

Seller Property Questionnaire: Summary of C.A.R. Form SPQ

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Q 1. *What is C.A.R. form SPQ?*

A California Association of REALTORS® Standard Form “Seller Property Questionnaire” (SPQ) is a document intended to elicit information from a seller about property that the seller is offering for sale. The purpose of the SPQ is to help the seller make full disclosure about the property's condition and other factors that may affect a buyer's decision to buy.

Q 2. *Why did C.A.R. create the SPQ?*

A In 2003, the C.A.R. Standard Forms Committee (SFAC) created a study group to look into the issue of statewide disclosures. The study group determined that C.A.R. members throughout the state believed the statutory Real Estate Transfer Disclosure Statement (TDS) did not address issues that were recurrent in real estate transactions or did not have the effect of prompting disclosure from sellers about such issues. The study group recommended that CAR create a standard statewide disclosure document. The study group's recommendation was adopted by the full SFAC and ratified by the C.A.R. Board of Directors in January 2005.

Q 3. *Does the SPQ replace the TDS, or other forms such as the SSD or SBSA?*

A No. The SPQ does not replace those forms but rather is used to supplement them. The TDS is a statutorily required form. The SSD is a C.A.R. created form used to document seller's responses to certain disclosures required by law (but not appearing on the statutory TDS) or by contract. The SBSA is a C.A.R. created form that is not property specific, like the SPQ, but instead informs buyers and sellers of issues that may apply to a transaction regardless of where the property is located. The SPQ is used in addition to these other forms.

Q 4. *Is the SPQ required to be used in real estate sales?*

A There is no law or statute requiring the use of this particular form. Further, there is no preprinted language in the C.A.R. Residential Purchase Agreement or any other contracts, requiring use of the SPQ.

However, if the SPQ is incorporated by reference in the purchase agreement (for example, it is explicitly required by language added to the Additional Terms paragraph in the Offer, a Counter Offer or an Addendum) then its use in a transaction becomes a contractual requirement.

Also, many brokerage companies believe that additional disclosures help avoid disputes and may therefore recommend to their principals that the SPQ be included in a transaction. Thus, although not mandated by law or pre-printed language in the contract, it is possible that use of the SPQ will be effectively required because of an office policy of a real estate brokerage company. A real estate salesperson or broker associate should check with that person's broker or office policy about whether to recommend the SPQ and how to respond to an offer in which the buyer asks the seller to complete a SPQ.

Q 5. *How does the SPQ help the buyer?*

A Because the SPQ may trigger the seller's memory about the property, and prompts the seller to disclose information, a buyer who receives the SPQ is likely to have more additional information about the property than the buyer would have otherwise received if the SPQ was not used. The buyer can then take this information into account when deciding how much to offer for a property, what types of inspections to have, what kinds of repairs to request or whether to seek other adjustments to the contract, and whether to remove contingencies or cancel the agreement.

Q 6. *How does the SPQ help the seller?*

A By providing a more thorough disclosure either before or during a transaction than may have otherwise occurred, the seller reduces the possibility for misunderstandings with the buyer, and even worse, future claims or lawsuits by the buyer alleging the seller misrepresented the property, intentionally failed to disclose material facts or committed fraud. Often the anger that accompanies an after-close discovery aggravates a situation that could have been easily resolved prior to the close of escrow.

Q 7. *When should the SPQ be completed and delivered to a buyer?*

A The earlier the better. Ideally, if the seller will be completing a TDS, the SPQ will be completed and delivered to the buyer at the same time.

Q 8. *What rights does a buyer have as a result of receiving the SPQ?*

A It depends on when the SPQ was given and the language of the contract. If the SPQ is given to a buyer before the offer is written then a buyer can take the disclosure into account when deciding whether or how much to offer for a property or what requests to make of a seller during the inspection period. If the SPQ is given after an offer has been made, but during the buyer's inspection period, the buyer can take the disclosure into account in deciding whether to make requests of the seller before expiration of the inspection period and whether to remove an inspection contingency or cancel the contract. If the SPQ is given after the inspection period has already expired, and after a TDS has already been delivered, it is possible that a court may consider the SPQ to be a material amendment to the TDS or a subsequent or amended disclosure pursuant to the contract triggering either a statutory right of rescission or contractual right of cancellation. As a result, it is prudent for a seller to give the buyer a SPQ at the same time as a TDS so the legal and contractual rescission and cancellation rights run concurrently.

Q 9. *How should an agent respond if a seller asks the agent if a particular item warrants disclosure in the SPQ?*

A As a general rule, one can say, "When in doubt, disclose." If the seller believes the item is important enough to ask the question, then disclosure is the prudent thing to do. If it turns out the disclosure is not important to the buyer, then it will be of no consequence. If the disclosure is of concern, it is better to resolve the matter prior to escrow closing rather than risk a later argument or lawsuit on whether the disclosure should have been made as a material fact.

Q 10. *Does the form prompt the seller to disclose defects that have been repaired?*

A Yes. Question 4 on the SPQ asks a seller to disclose defects in structural items, systems and appliances even if they have been repaired.

Q 11. *How far back in time does a seller have to make disclosures?*

A The seller should answer the questions based on the seller's actual knowledge, regardless of the time involved. The seller can always specify the time as part of an explanation. Ultimately, only a judge or arbitrator hearing a

dispute can decide whether the item is no longer material or significant because of the passage of time. A disclosure avoids the issue.

Q 12. *Does a seller have to disclose items that occurred before the seller acquired the property?*

A If the seller has actual knowledge, yes. The seller must disclose all known material facts.

Q 13. *Does the SPQ represent an absolute description of the current and future condition of the property?*

A No, the SPQ is not a guarantee of the property's condition, not a warranty regarding its future status and not a promise that the seller is either aware of, or remembers, everything that is asked about. Rather it represents a snapshot of a seller's good faith recollection about various aspects about or concerning the property. A buyer should consider the SPQ as one item affecting the buyer's decision. It is not a substitute for the buyer's own inspection, judgment and common sense.

Q 14. *Will the SPQ replace other seller disclosure documents that may already exist in certain markets?*

A In many market areas, local Associations of REALTORS® or brokerage companies or both had created their own documents (either addenda to the purchase contract or TDS) to elicit additional information from the seller. These AORs and brokerage companies believe, as did the CAR Standard Forms Committee when it recommended publishing the SPQ, that it is beneficial for both seller and buyer if information is disclosed during the course of a transaction. Such disclosure helps prevent misunderstandings and allows for an open, honest, good faith discussion between buyer and seller. Having knowledge of the availability of other disclosures in use throughout the state, the SFAC recommendation was also based partly on the belief that a statewide standard disclosure can help create consistency among transactions and real estate firms. Whether locally generated documents are replaced by the SPQ or modified as a result of the SPQ depends on management philosophy of, attorney input for, and member or licensee input to the local AOR or brokerage company.

Q 15. *Where can I obtain additional information?*

A Information concerning other **C.A.R. standard forms** is available online.

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