

Transfer Disclosure Statement Law–Overview

The Real Estate Transfer Disclosure Statement (TDS), is one of the most important and well-known seller disclosures.

Who is Required to Provide a TDS?

Generally, sellers (or transferors) of real property consisting of four or fewer dwelling units. A Mobilehome TDS (MHTDS) is required on the sale of personal property mobile homes and manufactured homes. Although certain sellers in these types of transactions are exempt from the TDS requirement (See Quick Guide “Transfer Disclosure Statement Exemptions.”)

A seller is required to provide the TDS even when selling property without an agent, such as in a “for sale by owner” transaction. The TDS also must be provided for sales of a new residential property that is not part of a subdivision, such as a new home or a new four-unit building being built on a lot.

How may Sellers Comply with the TDS Law?

The TDS and MHTDS are statutorily-defined forms, meaning the forms must contain the exact language provided in the statute. This language is available in C.A.R. Forms TDS (for real property) and MHTDS (for manufactured homes and mobile homes).

When Should the TDS be Provided?

Legally, the TDS should be delivered to the buyer as soon as practicable before transfer of title. However, the C.A.R. Residential Purchase Agreement (C.A.R. Form RPA) requires that all disclosures, including the TDS, be provided within 7 days after acceptance of the contract.

Keep in mind, if the buyer receives the TDS after execution of buyer’s offer to purchase, the buyer will have a three or five-day period to cancel the transaction, even if contingencies have already been removed. Therefore, to have a truly “non-contingent” contract, the buyer must receive the TDS before execution of the purchase agreement.

What are the Consequences of Not Providing a TDS?

The statute provides that if the seller willfully or negligently violates any of its provisions, the seller will be liable to the buyer for any actual damages that result from such a violation. If the licensee responsible for delivering the disclosure statement cannot obtain it, that licensee must advise the buyer in writing of the buyer’s right to receive the statement. Furthermore, the California courts have held that if the seller does not provide a TDS, the buyer, before close of escrow, may cancel the purchase contract.

NOTE: The TDS requirement may not be waived by the buyer.