



Selling Guide for Homeowners

If you are selling a home in California, you need to be aware of many legal requirements. Making the required disclosures and following the proper procedures will not only help your transaction proceed more smoothly, but will also help you avoid potential liability to the buyer following the sale.

California Home Sellers Must Disclose, in Writing, All Facts That May Affect the Desirability of the Property

California law requires sellers to disclose to potential buyers, in writing, any details about the property that may affect the potential buyer's desire to purchase it or the amount the potential buyer is willing to pay. These important facts concerning the property's condition are frequently called "material" facts, and a seller can face severe penalties if he or she fails to disclose one.

Most real estate professionals will tell you that, as a general rule, if you are unsure about whether an item should be disclosed, you probably should disclose it.

In California, material facts are most often disclosed by completing a form called a "Transfer Disclosure Statement," which your real estate broker may also refer to as a "TDS." The point of the TDS is to accurately describe the condition of the property, which necessarily includes information concerning the property's walls, ceiling, floors, insulation, roof, windows, doors, foundation, driveways, sidewalks, fences, electrical systems, plumbing systems or other structural components. This is not a complete list, as any fact concerning any part of the property can be a material fact if it affects the property's value, desirability, or ability to be used as intended.

Your real estate broker will also be able to supply you with a copy of the TDS form.

California Home Sellers Must Use a Title Company and May Need to Pay for the Buyer's Title Insurance

When you sell your California home, a title company will conduct a title search and write a Preliminary Title Report, often called a "PTR." The title insurance company will provide title insurance to the buyer based upon the PTR.

Lenders will require this title insurance as a condition of funding the buyer's loan. Generally, the home seller and buyer will agree upon a title company and title insurance company; frequently the company suggested by the buyer in the initial offer. Be aware that the Real Estate Settlement Procedures Act ("RESPA"), a federal law, prohibits the seller from requiring a buyer to use any particular title insurance company as a condition of the transaction.

In California, you can negotiate with your buyer regarding who is to pay for the title insurance. Local custom in Northern California is for the buyer to pay for title insurance. In Southern California, the seller customarily pays. Sometimes the buyer and seller agree to split the cost. Local custom can vary by county. Your real estate broker will be able to tell you what is customary in your area.

California Home Sellers Need to Use an Escrow Agent

Buyers and sellers of California homes customarily use escrow agents to facilitate the sale. The buyer will deposit funds in escrow, and the seller will deposit the deed in escrow. The escrow company will hold these items for safekeeping until all of the conditions of the escrow are satisfied, at which time the escrow agent will transfer the funds to the seller and the deed to the buyer.

In Southern California, escrow functions are usually performed by an independent escrow company. In Northern California, however, the title company frequently also acts as the escrow agent for the transaction. Again, the buyer and seller can negotiate who performs and who pays for the escrow services, and local custom will vary by location. The buyer generally suggests an escrow holder in the buyer's initial offer. While the parties may negotiate and mutually choose an escrow holder, sellers must be aware that RESPA prohibits the seller from requiring that the buyer agree to use a particular escrow holder as a condition of the transaction.

California Home Sellers May Need to Pay a Transfer Tax

When real estate is transferred from a seller to a buyer, a document must be recorded at the county recorder's office to show that the property has changed ownership. At the time this document is recorded, a transfer tax is imposed.

A transfer tax is a special tax imposed by the county and possibly also the city when real estate is sold. Who pays the transfer tax is negotiable with the buyer. However, industry standard generally dictates that if you are selling your home in Northern California, the buyer pays the transfer tax. If you are selling in Southern California, the seller generally pays.

In California, the county transfer tax (as of late 2014) is \$1.10 for every \$1,000 of the sales price, or 0.11%. Some cities, including San Francisco, Los Angeles, and Riverside also collect their own city transfer taxes, which vary by city.

For example, Los Angeles (as of late 2015) charges a 0.45% transfer tax. So, if you sell a home in Los Angeles for \$500,000.00, the county transfer tax will be \$550.00 ($\$500,000.00 \times 0.11\% = \550.00). The city transfer tax would be \$2,250.00 ($\$500,000.00 \times 0.45\% = \$2,250.00$).

If you are curious about whether or not your city imposes a transfer tax, or what the local custom is in your area concerning who pays the transfer taxes, ask your real estate broker or escrow agent.