault Zone (One of the six required zone disclosures on the Natural Hazard Disclosure Statement) (Cal. Civ. Code § 1103.2)

FHA/HUD Inspection Notice (only required if buyer obtains an FHA loan or for HUD-owned property) (HUD Mortgagee Letter 06-24)

FIRPTA (Federal Tax Withholding) and California Tax Withholding - Either the money must be withheld by escrow or the developer must provide an exemption form (Cal. Rev. & Tax Code §§ 18662, 18668; 26 U.S.C. § 1445)

Flood Disaster Insurance Requirements - If the developer received federal flood disaster assistance, the information regarding the insurance requirement must be provided to the buyer (42 U.S.C. § 5154a)

Homeowner Association Documents

Declaration of Restrictions (known as the "CC&Rs") (Cal. Civ. Code § 1368(a)(1) (resale), Cal. Bus. & Prof. Code § 11018.6 (new subd.))

Articles of Incorporation or Articles of Association - If not incorporated, a statement in writing from an authorized representative of the HOA that is association is not incorporated (Cal. Civ. Code § 1368(a)(1) (resale), Cal. Bus. & Prof. Code § 11018.6 (new subd.))

Bylaws (Cal. Civ. Code § 1368(a)(1) (resale), Cal. Bus. & Prof. Code § 11018.6 (new subd.))

Any other document which establishes or defines the common, mutual, and reciprocal rights and responsibilities of the owners or lessees (Cal. Civ. Code § 1368(a)(1) (resale), Cal. Bus. & Prof. Code § 11018.6 (new subd.))

All **Current Financial Information and related statements** (if available or applicable), such as:

An Operating Budget to include:

Estimated Revenue and Expenses,

Association Reserves,

Estimated Remaining Life of Major Components,

Estimated Useful Life of Major Components,

Estimated Replacement Cost of Each Major Component,

Estimated Reserves Necessary to Repair, Replace, Restore, or Maintain Major Components,

Actual Reserves Set Aside to Repair, Replace, Restore, or Maintain Major Components,

Percentage ratio of actual to estimated reserves,

Statement of Anticipated Assessments to Repair, Replace, Restore, or Maintain Major Components, and

Statement of Procedures Used to Calculate Reserves for Future Purposes

(Cal. Bus. & Prof. Code § 11018.6 (new subd.); Cal. Civ. Code §§ 1368(a)(3), 1365 (resale))

Regular, Special Assessments and Fees, (Cal. Civ. Code § 1368(a)(4) (resale), Cal. Bus. & Prof. Code § 11018.6(f) (new subd.))

Outstanding Delinquent Assessments, Monetary Fines or Penalties - Include any late charges, interest and costs of collection (Cal. Civ. Code § 1368(a)(4) (resale), Cal. Bus. & Prof. Code § 11018.6(f) (new subd.))

A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments (Cal. Civ. Code §§ 1368(a)(3), 1365(d) (resale), Cal. Bus. & Prof. Code § 11018.6(d) (new subd.))

Industrial Use Zone Location (including Airport Zone) - This is not required if there is a public report or the subdivision is exempt from a public report by California Business and Professions Code Section 11010.4 (see Question 3 below) (Cal. Civ. Code §§ 1102.2(a), 1102.17)

Insulation's Thermal Performance ("R-value") (16 C.F.R. §§ 460.3, 260.16)

Material Facts Disclosure - Developer must always disclose known material facts affecting the value or desirability of the property (*Nussbaum v. Weeks* (1990) 214 Cal. App. 3d 1589)

Megan's Law Disclosure - This is not required if there is a public report or the subdivision is exempt from a public report by California Business and Professions Code Section 11010.4 (see Question 3 below) (Cal. Civ. Code §§ 2079.6, 1079.10a)

Mello-Roos and 1915 Bond Act Assessments (Cal. Gov't Code 53341.5)

Military Ordnance Location- This is not required if there is a public report or the subdivision is exempt from a public report by California Business and Professions Code Section 11010.4 (see Question 3 below) (Cal. Civ. Code §§ 1102.2(a), 1102.15)

Natural Hazard Disclosure Statement (Cal. Civ. Code § 1103.2)

SB800 - Arbitration or Alternative Procedure Notice - (At the time the purchase contract is being signed, the developer must notify the buyer whether the developer intends to engage in the

arbitration procedure in SB800 or an alternative nonadversarial procedure (Cal. Civ. Code §§ 896, 914)

SB800 - Copy of the Law - Developer must provide buyer with a copy of SB800 which is codified in California Civil Code Sections 895 through 945.5; however, condo conversions are exempt from this requirement (Cal. Civ. Code §§ 896, 912(g))

SB800 - Maintenance and Preventative Maintenance Recommendations - Developer must provide this information to the buyer; however, condo conversions are exempt from this requirement (Cal. Civ. Code §§ 896, 912(b)(c))

SB800 - Name and Address of Builder's Agent for Service of Process - Developer must provide the name and address of the agent for service of process; however, condo conversions are exempt from this requirement (Cal. Civ. Code §§ 896, 912(e))

SB800 - Prelitigation/Litigation Procedures Notice - Developer must record on title a notice of the existence of the prelitigation/litigation procedures as well as give a copy to the buyer. Developer must instruct buyer to pass this information as well as all SB800 required information onto a subsequent buyer; however, condo conversions are exempt from this requirement (Cal. Civ. Code §§ 896, 912(f)(h))

SB800 - Warranties (Minimum One-Year Written or Enhanced Protection Warranty and Builder's Limited Contractual Warranties) - Condo conversions are exempt from this requirement (Cal. Civ. Code §§ 896, 900, 903, 912(d))

Seismic Hazard Zone (One of the six required zone disclosures on the Natural Hazard Disclosure Statement) (Cal. Civ. Code § 1103.2)

Smoke Detector Compliance- All smoke detectors must be in compliance with the building code requirements (Cal. Health & Safety Code §§ 13113.7, 13113.8)

Smoke Detector Statement of Compliance - For single family homes in a subdivision where there is no public report, this notice is required. For condominiums and other types of common interest developments, the statement of compliance is not required (Cal. Health & Safety Code §§ 13113.8)

Special Flood Hazard Area (One of the six required zone disclosures on the Natural Hazard Disclosure Statement) (Cal. Civ. Code § 1103.2)

State Responsibility Area - Fire Hazard Area (One of the six required zone disclosures on the Natural Hazard Disclosure Statement) (Cal. Civ. Code § 1103.2)

Subdivision Public Report - This must be given to a prospective buyer prior to the execution of a binding contract if the subdivision is subject to the Subdivided Lands Law (project consists of five or more separate units) (Cal. Bus. & Prof. Code § 11018.1)

Supplemental Property Tax Notice - This is not required if there is a public report or the subdivision is exempt from a public report by California Business and Professions Code Section 11010.4 (see Question 3 below) (Cal. Civ. Code §§ 1102.2(a), 1102.16)

Transfer Disclosure Statement - This is not required if there is a public report or the subdivision is exempt from a public report by California Business and Professions Code Section 11010.4 (see Question 3 below) (Cal. Civ. Code §§ 1102.2(a), 1102.3)

Very High Fire Severity Zone (One of the six required zone disclosures on the Natural Hazard Disclosure Statement) (Cal. Civ. Code § 1103.2)

Water Heater Bracing Statement of Compliance (Cal. Health & Safety Code § 19211)

Window Security Bars Release Mechanism - The disclosure of the existence of any window security bars and any safety release mechanism must be made. This is not required if there is a public report or the subdivision is exempt from a public report by California Business and Professions Code Section 11010.4 (see Question 3 below) (Cal. Civ. Code §§ 1102.2(a), 1102.3)

Q 3. What is meant by a Business and Professions Code Section 11010.4 exemption?

A Business and Professions Code Section 11010.4 refers to those subdivisions where each lot, parcel or unit of the subdivision is located entirely within the boundaries of a city, where there are no common areas, and the lot contains a completed residential structure with all other improvements completed necessary for occupancy (or with financial arrangements determined to be adequate by the city to ensure completion of the improvements). A public report is not required for these subdivisions; however they have many of the same disclosure exemptions as for subdivisions subject to the public report requirement.

Q 4. What is a "blanket encumbrance" mentioned in Question 2?

A Basically, a "blanket encumbrance" is a lien against an entire subdivision, or a lien against a collection (more than one) of lots or parcels. (Cal. Bus. & Prof. Code § 11013.) A buyer of a unit would not want to be subject to a lien covering the entire subdivision and, thus, a developer should provide the buyer with evidence of a lien release from the lender for each unit sold. Alternatives, such as a bond, are available to protect buyers (Cal. Bus. & Prof. Code 11013.2). See Question 8 for additional information.

Q 5. What disclosures/documents must be given to a buyer of a unit in a common interest development conversion?

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

This written statement must disclose any problems with major systems including, but not limited to, the roof, walls, floors, heating, air conditioning, plumbing, electrical systems or components, and recreational facilities.

If the owner has inspected the unit and the common areas and has not discovered a substantial defect or malfunction which a reasonable inspection would have uncovered, then the owner must provide a written disclaimer.

The written disclosure provides the buyer with a rescission right, comparable to the rescission right associated with a transfer disclosure statement, if delivered after execution of the purchase agreement (three days if delivered in person and five days after deposit in the mail).

In addition, the written disclosure must describe the buyer's right, method, and time to rescind.

(Cal. Civ. Code § 1134)

Q 6. What disclosures/documents should be given to a buyer in a resale of a unit in common interest development?

A For the required disclosures in the resale of a condominium or other type of unit in a common interest development, please refer to the [Sales Disclosure Chart for REALTORS®](#).

In addition, the following documents, if applicable, should also be delivered to the buyer:

- A summary of the association's property, general liability, and earthquake and flood insurance policies in effect--including any changes in policies or deductibles. In addition, a statutory statement in Section 1365(e)(4) is required to be provided. (Cal. Civ. Code §§ 1368(a)(3), 1365(e).)
- A statement describing any restrictions in the governing documents limiting the occupancy, residency, or use of a separate interest on the basis of age, including a statement that the restriction is only enforceable to the extent permitted by California Civil Code Section 51.3 (senior citizen housing) (Cal. Civ. Code § 1368(a)(2)).
- A statement from a representative of the association regarding current regular and special assessments and fees levied upon the seller's interest including any unpaid assessments (Cal. Civ. Code § 1368(a)(4)).
- A summary of any notice previously sent to the owner pursuant to California Civil Code Section 1363(h), alleging violations of the governing documents that remain unresolved at the time of request (Cal. Civ. Code § 1368(a)(5)).
- A copy of the preliminary list of defects provided to each member of the association pursuant to California Civil Code Section 1375, unless the association and the builder subsequently enter into a settlement agreement or otherwise resolve the matter and the association complies with California Civil Code Section 1375.1. The preliminary list of defects shall also include a statement that a final determination as to whether the list of defects is accurate and complete has not been made. (Cal. Civ. Code § 1368(a)(6).)
- A copy of the latest information provided for in California Civil Code Section 1375.1 (any settlement agreement involving construction defect litigation) (Cal. Civ. Code § 1368(a)(7)).

- Any change in the association's current regular and special assessments and fees which have been approved by the board of directors, but have not yet become due and payable (Cal. Civ. Code § 1368(a)(8)).

Q 7. Does a homeowners' association have an obligation to provide the owner of a unit with the necessary documentation to give to the buyer?

A Yes. Upon written request, an association must, within 10 days of the mailing or delivery of the request, provide the owner (seller not buyer) of a separate interest with a copy of the items listed in Question 5 (Cal. Civ. Code § 1368(b)). The association may charge a fee for this service, but the fee may not exceed the association's reasonable costs to prepare and reproduce the requested information (Cal. Civ. Code § 1368(c)(1)(A)).

If the homeowners' association refuses to comply (i.e., "willful" violation), the Civil Code provides a civil penalty not to exceed \$500, plus actual damages incurred by the buyer, plus reasonable attorney's fees (Cal. Civ. Code § 1368). However, the association does not have a duty either to the buyer or to the lender to provide any documentation or disclosure documents (*Kovich v. Paseo Del Mar Homeowners' Ass'n* (1996) 41 Cal. App. 4th 863).

Q 8. What fees may a managing agent for a homeowners' association legally charge a new buyer?

A A managing agent hired by the homeowners' association is bound by the same restrictions as the homeowners' association. In other words, since an association may not impose or collect any assessment, penalty, or fee in connection with a transfer of title other than the association's actual costs to change its records or to prepare and reproduce requested documents, the managing agent is subject to these same constraints

Q 9. How can a buyer of a unit in a new common interest development be protected against a mechanics' lien or any other lien?

A If the mechanics' lien is part of the blanket encumbrance (see Question 4), one option is for the buyer to obtain a partial release or unconditional release from the encumbrance by the holder of the lien (Cal. Bus. & Prof. Code § 11013.1).

Another option is for the buyer to obtain a title insurance endorsement protecting against any liens.

The law also requires that in a subdivision subject to a blanket encumbrance where there is no release clause, the subdivider must select one of the following options to protect a buyer:

- The entire sum of money paid or advanced by the buyer must be placed into a special escrow account until the release is obtained; or
- Title to the subdivision must be held in trust under an agreement of trust until the release is obtained; or

- A bond to the State of California must be furnished to the DRE for the benefit of the buyer; or
- Any other alternative which the DRE deems adequate to protect the buyer.

(Cal. Bus. & Prof. Code § 11013.2.)

Q 10. *Is a buyer responsible for delinquent homeowners' association assessments on the property at the date of acquisition?*

A No. A buyer of the separate unit will not be subject to personal liability for delinquent homeowners' association assessments due before the acquisition date. However, assessments after that date will be the responsibility of the new buyer. (Cal. Civ. Code §§ 1466, 1367, 1367.1, 1466; *Mountain Home Prop. v. Pine Mountain Lake Ass'n* (1982) 135 Cal. App. 3d 959.)

Q 11. *Where can readers obtain additional information*

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

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California Association of REALTORS®
Member Legal Services
525 South Virgil Avenue
Los Angeles, California 90020