

Natural Hazard Disclosure Statement

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March 8, 2005 (revised)

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Introduction

In 1998, AB 6x went into law requiring sellers and their agents to disclose to a prospective buyer that the property for sale is located in certain types of natural hazard zones and to make this disclosure on a statutory form known as the Natural Hazard Disclosure Statement (hereinafter referred to as the "NHD"). This law also permits the disclosure to be done on a local option real estate disclosure statement (hereinafter "local option form") as an alternative. The law specifies that the NHD or local option form must be provided to the buyer in all transactions where the property is located in at least one of the six natural hazard zones described on the NHD unless exempt.

The statutory NHD form consolidates in one form six independent statutory disclosure requirements, three of which were existing disclosure requirements prior to AB 6x and three of which became law under the NHD legislation.

Q 1. *What are the general requirements of the NHD legislation?*

A The NHD law is codified in California Civil Code Sections 1103 through 1103.14. The law imposes a duty to disclose that property offered for transfer (sale) is located in one of six so-called "natural hazard" zones and to make this disclosure either on a statutory form (the NHD) or the local option form. The six zones are:

- 1) A flood hazard zone as designated by the Federal Emergency Management Agency ("FEMA");
- 2) An area of potential flooding after a dam failure (also known as a "dam failure inundation area");
- 3) A high fire hazard severity zone;
- 4) A wildland fire area (also known as "state fire responsibility area" or "SRA");
- 5) An earthquake fault zone; and

6) A seismic hazard zone.

The disclosure that property is located in a particular zone is required if the transferor or his/her agent has "actual knowledge" that the property is located in a particular zone or the local jurisdiction has compiled a list, by parcel, of properties that are in the natural hazard area and a parcel list or map has been posted at the offices of the county recorder, county assessor, and county planning agency. (Cal. Civ. Code § 1103.)

Parcel lists are used for flood hazard zones and areas of potential flooding, but maps are used for high fire severity zones, wildland fire areas, earthquake fault zones, and seismic hazard zones.

If the property is not located in any of the six zones, no NHD statement is required.

Q 2. *What transactions are subject to the NHD law?*

A Unless exempt, an NHD statement must be provided to buyer/transferee of one to four unit residential real property in connection with any transfer by sale, exchange, installment land sale contract, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements, of real property, including residential stock cooperatives and personal property mobilehomes. (Cal. Civ. Code § 1103.)

Q 3. *What transfers of one to four unit residential property are exempt from the requirement to provide the NHD form?*

A Some of the transfers that are exempt from the NHD form are transfers made pursuant to a court order (such as a probate, bankruptcy or foreclosure sale); transfers made under a power of sale in a trust deed, transfers that constitute a deed in lieu of foreclosure or an REO sale; transfers made by a fiduciary in the course of administering an estate or trust; transfers between co-owners; transfers between spouses and certain relatives. (Cal. Civ. Code § 1103.1.)

Q 4 . *If the transaction is exempt from the NHD law, does the seller or seller's agent still have to disclose that the property is in one of these six zones?*

A Maybe. In other words, even though the use of the NHD or local option form is not required because of an exemption from the NHD law, the buyer must still be given a disclosure if the property is in some of these zones. See the legal memorandum, **Real Estate Sales Disclosure Chart**, for the specific disclosure

requirements by category or type of property.

Another reason for the requirement of a zone disclosure--despite the fact that the NHD form is not required--is that each of the six statutes mandating disclosure that a property is located in a particular zone uses the phrase "real property" without limiting that term to one to four unit residential property. Thus, the requirement to disclose the fact that a property is located in one of these six natural hazard zones applies to *all* sales of *any* kind of real property. (It's probably a good idea to use the NHD form even if exempt from using the form, because it's a convenient way to make the required disclosures, and since the state authorized the format, no one could argue that the information was provided in a misleading or unclear manner.)

Q 5 . *What information does the NHD contain?*

A The NHD statutorily-required form contains representations made by the seller and his/her agent based on their actual knowledge as of the date signed on the NHD and based on existing zone maps or lists of affected parcels. This form allows a seller and his/her agent to check off ("Yes" or "No") whether the property is located within a specified natural hazard zone. The NHD also states that these hazards may limit a buyer's ability to develop the property, obtain insurance, or receive assistance after a disaster. By signing, the buyer represents that he/she has read and understood the document. (Cal. Civ. Code § 1103.2.)

Q 6 . *What changes were made to the NHD law in 2005 by AB 920?*

A The NHD form was modified to provide a signature of a third-party disclosure company if one is used. AB 920 has been incorrectly characterized by some disclosure providers and other private interests as including a higher standard in selection of disclosure companies by real estate professionals and increasing liability for real estate agents. This is not the case; if anything, AB 920 reinforces the responsibilities of the disclosure companies making these substitute disclosures and requires them to sign their own work.

To assist REALTORS® in understanding how AB 920 changed the NHD law, see the side-by-side [comparison chart](#).

Here is the applicable language in the form (Cal. Civ. Code § 1103.2) :

Transferor(s) and their agent(s) acknowledge that they have exercised good faith in the selection of third-party report provider as required in Civil Code Section 1103.7, and that the representations made in this Natural Hazard Disclosure Statement are based upon information provided by the independent third-party disclosure provider as substituted disclosure pursuant to Civil Code Section

1103.4. Neither transferor(s) nor their agent(s) (1) has independently verified the information contained in this statement and report or (2) is personally aware of any errors or inaccuracies in the information contained on the statement.

This statement was prepared by the provider below:

Third-Party Disclosure Provider(s) _____ Date _____

Q 7. Once the seller provides a completed NHD to the buyer, does the buyer have a three-day (five if mailed) right of rescission similar to the TDS?

A Yes, unless the NHD is delivered to the prospective buyer *before* the buyer signs the contract. In other words, for purposes of the right of rescission, an NHD is treated exactly like a TDS. (Cal. Civ. Code § 1103.3(c).)

Q 8. Who is actually legally responsible for disclosing whether the property is in one or more of the six zones and where can that person obtain these maps or lists?

A The question of who has the duty to disclose depends on the type of zone to be disclosed. It is either the seller or the seller's agent. The following is a list of the six natural hazard zone disclosures specified on the NHD, the individual who has the responsibility for determining whether the property is located within each zone (by checking if the parcel is on the list at any of the three agencies (county recorder, county assessor, county planning agency) and disclosing that information to the buyer, the government agency responsible for providing the map or list for each zone, and the place to obtain information concerning the map or list.

Type of Natural Hazard Area	Party With Duty to Disclose	Responsible Agency	Where to Get Information
1. FEMA flood hazard zone (Zone A and Zone V)	Sellers' agent, or the seller if there is no seller's agent. (Applicable only if the local jurisdiction has compiled a list, by parcel, of properties within the zone and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency identifying the location of the parcel list; or if either the	Federal Emergency Management Agency (FEMA)	FEMA 800.358.9616

	seller or seller's agent has actual knowledge that property is in a flood hazard zone. (Cal. Civ. Code §1103.)		
2. Area of potential flooding after a dam failure (dam failure inundation area)	Seller's agent, or the seller if there is no selling agent. Applicable only if the local jurisdiction has compiled a list, by parcel, of properties within the area and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency identifying the location of the parcel list; or if either the seller or seller's agent has actual knowledge of the property being in an inundation area. (Cal. Gov't Code § 8589.4.)	State Office of Emergency Services	Contact local county emergency services.
3. High fire hazard severity zone	Seller. Applicable only if the local jurisdiction has been provided a map that includes the property and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency identifying the location of the map; or if either the seller or seller's agent has actual knowledge that the property is in a zone. (Cal. Gov't Code § 51183.5)	State Board of Forestry	Teale Data Center 916.263.1767
4. Wildland fire area (state fire responsibility area)	Seller. Applicable only if the local jurisdiction has been provided a map that includes the property and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency	State Board of Forestry	Teale Data Center 916.263.1767

	identifying the location of the map; or if either the seller or seller's agent has actual knowledge that the property is in a zone. (Cal. Pub. Res. Code § 4136.)		
5. Earthquake fault zone	Seller's agent, or the seller if there is no seller's agent. Applicable only if the local jurisdiction has been provided a map that includes the property and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency identifying the location of the map; or if either the seller or seller's agent has actual knowledge that the property is in a zone. (Cal. Pub. Res. Code § 2621.9.)	State Geologist	Blue Print Service Company 415.512.6550
6. Seismic hazard zone	Seller's agent, or the seller if there is no seller's agent. Applicable only if the local jurisdiction has been provided a map that includes the property and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency identifying the location of the map; or if either the seller or seller's agent has actual knowledge that the property is in a zone. (Cal. Pub. Res. Code § 2694.)	State Geologist	Blue Print Service Company 415.512.6550

Q 9. *Is there any place I can obtain a copy of this law?*

A Yes. All of the California statutes are available on a website provided by the State of California. For a link to all California statutes, [click here](#)*. To find the NHD law, click the box next to Civil Code and enter 1103 on the space on the

bottom of the page.

Q 10. Are the maps that are currently available at the county offices the only natural hazard zone maps that will ever be created and delivered?

A No. Maps of natural hazard zones are being prepared and released on an ongoing basis. If a third-party disclosure company is not being used, then a seller or his/her agent must check the county recorder, county assessor, or county planning agency during escrow just prior to providing the information to the purchaser to see if the property is on the list for each zone.

Q 11. What are these six hazard zones?

A 1) FEMA Flood Hazard Areas include Zones A (100 year flood plain) and V (100 year coastal flood area). Local planning departments, as well as FEMA, often have information. See FEMA's website at www.fema.gov.

2) Dam Failure Inundation Areas are designated by the Office of Emergency Service (OES) as places that are subject to potential flooding in the event of the failure of any dam that would result in death or personal injury. Every county except Del Norte contains one or more such dams and OES has delivered maps to each of these counties. See also www.oes.ca.gov (OES's website).

3) High Fire Severity Zones identify areas subject to a very high fire risk (e.g., Oakland Hills) and establish specific fire prevention maintenance standards.

4) Wildland Fire Areas (also called state fire responsibility areas or SRA's) include properties where the state, rather than local agencies, has the responsibility to suppress fires. Sellers of properties in such areas must disclose not only that the property is in an SRA, but also that the area may contain substantial fire risks and the property is subject to fire prevention measures such as maintaining firebreaks. In addition, the seller must disclose that the state has no responsibility to provide fire suppression services to any structures located in such an area unless it has entered into an agreement with a local agency or unless the county has assumed fire protection responsibility for the entire county.

5) Earthquake Fault Zones include all potentially and recently active traces of the San Andreas, Calaveras, Hayward and San Jacinto Faults, as well as other faults that are active enough to constitute a potential hazard to structures because of surface faulting or fault creep. To obtain a map, consult the Division of Mines and Geology ("DMG") Publication 42 to determine the name of the map and then order one from the Blue Print Service Company. See also www.consrv.ca.gov/dmg/rghm/disclose.htm

6) Seismic Hazard Zones are areas subject to strong ground shaking, liquefaction or landslides, in the event of earthquakes. See the DMG publication called "Seismic Hazard Bulletin" for map names and see also www.consrv.ca.gov/dmg/shezp/disclose.htm.

Q 12. As a seller's agent, am I responsible for confirming the information for which the seller is responsible?

A No. It is not recommended that the seller's agent complete the portion for which the seller is responsible (i.e., a very high fire hazard severity zone or a wildland fire area), nor must the seller's agent confirm the accuracy of the seller's portion. For zone disclosures that the seller's agent is responsible for, the agent must represent the information to be true and correct to the best of his/her knowledge as of the date signed by the agent. Under common law, a listing agent's statutory duty to disclose material facts to a buyer in residential sales does not include a duty to verify or disclaim potentially inaccurate statements made by a seller. (*Robinson v. Grossman* 67 Cal. Rptr.2d 380 (Cal.App.4th Dist. 1997).) However, the agent should make it clear that they are the seller's statements.

Many licensees use third-party disclosure companies to avoid potential liability by either the seller or the seller's agent.

Q 13. If the seller or seller's agent does not have actual knowledge of the fact that the property is in a natural hazard zone, must the seller or seller's agent investigate to find out?

A Yes. Disclosure of the fact that the property is in a specific zone is triggered when the seller or seller's agent has actual knowledge or the local jurisdiction has compiled a list, by parcel, of properties that are within the natural hazard area and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the parcel list or zone map. (Cal. Civ. Code § 1103.) The seller or seller's agent is deemed to have constructive knowledge that a property is in a natural hazard zone when the local jurisdiction has posted the parcel list or map.

Note that parcel lists are provided for flood hazard zones and areas of potential flooding, but maps are provided for high fire severity zones, wildland fire areas, earthquake fault zones, and seismic hazard zones.

Q 14. As a buyer's agent only, do I have to sign the NHD?

A No. The law requires only the seller and seller's agent to sign the form and the third-party disclosure company, if one is used. (Cal. Civ. Code § 1103.2.)

Q 15. *If the seller or seller's agent hires a third-party disclosure company to provide a disclosure report, are the seller and seller's agent thereby relieved of liability for disclosure of natural hazard zones on the NHD?*

A Yes. Civil Code § 1103.4 provides that sellers and listing agents receive the benefit of a liability shield when they hire experts in natural hazard discovery, such as licensed engineers, land surveyors, or geologists, to provide disclosure information, including reports disclosing that the property is located in one or more natural hazard zones. In other words, neither the seller or listing agent is liable for any errors, inaccuracies or omissions in any information provided in a third-party disclosure report, unless the seller or agent has personal knowledge of the error, inaccuracy, or omission. See Question 6 for the relevant language on the NHD form.

Q 16. *If the seller or seller's agent hires a third-party disclosure company to provide a disclosure report, are there any additional disclosure requirements?*

A Yes. The delivery of the NHD report or opinion prepared by a third-party disclosure company (e.g., "licensed engineer, land surveyor, geologist, or expert in the natural hazard discovery dealing with matters within the scope of the professional's license or expertise") must include a determination by the third-party disclosure company whether the property is located in an "airport influence area" as defined in California Business & Professions Code Section 11010(b). (Cal. Civ. Code § 1103.4(c).) An "airport influence area," also known as an "airport referral area," is the area in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by an airport land use commission.

If the property is located within an "airport influence area," the report must contain the following statement:

NOTICE OF AIRPORT IN VICINITY

This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you

complete your purchase and determine whether they are acceptable to you.
(Cal. Civ. Code § 1103.4(c).)

Q 17. *How can I be sure the disclosure company stands behind its work?*

A You should check the E&O insurance of the provider and make sure there is language that covers you and the seller. You should insist on seeing a copy of the policy and evidence of its limits. In some instances, the insurance covers only the person who "orders" the report so you would want to make sure both the seller and the seller's agent are considered persons who "ordered" the report. Some companies provide indemnity to the seller and/or seller's agent. Naturally, you should exercise the same due diligence in investigating these companies as you do for other companies used in a transaction, such as escrow, pest control, and home inspectors.

Q 18. *Am I required to use a disclosure company to make the NHD disclosures?*

A No. The law does not mandate use of these companies. If the seller or seller's agent wishes to make the disclosures without the use of a disclosure company, they may investigate to determine if the property is in a zone and then complete the NHD form themselves.

Q 19. *If, in a non-NHD transaction, the seller or seller's agent provides a third party company's disclosure report, are the seller and seller's agents thereby immune from liability?*

A No. The *statutory* immunity provided by third party disclosure company reports under Civil Code § 1103.4 applies only to NHD transactions. Therefore, in non-NHD transactions, sellers and their agents must be sure to engage disclosure companies that are competent, well-insured and willing to indemnify them *contractually*.

Q 20. *Who has the responsibility to deliver the NHD to the buyer?*

A The buyer's agent has the responsibility to deliver the NHD (already appropriately completed and signed) to the buyer. (Cal. Civ. Code § 1103.12.)

Q 21. *What happens if the NHD statement given to the buyer is rendered inaccurate during escrow?*

A According to Civil Code Section 1103.5, "the transferor and his or her agent shall not be required to provide notice to the transferee if the information provided subsequently becomes inaccurate as a result of any governmental action, map revision, changed information, or other act or occurrence, unless the transferor or agent has actual knowledge that the information has become inaccurate." Furthermore, "if information disclosed in accordance with this article is subsequently rendered inaccurate as a result of any governmental action, map revision, changed information, or other act or occurrence subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this article."

If either the seller or his/her agent has actual knowledge of any inaccuracy or change, then a revised NHD "may" be given to the buyer. If material amendments are made to the NHD and the form is delivered to the buyer after the buyer has signed the offer, the buyer has three days (delivery in person) or five days (delivery by mail) to terminate the contract. (Cal. Civ. Code §§1103.3, 1103.9.)

Q 22. *What happens if the earthquake or fire zone maps issued by the state or federal governments are not of sufficient accuracy or scale to enable a reasonable person to determine if the property is in a designated zone?*

A If a map of a specified natural hazard zone or accompanying information is not of sufficient accuracy or scale then the seller or seller's agent is required to mark "Yes" on the NHD *unless* he/she attaches a report prepared by an expert verifying that the property is not located within such zone. If such report is attached, the seller or sellers' agent may mark "No." This requirement to mark "Yes" if not sure specifically excludes disclosures regarding a FEMA flood hazard zone or an inundation area (since location of properties in flood hazard zones and inundation areas can be determined simply by examining a parcel list, there is no need to consult a map). In other words, only disclosures about earthquake fault zones, seismic hazard zones, high fire hazard severity zones or wildland fire areas are subject to the "when in doubt, mark Yes" rule. (Cal. Civ. Code §§ 1103.2(b)(c).)

It is probably prudent for a seller's agent or seller to explain the use of "Yes" in the above situation to the buyer because the buyer may think "Yes" means that the property definitely is in the specified zone. The seller or seller's agent may want to make an explanatory notation on the form.

It is also probably prudent to provide an NHD, along with a third party disclosure report, even if the property isn't in any of the six zones, if the "No" for any of the zones is based on a map not of sufficient accuracy to enable a reasonable person to determine if the property is within it.

Q 23. Can the NHD statement be used for other purposes by government agencies or insurance companies?

A No. The NHD is just a disclosure between the seller, seller's agent, and buyer. Other parties, including, but not limited to, insurance companies, lenders, or governmental agencies, cannot use it for any purpose. (Cal. Civ. Code § 1103.2(g).)

Q 24. Must a third-party disclosure company include a completed NHD statement with their report?

A Yes. (Cal. Civ. Code § 1103.2(f)(2).)

Q 25. May a third-party disclosure company use a pre-printed name instead of a signature on the report and/or NHD form?

A Yes. (Cal. Civ. Code § 1103.2(f)(3).)

Q 26. What happens if the NHD is not provided in a covered transaction when one is required by law?

A A transfer of title will not be invalidated because the law was not complied with. However, anyone who willfully or negligently violates or fails to perform his/her duty required by this law will be liable in the amount of actual damages suffered by the buyer. (Cal. Civ. Code § 1103.13.)

Q 27. Where can I get more information?

A See the following:

FEMA Flood Map Store*

Inundation Maps*

California Dam Locator*

California Department of Forestry and Fire Protection*

Earthquake Fault Zones*

Seismic Hazard Zones*

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