

Disclosure Potpourri

Agent Visual Inspection Disclosure. A real estate broker, buyer or seller side, involved in a sale of residential property with one to four units is required by California law to conduct a reasonably competent and diligent visual inspection of the accessible areas of the property and to disclose the results of the inspection to the buyer. C.A.R. form AVID is often used to document the inspection results. Reminder: The AVID is NOT a marketing tool to boast about the property. Its purpose is to reveal negative material facts or defects that may impact the buyer's opinion of the property's value. Be direct, factual and forthcoming. Don't speculate, brag, or minimize/ignore defects.

Verbal disclosure is good, but it's not good enough. Real estate agents are often frustrated when a buyer or seller fails to remember something the agent told or warned them about. It is good practice to document instructions and material information. When working with a seller, an agent can provide the seller with the Disclosure Information Advisory (C.A.R. form DIA). When working with a buyer, information should be disclosed in the AVID if concerning the property, or in a separate disclosure otherwise. Agents should document any information or discussion so they will be protected from a buyer or seller claiming they were never told. Remember: Disclose, document and confirm.

Are you aware vs. do you know. Certain disclosures, such as sections IIB and IIC of the TDS, and the entire SPQ, ask the seller to disclose if the seller is aware of a condition or item. Checking "Yes", means the seller is aware. Checking "No" means the seller is not aware, which is not an affirmative representation that the item or condition does or does not exist. For example, there could be defects in the attic that a seller does not know about because they have not been up there. "No" does not mean there are no such defects, only that the seller is not aware of them if they do exist. If the seller is at all in doubt, the common refrain, "when in doubt, disclose" is best. It is better for a buyer to get a property that has fewer problems than disclosed than the other way around.

A few disclosures, however, take a different approach. Section IIA of the TDS asks if the property has the items checked, not if the seller is aware of them. Checking the box, for example, for central air conditioning, is an affirmative representation upon which the buyer is entitled to rely. The most recent addition to the Fire Hardening and Defensible Space form (C.A.R. form FHDS) in June 2025, section 2C, asks if the seller has completed any of a list of 12 retrofits, not if the seller is aware of them. Checking a box in IIA of the TDS or any "Yes" box in 2C of the FHDS amounts to the seller affirmatively representing the existence of those things. Here the opposite of the general rule comes into play. If the seller is not absolutely certain about those items, then it is safer to leave the TDS box unchecked in IIA or check "No" in 2C of the FHDS. If the item exists, it will be a benefit to the buyer. But if a positive representation turns out to be untrue or incomplete, then the buyer has a potentially viable misrepresentation claim. Better to under promise and over perform.

Historical Document Disclosure. Remember to disclose and provide these documents no matter how long ago they occurred, if still in seller's possession. See Quick Guide dated 4/24 titled, "Yes, You Have To – Disclosing Prior Reports and Repairs."