

# Frequently Asked Questions

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# Property Transaction Questions and Answers

*The purchase of property is a very significant act for many people. You have taken an important step by contacting a real estate professional to assist you with your transaction. Agency relationships are more satisfying to both principal and agent if all parties understand the scope of the responsibilities of each in the transaction.*

*Your real estate professional will be assisting you in many ways during the course of your real estate transaction. These questions and answers will help you to avoid misunderstandings, give you some valuable insight as to what to expect, and help you with information regarding the responsibilities of the seller, the buyer, the real estate professional, and other appropriate professionals.*

## Agency disclosures & contracts

**Question 1:** What is the agency disclosure form at the front of this booklet?

**Answer:** The form at the front of this booklet describes the various types of agency relationships. The law requiring this form is printed on the back of the form.

**Questions 2:** When must the form be given?

**Answer:** The disclosure form must be provided in a listing, sale, exchange, installment land contract, or lease over one year, if the transaction involves one-to-four unit residential property (includes mobile homes), as follows:

- (a) From a Listing Agent to a seller prior to entering into the listing.
  - (b) From an Agent selling a property he/she has listed to a buyer prior to the buyer's execution of the offer.
  - (c) From a Selling Agent to a buyer prior to the buyer's execution of the offer
  - (d) From a Selling Agent in a cooperating real estate firm to a seller prior to presentation of the offer to the seller.
- It is not necessary or required to confirm an agency relationship using a separate confirmation form if the agency confirmation portion of the purchase contract is properly completed in full. However, it is still necessary to use this disclosure form.

It is possible that you will receive more than one of these forms in any given transaction.

**Question 3:** Can an agent represent more than one buyer or seller in the same transaction?

**Answer:** Yes. A real estate broker, whether a corporation, a partnership or sole proprietor, may represent more than one buyer or seller. This multiple representation can occur through an individual licensed broker or through different associate licensees acting for the broker. These associate licensees may be working out of the same or different office locations. The broker (individually or through associate licensees) may be working with many prospective buyers at the same time. Some properties may appeal to more than one buyer represented by the same broker and the broker will not limit or restrict any particular buyer from making an offer on any particular property whether or not the Broker represents other buyers interested in the same property. The broker (individually or through associate licensees) most likely will also have listings on many properties at the same time. The broker will market all of these properties whether or not the broker may have other properties that appeal to the same prospective buyers.

## Disclosure Responsibilities

Every property has defects, whether small or large. Some sellers have lived with a defect that they view as unimportant but which may be important to a buyer. Of course, sellers, buyers and agents have an obligation to deal honestly with each other and the transaction goes more smoothly when all parties are forthcoming with relevant information of which they are aware. This section deals with what must be disclosed and the format in which it must be disclosed.

**Question 4:** What must a seller disclose about the condition of the property?

**Answer:** A seller must disclose known material defects about the property. Typically, a seller would make these disclosures on a Real Estate Transfer Disclosure Statement (TDS). However, if an item is not covered on a TDS, a seller must still make these disclosures about known material defects. In virtually all cases, a buyer will discover any problems once the buyer occupies the property. By disclosing all problems up front, the seller can avoid the surprise that many times provokes a lawsuit. Even if a matter has been repaired, a cautious seller should consider disclosing the previous defect and the repairs completed. In addition, sellers may also give you a Natural Hazards Disclosure Statement. That form contains disclosures about certain flood, earthquake and fire zones. These are often provided by a third party report and the information may depend on the availability of public reports and maps.

**Questions 5:** What is the Transfer Disclosure Statement (TDS)?

**Answer:** The TDS is a form required by state law which the seller completes (unless exempt) and delivers to a buyer. Among other things, it asks the seller to list the various features of the property and disclose whether or not any of those features are in operating condition. It also allows a seller to state whether the seller is aware of a variety of common issues such as environmental hazards, permits, homeowners' associations and other matters that might affect the property. Some areas have additional local disclosures required by the county or city.

**Question 6:** What are the seller's obligations regarding the TDS?

**Answer:** Generally, the seller must complete the TDS and deliver it to the buyer as soon as practicable before the transfer of title. Sellers should thoughtfully and carefully consider each question, to ensure it is answered accurately, erring on the side of more, rather than less disclosure. Some transactions are exempt from this requirement. Agents do not have the obligation to verify statements made by the seller on this form.

**Question 7:** Does the seller have these same disclosure obligations in an "AS IS" sale?

**Answer:** Yes. The terminology "AS IS" simply means that the seller will normally not be paying for any repairs to the property. An "AS IS" sales does not exempt a seller from disclosing material information about the property. The seller must still accurately complete a TDS and deliver it to the buyer, unless otherwise exempt, and must still disclose other material facts affecting the value or desirability of the property.

**Question 8:** Must the seller correct the defects in the property?

**Answer:** No, the seller does not generally have an obligation to correct the defects, known or discovered, unless there is a federal, state or local law requiring correction (e.g., California's smoke detector installation laws), or unless the seller has agreed to do so in the contract. Otherwise, any correction of the defects is a matter of negotiation as part of the purchase contract. This will usually take place during the inspection period of the contract.

**Question 9:** What are the buyer's responsibilities in the transaction?

**Answer:** A buyer must take an active role in the transaction. Rather than passively waiting for the seller to volunteer information, a buyer must exercise reasonable care to protect himself or herself including ascertaining those facts which are known to or within the diligent attention and observation of the buyer. All real property and improvements contain defects and conditions which are not readily apparent and which may affect the value or desirability of the property. The buyer should review the TDS with a particular eye to questions answered "unknown" or left unanswered. Keep in mind, the buyer should not rely on the agent to verify any statements by the seller. Because conditions and defects are often difficult to locate and discover, all buyers should obtain independent inspections by appropriate professionals to ascertain facts important to him or her. All of this should take place during the inspection period of the contract.

**Question 10:** What obligations does a buyer have to investigate facts regarding a property?

**Answer:** The buyer should request any information important to the buyer that could affect the property's value or desirability to him or her. Some information will be disclosed as a matter of course, but the buyer should also take responsibility to assure that all issues important to him or her are verified and addressed. The contingency period of the purchase contract is the time for the buyer to thoroughly investigate all aspects of the property through questions, outside inspections and reports and the buyer's own diligent inquiry. At the very least, if there is an issue not addressed in disclosure documents or other reports, the buyer should affirmatively raise it. For example, if the buyer is concerned about the future development of raw land in back of the property, the buyer should ask the agent. One way for a buyer to inquire about these issues is to write a list of any such concerns and give the list to his or her agent. The agent may not be the one who has the information, in which case he or she may be able to direct the buyer to a source or the appropriate professional who can provide the information through appropriate inspections by professionals or other means. In the case of raw land, the county records of who owns the property but may not have plans for future development. Likewise, even current zoning prohibiting certain kinds of development may change in the future. However, if the buyer never raises the issue, the agent will not know that it needs to be resolved and will assume that the disclosure documents cover the areas of concern to the buyer.

**Question 11:** What are the agent's disclosure responsibilities in the transaction?

**Answer:** The agent must disclose material facts which the agent knows and are not observable by the buyer. The agent must also conduct a visual inspection of the property as set forth in Question 15. In addition, the agreement between the agent and the seller, or agent and the buyer, may define the scope of the agent's duties and responsibilities. Since conditions and defects are often difficult to locate and discover, and since the agent often relies on the statements of the owner of the property, the agent does not guarantee, and in no way assumes accessible areas in the agent's portion of the TDS, but this does not mean that all defects have been discovered. This is why inspections including those from outside experts, contingencies and other disclosures (such as the TDS), as well as the written agreement between the buyer and seller, are vital.

**Question 12:** How does a buyer protect him or herself from defects discovered after the close of escrow?

**Answer:** There are home warranties and other insurance policies available that cover certain types of defects. These are usually purchased separately. However, neither the seller nor the agents involved warrant the condition of the property against defects, which occur or are discovered after the close of escrow, unless they specifically agree in writing. Though the seller and the agents must make certain disclosures, this does not mean that the seller or agents warrant the property to be free from defects or agree to correct defects which occur or are discovered after the close of escrow. Effectively using contingency periods and inspection rights are critical because they enable a buyer to ascertain the condition of the property and negotiate possible solutions to any problems before electing to go forward with the transaction.

## Inspections and Investigations

**Question 13:** Since the seller must make disclosures, is it still necessary for the buyer to obtain inspections and investigate the property?

**Answer:** Yes. Many times the seller does not know about the defect or problem. For example, a seller may not be aware that a repair was done incorrectly and therefore the problem still exists. Alternatively, something that may be unimportant to the seller (i.e., a defect that they have lived with for years) may be an issue for the buyer. The selling agent's visual inspection may also not reveal issues of importance to the buyer. An inspection by an appropriate professional can help the buyer determine the condition of the property and address issues that the buyer deems important. Also, the buyer should communicate, in writing, any issues of significance to his or her agent.

**Question 14:** Does the buyer have a responsibility to obtain information about the property?

**Answer:** Yes. A buyer must exercise reasonable care and ascertain facts within his or her diligent attention and observation. A buyer should make careful observations, examine the property and request or otherwise obtain any records important to the buyer. These requests should be made in writing.

**Question 15:** Does the agent have a responsibility to obtain information about the property?

**Answer:** The agent who is a listing agent or who acts in cooperation with the listing broker has a statutory responsibility to conduct a careful visual inspection of the property itself and disclose the results of the visual inspection. The statute, however, does not obligate the agent to inspect inaccessible areas, offsite areas, examine public records, search public records for permits, zoning, sex offender databases, or other requirements or inspect the areas outside of the unit itself of a condominium or planned development.

**Question 16:** What types of non-physical conditions should the buyer investigate?

**Answer:** The type and scope of investigation the buyer makes will depend on the specific needs of the buyer. A buyer may have various plans for the property, such as remodeling, renting or other use. Since neither the seller nor the agents involved may know the buyer's intent, the buyer needs to satisfy himself or herself as to these matters. The following are just some of the property's non-physical conditions, which the buyer may wish to address:

- Proximity to fire protection and other governmental services
- Proximity to commercial, industrial, or agricultural activities
- Existing and proposed transportation, construction, and development which may affect noise level (i.e. - airport noise), view, traffic, or odor from any source
- Wild and domestic animals; other nuisances, hazards, or circumstances
- Possible lack of compliance with any governing documents or homeowners' association requirements
- Adequacy and condition of common areas and facilities of common interest developments (e.g. condominiums)
- Violations of governing documents or of homeowners' association requirements of common interest developments
- Information regarding homeowners' associations, including, but not limited to, minutes, financial statements, pending special assessments, claims, and litigation
- Conditions and influences of significance to specific cultures and religions, or to the personal needs, requirements, and preferences of the buyer.
- Proximity of registered sex offenders and other crime related information
- Insurance claims and insurance availability for the property
- Properties subject to historical conservancy or designated a historical landmark that may limit development or modification of the property
- Location in school districts
- Governmental or private oversight that limits use of property
- Noise from airports and flight patterns

Keep in mind that a selling agent's visual inspection duties are generally limited to the physical condition of the property. Since a buyer may have a wide range of concerns, including non-physical aspects of the property, a buyer desiring additional information or investigation of issues should discuss these with the agent and, if the agent consents to inquiring further, should get a written agreement to that effect. Many times, the agent will respond by directing a buyer to the appropriate inspector or consultant

**Question 17:** Is the seller required to fix defects that are discovered as a result of any inspection prior to the close of the transaction?

**Answer:** That will depend on the purchase contract. Unless specifically agreed to in writing, a sale of real estate does not include any warranty as to any system, component, or aspect of the property. Many purchase contracts have a maintenance provision, however, that requires the seller to maintain items such as landscaping during the transaction process. Agents do not warrant the property or its features.

**Question 18:** Is the seller required to fix defects that are discovered after the transaction closes?

**Answer:** Generally no. This is why it is so important that buyers follow through with their obligation to investigate the property before completing the transaction. As stated earlier, agents do not warrant the property or its features and a seller does not generally warrant any system, component, or aspect of the property unless he or she specifically agrees to do so in writing. Many purchase contracts have a maintenance provision, however, that requires the seller to maintain such items as landscaping during the transaction process. Defects or problems that occur after the transaction closes are the responsibility of the new owner. Home warranty or maintenance policies can be purchased to cover some items. Homeowners' insurance may also cover certain defects.

**Question 19:** How should a buyer or seller select a service provider?

**Answer:** Service providers should be selected based on their qualifications, the scope of their service, satisfaction of previous clients and the price of their service. Keep in mind that if agents provide the buyer or seller names of providers or other professional persons, (1) the agents do not guarantee the performance of any providers, and (2) the buyer and seller are free to select providers other than those referred or recommended by the agents. Some service providers are members of professional trade associations or are regulated by a government agency. A list of such associations and/or governmental agencies overseeing the provider's function is located at the end of this booklet.

**Question 20:** How do I select a home inspector?

**Answer:** As with any professional, a buyer will want to check a home inspector's references and ask questions, such as whether the inspector has a contractor's license, carries professional liability insurance, belongs to a professional trade association and provides written reports. Buyers should find out what items the inspector's report covers to ensure that items important to the buyer will be addressed. The scope of the report and any limitations or disclaimers should also be examined.

**The table on the following page contains some information regarding items you may wish to check out further and the appropriate contacts to learn more about these items.**

Item	Explanation	Appropriate Professional
<b>General condition of the property, it's systems and components</b>	Foundation, roof, plumbing, heating, air conditioning, electrical, mechanical, security, pool/spa, other structural and non-structural systems and components, fixtures, built-in appliances, any personal property included in the sale, and energy efficiency of the property.	Structural engineers are best suited to determine possible design or construction defects, and whether improvements are structurally sound.
<b>Square footage, age, boundaries</b>	Square footage, room dimensions, lot size, age of improvements, and boundaries. Any numerical statements regarding these items are APPROXIMATIONS ONLY, and have not been and cannot be verified by Broker; Fences, hedges, walls, retaining walls, and other natural or constructed barriers or markers do not necessarily identify true property boundaries.	Professionals such as appraisers, architects, surveyors, or civil engineers are best suited to determine square footage, dimensions, and boundaries of the property.
<b>Toxic mold and environmental hazards</b>	Presence of harmful mold or other environmental hazards. The California Department of Health Services' Environmental Hazards booklet is a good source of information. If needed, specific inspections can be done by request.	Environmental Industrial Hygiensists
<b>Termites and other wood destroying pests</b>	Presence of, or conditions likely to lead to the presence of wood destroying pests and organisms and other infestation or infection.	A registered structural pest control company is best suited to perform these inspections.
<b>Soil Stability</b>	Existence of fill or compacted soil, expansive or contracting soil, susceptibility to slippage, settling or movement, and the adequacy of drainage.	Geotechnical engineers are best suited to determine such conditions, causes, and remedies.
<b>Insurance Availability</b>	The availability and cost of property insurance.	Insurance agents
<b>Roof</b>	Present condition, age, leaks, and remaining useful life.	Roofing contractors are best suited to determine these condntions.
<b>Registered Sex offender and other crime information</b>	The information about the registered sex offender database and other crime information.	Local law enforcement authorities.
<b>Pool/Spa</b>	Cracks, leaks or operational problems.	Pool contractors are best suited to determine these conditions.
<b>Waste Disposal</b>	Type, size, adequacy, capacity and condition of sewer and septic systems and components, connection to sewer, and applicable fees.	
<b>Water and utilities; well systems and components</b>	Water and utility availability, use restrictions, and costs. Water quality, adequacy, condition, and performance of well systems and components.	

## **Conclusion**

Selling or purchasing property is an important step in one's life. All parties involved play a role in obtaining the information needed to make informed decisions regarding the property. It is critical that they buyer and the seller actively participate in this process to ensure that their needs are addressed.

It is important that buyers and sellers communicate with their respective agents if they wish them to perform services in excess of these minimum legal requirements. Any such additional services agreed to by the agents should be documented in a separate written agreement.

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