

AMENDED IN ASSEMBLY APRIL 24, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 530

Introduced by Assembly Member Weggeland

February 17, 1995

An act to amend Sections 1102, 1102.4, and 1102.14 of, to amend and renumber Sections 1102.1 and 1102.2 of, and to add Section 1102.1 to, the Civil Code, relating to real estate transfers.

LEGISLATIVE COUNSEL'S DIGEST

AB 530, as amended, Weggeland. Real estate transfers: disclosure.

(1) Existing law requires specified written disclosures to be made to prospective transferees of real property, the waiver of which is declared void as against public policy.

This bill would declare the intent of the Legislature with regard to these real estate transfer disclosure statements.

(2) Existing law provides that neither the transferor of real property nor any listing or selling agent shall be liable for any error, inaccuracy, or omission with respect to a real estate transfer disclosure statement if the information involved was not within his or her personal knowledge or was based on specified sources of information, and ordinary care was exercised in obtaining and transmitting the information.

This bill would extend this exemption from liability for transferors of real property and listing and selling agents to disclosures required of real estate brokers and salespersons

with respect to certain residential property, based upon their duty to inspect the property offered for sale, and would add home inspectors, as defined, to the list of sources which may be relied upon for such information.

(3) Specified provisions of this bill would become operative only if SB 258 is enacted, as specified.

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. Section 1102 of the Civil Code is
2 amended to read:

3 1102. Except as provided in Section 1102.2, this article
4 applies to any transfer by sale, exchange, installment land
5 sale contract, as defined in Section 2985, lease with an
6 option to purchase, any other option to purchase, or
7 ground lease coupled with improvements, of real
8 property, or residential stock cooperative, improved with
9 or consisting of not less than one nor more than four
10 dwelling units.

11 SEC. 2. Section 1102.1 is added to the Civil Code, to
12 read:

13 1102.1. In enacting Chapter 817 of the Statutes of
14 1994, it was the intent of the Legislature to clarify and
15 facilitate the use of the real estate disclosure statement,
16 as specified in Section 1102.6. The Legislature intended
17 the statement to be used by both transferors making
18 required disclosures and by agents making disclosures
19 required by Section 2079; and the Legislature did not
20 intend to adversely affect the existing obligations of the
21 parties to a real estate contract, or their agents, to disclose
22 any fact, including the physical conditions of the property
23 and previously received reports of physical inspections,
24 materially affecting the value and desirability of the
25 property, *and that nothing in this article shall be*
26 *construed to change the duty of a real estate broker or*
27 *salesperson pursuant to Section 2079.*

28 It is also the intent of the Legislature that the delivery
29 of a real estate transfer disclosure statement may not be



1 waived in an “as is” sale, as held in *Loughrin v. Superior*
2 *Court*, 15 Cal. App. 4th 1188.

3 SEC. 3. Section 1102.1 of the Civil Code is amended
4 and renumbered to read:

5 1102.2. This article does not apply to the following:

6 (a) Transfers which are required to be preceded by
7 the furnishing to a prospective transferee of a copy of a
8 public report pursuant to Section 11018.1 of the Business
9 and Professions Code and transfers which can be made
10 without a public report pursuant to Section 11010.4 of the
11 Business and Professions Code.

12 (b) Transfers pursuant to court order, including, but
13 not limited to, transfers ordered by a probate court in
14 administration of an estate, transfers pursuant to a writ of
15 execution, transfers by any foreclosure sale, transfers by
16 a trustee in bankruptcy, transfers by eminent domain,
17 and transfers resulting from a decree for specific
18 performance.

19 (c) Transfers to a mortgagee by a mortgagor or
20 successor in interest who is in default, transfers to a
21 beneficiary of a deed of trust by a trustor or successor in
22 interest who is in default, transfers by any foreclosure sale
23 after default, transfers by any foreclosure sale after
24 default in an obligation secured by a mortgage, transfers
25 by a sale under a power of sale or any foreclosure sale
26 under a decree of foreclosure after default in an
27 obligation secured by a deed of trust or secured by any
28 other instrument containing a power of sale, or transfers
29 by a mortgagee or a beneficiary under a deed of trust who
30 has acquired the real property at a sale conducted
31 pursuant to a power of sale under a mortgage or deed of
32 trust or a sale pursuant to a decree of foreclosure or has
33 acquired the real property by a deed in lieu of foreclosure.

34 (d) Transfers by a fiduciary in the course of the
35 administration of a decedent’s estate, guardianship,
36 conservatorship, or trust.

37 (e) Transfers from one coowner to one or more other
38 coowners.



1 (f) Transfers made to a spouse, or to a person or
2 persons in the lineal line of consanguinity of one or more
3 of the transferors.

4 (g) Transfers between spouses resulting from a
5 judgment of dissolution of marriage or of legal separation
6 or from a property settlement agreement incidental to
7 such a judgment.

8 (h) Transfers by the Controller in the course of
9 administering Chapter 7 (commencing with Section
10 1500) of Title 10 of Part 3 of the Code of Civil Procedure.

11 (i) Transfers under Chapter 7 (commencing with
12 Section 3691) or Chapter 8 (commencing with Section
13 3771) of Part 6 of Division 1 of the Revenue and Taxation
14 Code.

15 (j) Transfers or exchanges to or from any
16 governmental entity.

17 SEC. 4. Section 1102.2 of the Civil Code is amended
18 and renumbered to read:

19 1102.3. The transferor of any real property subject to
20 this article shall deliver to the prospective transferee the
21 written statement required by this article, as follows:

22 (a) In the case of a sale, as soon as practicable before
23 transfer of title.

24 (b) In the case of transfer by a real property sales
25 contract, as defined in Section 2985, or by a lease together
26 with an option to purchase, or a ground lease coupled
27 with improvements, as soon as practicable before
28 execution of the contract. For the purpose of this
29 subdivision, "execution" means the making or
30 acceptance of an offer.

31 With respect to any transfer subject to subdivision (a)
32 or (b), the transferor shall indicate compliance with this
33 article either on the receipt for deposit, the real property
34 sales contract, the lease, or any addendum attached
35 thereto or on a separate document.

36 If any disclosure, or any material amendment of any
37 disclosure, required to be made by this article, is
38 delivered after the execution of an offer to purchase, the
39 transferee shall have three days after delivery in person
40 or five days after delivery by deposit in the mail, to



1 terminate his or her offer by delivery of a written notice
2 of termination to the transferor or the transferor's agent.

3 SEC. 5. Section 1102.4 of the Civil Code is amended
4 to read:

5 1102.4. (a) Neither the transferor nor any listing or
6 selling agent shall be liable for any error, inaccuracy, or
7 omission of any information delivered pursuant to this
8 article or Section 2079 if the error, inaccuracy, or omission
9 was not within the personal knowledge of the transferor
10 or that listing or selling agent, was based on information
11 timely provided by public agencies or by other persons
12 providing information as specified in subdivision (c) that
13 is disclosed pursuant to this article or Section 2079, and
14 ordinary care was exercised in obtaining and transmitting
15 it.

16 (b) The delivery of any information disclosed by this
17 article to a prospective transferee by a public agency or
18 other person providing information required to be
19 disclosed pursuant to this article shall be deemed to
20 comply with the requirements of this article and shall
21 relieve the transferor or any listing or selling agent of any
22 further duty under this article with respect to that item
23 of information.

24 (c) The delivery of a report or opinion prepared by a
25 licensed engineer, land surveyor, geologist, structural
26 pest control operator, contractor, home inspector, or
27 other expert, dealing with matters within the scope of the
28 professional's license or expertise, shall be sufficient
29 compliance for application of the exemption provided by
30 subdivision (a) if the information is provided to the
31 prospective transferee. In providing such information, an
32 expert may indicate, in writing, an understanding that
33 the information provided will be used in disclosures
34 pursuant to Section 1102.6 and, if so, shall indicate the
35 disclosures, or parts thereof, to which the information
36 being furnished is applicable. Where such a statement is
37 furnished, the expert shall not be responsible for any
38 items of information, or parts thereof, other than those
39 expressly set forth in the statement.



1 SEC. 5.5. Section 1102.4 of the Civil Code is amended
2 to read:

3 1102.4. (a) Neither the transferor nor any listing or
4 selling agent shall be liable for any error, inaccuracy, or
5 omission of any information delivered pursuant to this
6 article *or Section 2079* if the error, inaccuracy, or omission
7 was not within the personal knowledge of the transferor
8 or that listing or selling agent, was based on information
9 timely provided by public agencies or by other persons
10 providing information as specified in subdivision (c) that
11 is ~~required to be~~ disclosed pursuant to this article *or*
12 *Section 2079*, and ordinary care was exercised in
13 obtaining and transmitting it.

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

22 (c) The delivery of a report or opinion prepared by a
23 licensed engineer, land surveyor, geologist, structural
24 pest control operator, contractor, or other expert, dealing
25 with matters within the scope of the professional's license
26 or expertise, shall be sufficient compliance for application
27 of the exemption provided by subdivision (a) if the
28 information is provided to the prospective transferee
29 ~~pursuant to a request therefor, whether written or oral.~~
30 ~~In responding to such a request~~ *providing such*
31 *information*, an expert may indicate, in writing, an
32 understanding that the information provided will be used
33 ~~in fulfilling the requirements of disclosures pursuant to~~
34 *Section 1102.6* and, if so, shall indicate the ~~required~~
35 disclosures, or parts thereof, to which the information
36 being furnished is applicable. Where such a statement is
37 furnished, the expert shall not be responsible for any
38 items of information, or parts thereof, other than those
39 expressly set forth in the statement.



1 SEC. 6. Section 1102.14 of the Civil Code is amended
2 to read:

3 1102.14. (a) As used in this article, “listing agent”
4 means listing agent as defined in subdivision (f) of
5 Section 1086.

6 (b) As used in this article, “selling agent” means selling
7 agent as defined in subdivision (g) of Section 1086,
8 exclusive of the requirement that the agent be a
9 participant in a multiple listing service as defined in
10 Section 1087.

11 (c) As used in this article, “home inspector” means an
12 ~~individual certified by the American Society of Home~~
13 ~~Inspectors (ASHI) or the California Real Estate~~
14 ~~Inspection Association (CREIA); individual defined in~~
15 ~~subdivision (c) of Section 7195 of the Business and~~
16 ~~Professions Code.~~

17 *SEC. 7. Sections 5 and 6 of this act shall become*
18 *operative only if Senate Bill 258 of the 1995–96 Regular*
19 *Session is enacted and adds Section 7195 to the Business*
20 *and Professions Code, in which case Section 5.5 shall not*
21 *become operative.*

