

AMENDED IN ASSEMBLY MAY 27, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2733**

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**Introduced by Assembly Member Brownley**

February 22, 2008

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An act to amend ~~Sections 1103, 1103.4, and 1103.5 of, Section 1103 of, and to amend the heading of Article 1.7 (commencing with Section 1103) of Chapter 2 of Title 4 of Part 4 of Division 2 of, and to add Section 1103.6 to,~~ the Civil Code, relating to real property disclosures.

LEGISLATIVE COUNSEL'S DIGEST

AB 2733, as amended, Brownley. Real property disclosures.

Existing law requires certain natural hazard disclosures to be made upon the transfer of residential property, as specified, and prescribes the manner and form of the disclosures.

This bill would require certain additional environmental hazard disclosures to be made upon the transfer of residential property, as specified, and would prescribe the ~~manner and~~ form of the disclosures. The bill would make other conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The heading of Article 1.7 (commencing with
- 2 Section 1103) of Chapter 2 of Title 4 of Part 4 of Division 2 of the
- 3 Civil Code is amended to read:

1 Article 1.7. Disclosure of Natural and Environmental Hazards  
2 Upon Transfer of Residential Property

3  
4 SEC. 2. Section 1103 of the Civil Code is amended to read:

5 1103. (a) Except as provided in Section 1103.1, this article  
6 applies to the transfer by sale, exchange, installment land sale  
7 contract, as defined in Section 2985, lease with an option to  
8 purchase, any other option to purchase, or ground lease coupled  
9 with improvements, of any real property described in subdivision  
10 (c), or residential stock cooperative, improved with or consisting  
11 of not less than one nor more than four dwelling units.

12 (b) Except as provided in Section 1103.1, this article shall apply  
13 to a resale transaction entered into on or after January 1, 2000, for  
14 a manufactured home, as defined in Section 18007 of the Health  
15 and Safety Code, that is classified as personal property intended  
16 for use as a residence, or a mobilehome, as defined in Section  
17 18008 of the Health and Safety Code, that is classified as personal  
18 property intended for use as a residence, if the real property on  
19 which the manufactured home or mobilehome is located is real  
20 property described in subdivision (c).

21 (c) This article shall apply to the transactions described in  
22 subdivisions (a) and (b) only if the transferor or his or her agent  
23 is required by one or more of the following to disclose the  
24 property's location within a hazard zone:

25 (1) A person who is acting as an agent for a transferor of real  
26 property that is located within a special flood hazard area (any  
27 type Zone "A" or "V") designated by the Federal Emergency  
28 Management Agency, or the transferor if he or she is acting without  
29 an agent, shall disclose to any prospective transferee the fact that  
30 the property is located within a special flood hazard area if either:

31 (A) The transferor, or the transferor's agent, has actual  
32 knowledge that the property is within a special flood hazard area.

33 (B) The local jurisdiction has compiled a list, by parcel, of  
34 properties that are within the special flood hazard area and a notice  
35 has been posted at the offices of the county recorder, county  
36 assessor, and county planning agency that identifies the location  
37 of the parcel list.

38 (2) A person who is acting as an agent for a transferor of real  
39 property that is located within an area of potential flooding  
40 designated pursuant to Section 8589.5 of the Government Code,

1 or the transferor if he or she is acting without an agent, shall  
2 disclose to any prospective transferee the fact that the property is  
3 located within an area of potential flooding if either:

4 (A) The transferor, or the transferor's agent, has actual  
5 knowledge that the property is within an inundation area.

6 (B) The local jurisdiction has compiled a list, by parcel, of  
7 properties that are within the inundation area and a notice has been  
8 posted at the offices of the county recorder, county assessor, and  
9 county planning agency that identifies the location of the parcel  
10 list.

11 (3) A transferor of real property that is located within a very  
12 high fire hazard severity zone, designated pursuant to Section  
13 51178 of the Government Code, shall disclose to any prospective  
14 transferee the fact that the property is located within a very high  
15 fire hazard severity zone and is subject to the requirements of  
16 Section 51182 of the Government Code if either:

17 (A) The transferor, or the transferor's agent, has actual  
18 knowledge that the property is within a very high fire hazard  
19 severity zone.

20 (B) A map that includes the property has been provided to the  
21 local agency pursuant to Section 51178 of the Government Code  
22 and a notice has been posted at the offices of the county recorder,  
23 county assessor, and county planning agency that identifies the  
24 location of the map and any information regarding changes to the  
25 map received by the local agency.

26 (4) A person who is acting as an agent for a transferor of real  
27 property that is located within an earthquake fault zone, designated  
28 pursuant to Section 2622 of the Public Resources Code, or the  
29 transferor if he or she is acting without an agent, shall disclose to  
30 any prospective transferee the fact that the property is located  
31 within a delineated earthquake fault zone if either:

32 (A) The transferor, or the transferor's agent, has actual  
33 knowledge that the property is within a delineated earthquake fault  
34 zone.

35 (B) A map that includes the property has been provided to the  
36 city or county pursuant to Section 2622 of the Public Resources  
37 Code and a notice has been posted at the offices of the county  
38 recorder, county assessor, and county planning agency that  
39 identifies the location of the map and any information regarding  
40 changes to the map received by the county.

1 (5) A person who is acting as an agent for a transferor of real  
2 property that is located within a seismic hazard zone, designated  
3 pursuant to Section 2696 of the Public Resources Code, or the  
4 transferor if he or she is acting without an agent, shall disclose to  
5 any prospective transferee the fact that the property is located  
6 within a seismic hazard zone if either:

7 (A) The transferor, or the transferor's agent, has actual  
8 knowledge that the property is within a seismic hazard zone.

9 (B) A map that includes the property has been provided to the  
10 city or county pursuant to Section 2696 of the Public Resources  
11 Code and a notice has been posted at the offices of the county  
12 recorder, county assessor, and county planning agency that  
13 identifies the location of the map and any information regarding  
14 changes to the map received by the county.

15 (6) A transferor of real property that is located within a state  
16 responsibility area determined by the board, pursuant to Section  
17 4125 of the Public Resources Code, shall disclose to any  
18 prospective transferee the fact that the property is located within  
19 a wildland area that may contain substantial forest fire risks and  
20 hazards and is subject to the requirements of Section 4291 if either:

21 (A) The transferor, or the transferor's agent, has actual  
22 knowledge that the property is within a wildland fire zone.

23 (B) A map that includes the property has been provided to the  
24 city or county pursuant to Section 4125 of the Public Resources  
25 Code and a notice has been posted at the offices of the county  
26 recorder, county assessor, and county planning agency that  
27 identifies the location of the map and any information regarding  
28 changes to the map received by the county.

29 ~~(7) A transferor of real property that is located within a~~  
30 ~~one-quarter mile radius of an environmental hazard site listed in~~  
31 ~~Section 1103.6, as determined pursuant to the process described~~  
32 ~~in subparagraph (A), or within the same ZIP Code or city as an~~  
33 ~~environmental hazard site listed in Section 1103.6, as determined~~  
34 ~~pursuant to the process described in subparagraph (B), shall~~  
35 ~~disclose this fact to any prospective transferee. A transferor is not~~  
36 ~~required to make both disclosures.~~

37 ~~(A) A transferor of real property regulated by this paragraph,~~  
38 ~~or the transferor's agent, who uses a report or opinion of a third~~  
39 ~~party, as described in subdivision (e) of Section 1103.4, to~~  
40 ~~determine the location of environmental hazards in the vicinity of~~

1 the real property shall determine if the property is located within  
2 a one-quarter mile radius of an environmental hazard site listed in  
3 Section 1103.6.

4 (B) A transferor of real property regulated by this paragraph  
5 who does not use a report or opinion of a third party, as described  
6 in subdivision (c) of Section 1103.4, to determine the location of  
7 environmental hazards in the vicinity of the real property shall  
8 satisfy the disclosure requirements of this paragraph by doing  
9 either of the following:

10 (i) Determining if the property is located within the same ZIP  
11 Code or the same city as an environmental hazard site listed in  
12 Section 1103.6 as indicated by a search of the public database  
13 available at the Web site of the Department of Toxic Substances  
14 Control. A transferor who transfers real property located in an  
15 unincorporated area is not required to search by city.

16 (ii) Determining if the property is within a one-quarter mile  
17 radius of an environmental hazard site listed in Section 1103.6.

18 (d)

19 (1) *This subdivision shall apply to the transactions described  
20 in subdivisions (a) and (b).*

21 (2) *A transferor, or the transferor’s agent, of real property that  
22 is located within a one-quarter mile radius of an environmental  
23 hazard site as designated by the federal National Priority List or  
24 the Resource Recovery and Conservation Act (42 U.S.C. Sec. 6401  
25 et seq.) shall disclose this fact to a prospective transferee.*

26 (A) *The disclosure shall identify the environmental hazard site  
27 and its location.*

28 (B) *The disclosure shall include the following statement:*

29 **“NOTICE OF ENVIRONMENTAL HAZARD SITE**

30 *This property is presently located within a one-quarter mile  
31 radius of an environmental hazard site. For that reason, you may  
32 wish to investigate the information about the site further by  
33 contacting the agency responsible for the maintenance and cleanup  
34 of this site, consider what factors, if any, are associated with the  
35 property’s proximity to an environmental hazard site, and  
36 determine whether the information you receive is acceptable to  
37 you before you purchase.”*

38 (e) Any waiver of the requirements of this article is void as  
39 against public policy.

40 SEC. 3. Section 1103.4 of the Civil Code is amended to read:

1 1103.4.— (a) Neither the transferor nor any listing or selling  
 2 agent shall be liable for any error, inaccuracy, or omission of any  
 3 information delivered pursuant to this article if the error,  
 4 inaccuracy, or omission was not within the personal knowledge  
 5 of the transferor or the listing or selling agent, and was based on  
 6 information timely provided by public agencies or by other persons  
 7 providing information as specified in subdivision (c) that is  
 8 required to be disclosed pursuant to this article, and ordinary care  
 9 was exercised in obtaining and transmitting the information.

10 (b) The delivery of any information required to be disclosed by  
 11 this article to a prospective transferee by a public agency or other  
 12 person providing information required to be disclosed pursuant to  
 13 this article shall be deemed to comply with the requirements of  
 14 this article and shall relieve the transferor or any listing or selling  
 15 agent of any further duty under this article with respect to that item  
 16 of information.

17 (c) The delivery of a report or opinion prepared by a licensed  
 18 engineer, land surveyor, geologist, or expert in natural hazard  
 19 discovery dealing with matters within the scope of the  
 20 professional's license or expertise, shall be sufficient compliance  
 21 for application of the exemption provided by subdivision (a) if the  
 22 information is provided to the prospective transferee pursuant to  
 23 a request therefor, whether written or oral. In responding to that  
 24 request, an expert may indicate, in writing, an understanding that  
 25 the information provided will be used in fulfilling the requirements  
 26 of Sections 1103.2 and 1103.6 and, if so, shall indicate the required  
 27 disclosures, or parts thereof, to which the information being  
 28 furnished is applicable. Where that statement is furnished, the  
 29 expert shall not be responsible for any items of information, or  
 30 parts thereof, other than those expressly set forth in the statement.

31 (1) In responding to the request, the expert shall determine  
 32 whether the property is within an airport influence area as defined  
 33 in subdivision (b) of Section 11010 of the Business and Professions  
 34 Code. If the property is within an airport influence area, the report  
 35 shall contain the following statement:

36  
 37 NOTICE OF AIRPORT IN VICINITY

38  
 39 — This property is presently located in the vicinity of an airport,  
 40 within what is known as an airport influence area. For that reason, the

NOTICE OF AIRPORT IN VICINITY

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.

(2) In responding to the request, the expert shall determine whether the property is within the jurisdiction of the San Francisco Bay Conservation and Development Commission, as defined in Section 66620 of the Government Code. If the property is within the commission’s jurisdiction, the report shall contain the following notice:

NOTICE OF SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION JURISDICTION

This property is located within the jurisdiction of the San Francisco Bay Conservation and Development Commission. Use and development of property within the commission’s jurisdiction may be subject to special regulations, restrictions, and permit requirements. You may wish to investigate and determine whether they are acceptable to you and your intended use of the property before you complete your transaction.

SEC. 4. Section 1103.5 of the Civil Code is amended to read:

1103.5. (a) After a transferor and his or her agent comply with Sections 1103.2 and 1103.6, they shall be relieved of further duty under this article with respect to those items of information. 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.

(b) 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,

1 the inaccuracy resulting therefrom does not constitute a violation  
2 of this article:

3 SEC. 5. Section 1103.6 is added to the Civil Code, to read:

4 1103.6. (a) The environmental hazard disclosures required by  
5 this article are set forth in, and shall be made on a copy of, the  
6 following Environmental Hazard Disclosure Statement:

7  
8  
9

ENVIRONMENTAL HAZARD DISCLOSURE STATEMENT

10 This statement applies to the following property: \_\_\_\_\_  
11

12

13 The transferor and his or her agent(s) or a third-party consultant disclose the  
14 following information with the knowledge that even though this is not a  
15 warranty, prospective transferees may rely on this information in deciding  
16 whether and on what terms to purchase the subject property. Transferor hereby  
17 authorizes any agent(s) representing any principal(s) in this action to provide  
18 a copy of this statement to any person or entity in connection with any actual  
19 or anticipated sale of the property.

20 The following are representations made by the transferor and his or her agent(s)  
21 based on their knowledge and public record databases maintained by the state  
22 and federal governments. This information is a disclosure and is not intended  
23 to be part of any contract between the transferee and transferor:  
24

25 THIS REAL PROPERTY IS IN THE PROXIMITY OF THE FOLLOWING  
26 ENVIRONMENTAL HAZARD SITE(S):

27

-

28 (1) A NATIONAL PRIORITY LIST SITE, as listed on the database  
29 of the Environmental Protection Agency.

30

31 Yes \_\_\_\_ No \_\_\_\_ (Site ID and Location \_\_\_\_\_)

32

33 (2) A COMPREHENSIVE ENVIRONMENTAL RESPONSE,  
34 COMPENSATION, AND LIABILITY ACT (CERCLA) SITE, as  
35 listed on the database of the Environmental Protection Agency.

36

37 Yes \_\_\_\_ No \_\_\_\_ (Site ID and Location \_\_\_\_\_)  
38

~~(3) A SPILLS, LEAKS, INVESTIGATIONS, AND CLEANUP SITE, as listed on the database of the California Water Resources Control Board.~~

~~Yes \_\_\_\_\_ No \_\_\_\_\_ (Site ID and Location \_\_\_\_\_)~~

~~IF THIS PROPERTY IS LOCATED WITHIN A ONE-QUARTER MILE RADIUS OF AN ENVIRONMENTAL HAZARD SITE, OR WITHIN THE SAME ZIP CODE OR CITY AS AN ENVIRONMENTAL HAZARD SITE AS INDICATED IN THE PUBLIC DATA BASE OF THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL, YOU MAY WISH TO INVESTIGATE THE INFORMATION ABOUT THE SITE FURTHER BY CONTACTING THE AGENCY RESPONSIBLE FOR THE MAINTENANCE AND CLEANUP OF THIS SITE. THE DATABASES ON WHICH THESE DISCLOSURES ARE BASED ARE ESTIMATES OF WHERE POTENTIAL CONTAMINATION FROM THE HAZARD SITES MAY BE LOCATED. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A PROPERTY WILL BE AFFECTED BY AN ENVIRONMENTAL HAZARD SITE. TRANSFEREE(S) AND TRANSFEROR(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING THOSE HAZARDS AND OTHER HAZARDS THAT MAY AFFECT THE PROPERTY.~~

~~Signature of Transferor(s) \_\_\_\_\_ Date \_\_\_\_\_~~

~~Signature of Transferor(s) \_\_\_\_\_ Date \_\_\_\_\_~~

~~Agent(s) \_\_\_\_\_ Date \_\_\_\_\_~~

~~Agent(s) \_\_\_\_\_ Date \_\_\_\_\_~~

Check only one of the following:

~~Transferor(s) and their agent(s) represent that the information herein is true and correct to the best of their knowledge as of the date signed by the transferor(s) and agent(s).~~

~~Transferor(s) and their agent(s) acknowledge that they have exercised good faith in the selection of a third-party report provider as required in Civil Code Section 1103.7, and that the representations made in this Environmental Hazard~~

1 ~~Disclosure Statement are based upon information provided by the independent~~  
 2 ~~third-party disclosure provider as a substituted disclosure pursuant to Civil~~  
 3 ~~Code Section 1103.4. Neither transferor(s) nor their agent(s) (1) has~~  
 4 ~~independently verified the information contained in this statement and report~~  
 5 ~~or (2) is personally aware of any errors or inaccuracies in the information~~  
 6 ~~contained in the statement. This statement was prepared by the provider below:~~

7  
 8 ~~Third-Party~~  
 9 ~~Disclosure Provider(s) \_\_\_\_\_ Date \_\_\_\_\_~~

10 -  
 11 ~~Transferee represents that he or she has read and understands this document.~~  
 12 ~~Pursuant to Civil Code Section 1103.8, the representations made in this~~  
 13 ~~Environmental Hazard Disclosure Statement do not constitute all of the~~  
 14 ~~transferor's or agent's disclosure obligations in this transaction.~~

15  
 16 ~~Signature of Transferee(s) \_\_\_\_\_ Date \_\_\_\_\_~~  
 17 ~~Signature of Transferee(s) \_\_\_\_\_ Date \_\_\_\_\_~~

18  
 19 ~~(b) The disclosure required by this article is only a disclosure~~  
 20 ~~between the transferor, the transferor's agents, and the transferee,~~  
 21 ~~and shall not be used by any other party, including, but not limited~~  
 22 ~~to, insurance companies, lenders, or governmental agencies, for~~  
 23 ~~any purpose.~~