



Acknowledgement of Receipt of

GENERAL INFORMATION FOR BUYERS AND SELLERS OF RESIDENTIAL REAL PROPERTY IN THE CITY AND COUNTY OF SAN FRANCISCO

By signing in the space provided below, the buyer(s) or seller(s) acknowledge receipt of a copy of "General Information for Buyers and Sellers of Residential Real Property in the City and County of San Francisco," published by the San Francisco Association of REALTORS®, consisting of 53 pages and bearing a revision date of January 1, 2009. Buyers and sellers are urged to satisfy any questions or concerns they might have regarding matters covered in this document, as well as any other matters relevant to any real property sale and purchase transaction, at the earliest possible time and before removing any contingencies.

Property Address: _____

Buyer (Please Print): _____

Signature: _____ Date: _____

Buyer (Please Print): _____

Signature: _____ Date: _____

Seller (Please Print): _____

Signature: _____ Date: _____

Seller (Please Print): _____

Signature: _____ Date: _____

GENERAL INFORMATION FOR BUYERS AND SELLERS OF RESIDENTIAL REAL PROPERTY IN THE CITY AND COUNTY OF SAN FRANCISCO

The San Francisco Association of REALTORS® has compiled the general information contained in this document to assist buyers and sellers of residential real property in the City and County of San Francisco in gaining an understanding of certain matters which can become issues in real property sale and purchase transactions, and to foster informed decisions. In many cases, the information relates to matters which can affect the desirability of the property or the property's use or value. In others, the information relates to the obligations of buyers and sellers in real property sale and purchase transactions. Not every matter will be applicable to every transaction. For more information regarding San Francisco residential real property go to www.sfbaywindow.com or call the help line for the City and County of San Francisco (telephone: 311).

This document is not meant to be a complete source of information on all matters which can become issues in real property sale and purchase transactions. For that reason, it is strongly recommended that buyers and sellers use the utmost care and diligence in reviewing and investigating all matters which may be relevant to any transaction. It should be understood that the San Francisco Association of REALTORS® neither guarantees nor warrants the accuracy of the information contained in this document. Further, it makes no representation regarding the adequacy of any information contained in this document as it relates to any specific transaction.

Buyers and sellers are urged to verify and confirm the accuracy, applicability, legal effect and/or tax consequences of all information contained in this document. If they have any legal and/or tax questions, buyers and sellers are urged to consult with a qualified attorney and/or certified public accountant. Real estate brokers and agents are qualified to advise on real estate transactions, not legal and tax matters.

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IMPORTANT NOTE: *To assist readers in understanding the information contained in this document, and for convenience only, each summary is preceded by a subject highlight, printed in italics. The highlight is not meant as a summary of the text which follows. In order to understand the text which follows, it must be read in full.*

THE PURCHASE CONTRACT AND CONFIDENTIALITY REQUIREMENTS

The Real Property Sale and Purchase Contract - *The terms and conditions of every real property sale and purchase transaction are determined by the real property purchase contract. It is essential that every buyer and every seller carefully read any contract pertaining to the sale and purchase of real property in its entirety before accepting its provisions by signing it.*

The terms and conditions of every real property sale and purchase transaction are determined by the real property sale and purchase contract. In the contract, the seller agrees to sell and a buyer agrees to buy real property pursuant to the contract's provisions. Generally, the buyer and the seller accept those provisions by signing the contract in the acceptance section (or when the last of any counter-offers has been signed by the receiving party without any changes and a signed copy of that counter-offer is received by the issuing party). When both parties have accepted the contract, the contract becomes a legal binding document and creates obligations on the part of both parties to act and perform in the manner specified in the document.

A common misconception is that any standard real property sale and purchase contract will work in every situation. In fact, nothing could be farther from the truth. Purchase contracts are often developed for a particular market area and may not be appropriate for use outside that market area. But most standard real property sale and purchase contracts are adaptable and sellers and buyers may add, modify or delete any provision they wish. However, any additions, modifications or deletions must be lawful, agreed upon and signed by both parties.

Although real property sale and purchase contracts can vary widely, most commonly used forms of agreement contain sections dealing with the following subjects:

- The names of the parties to the contract;
- A description of the property;
- The amount of the purchase price;
- The amounts of the deposit and the down payment;
- The method of payment;
- The escrow holder and its location;
- Financing terms, if any;
- Obtaining a preliminary title report and insurance;
- Fixtures (included and excluded);
- Personal property (included and excluded);
- Physical and geological inspections;
- 24-hour notices from seller to buyer to remove inspection and other contingencies;
- Warranties and any exceptions;
- Delivery of offers, acceptances and other documents by any method, including e-mail;
- Inspection, financing, title and other conditions of performance that must be satisfied within a specified period of time to avoid termination of the contract (commonly referred to as "contingencies");
- The closing date; and
- Physical possession.

It is essential that every buyer and every seller carefully read any contract pertaining to the sale and purchase of real property in its entirety and understand the obligations that are being assumed before accepting its provisions by signing it.

The above is provided for informational purposes only to provide buyers and sellers of residential real property with basic, general information about real property sale and purchase contracts. It should be viewed as a starting point only. It is not intended to be a complete summary of important information regarding purchase contracts. Buyers and sellers are urged to consult with a qualified real estate attorney if they desire any legal advice or have any questions, such as whether a particular contract is appropriate for use

in a specific transaction. A real estate broker or agent (referred to in this document as a “real estate broker” or “broker”) can advise on real estate transactions only and is not qualified to give legal advice or answer questions concerning matters of law.

Confidentiality Requirements - *Unless the buyer and seller enter into a special confidentiality agreement, the existence, terms and conditions of the buyer’s offer or seller’s counter-offer are not confidential.*

When a buyer makes an offer to purchase there is a possibility that the seller or seller’s representatives may not treat the existence, terms or conditions of the offer as confidential unless confidentiality is required by law, regulation, or by any confidentiality agreement between the parties. Likewise, for a seller making a counter-offer there is a possibility that the buyer or buyer’s representatives may not treat the existence, terms or conditions of the counter-offer as confidential unless confidentiality is required by law, regulation, or by any confidentiality agreement between the parties.

Generally, the existence, terms or conditions of such an offer or counter-offer (or any contract that is formed) are not considered to be confidential under California law unless there is a preexisting confidentiality agreement in effect. Accordingly, a buyer or seller seeking confidentiality in this regard should inquire as to whether there is a standard form of confidentiality agreement available that can be reviewed and considered or, alternatively, the party should engage a qualified attorney to draft one. And, where there is such a standard form of confidentiality agreement available, if either party wishes to make any changes to it or has any questions, the party should engage a qualified real estate attorney.

TITLE AND POSSESSION

Taking Title - *How a buyer takes title can have an impact on financing, estate planning and other important issues.*

Title to real property may be taken as a sole or concurrent owner. Concurrent ownership involves ownership by two or more persons and includes tenancy-in-common, joint tenancy and community property.

As a sole owner, one person alone enjoys the benefits of real property and is subject to the accompanying burdens, such as the payment of taxes. A sole owner is free to dispose of real property at will, and normally only a sole owner’s signature is required on the deed of conveyance. In fact, even after marriage, a husband or wife may continue to own real (and personal) property separately from the other spouse under certain circumstances.

A tenancy-in-common exists where two or more persons are owners of an undivided interest in real property. Generally, each owner (or tenant-in-common) has a right to possession of the entire property and no owner may exclude any other owner from any portion of the property or claim any portion for himself or herself alone, unless otherwise provided in a written agreement. Additionally, unless a written agreement provides otherwise, any tenant-in-common is free to sell, convey or mortgage the tenant’s interest in the property as he or she sees fit, and the new owner simply takes his or her place as a tenant-in-common with the other owner or owners. (Please see **Tenancy-in-Common** on page 22.)

Joint tenancy exists where two or more persons are joint and equal owners of the same undivided interest in real property (in other words, each joint tenant equally owns the real property as a whole, as opposed to owning a percentage interest only). The most important characteristic of joint tenancy is the right of survivorship. It means that if one joint tenant dies, the surviving joint tenant immediately becomes the sole owner.

Community property basically consists of all property, other than separate property, acquired by a husband and wife or either of them during a valid marriage.

The manner in which title to real property is held can significantly affect the rights and liabilities of the owner(s). And those rights and liabilities are subject to being changed by state and local government. For example, in San Francisco, the Board of Supervisors has attempted to restrict the rights of tenants-in-common in the past and may do so in the future. For these and other reasons, buyers are urged to consult with a qualified real estate attorney knowledgeable regarding San Francisco real property issues to determine what form of ownership best fits their needs.

Seller Occupancy Agreements - *Allowing a seller to retain possession of real property after the close of escrow can have serious consequences and requires a separate written agreement or addendum to the purchase contract to minimize the potential for misunderstandings.*

Sometimes, as an accommodation, a seller will seek to remain in possession of real property after the close of escrow. In most instances, this occurs where the seller needs time for the escrow for a new home to close.

To avoid any misunderstandings, it is recommended that buyers and sellers enter into a special agreement or addendum to their existing real property sale and purchase contract spelling out such key terms as the length of the seller's occupancy, the amount of the security deposit, the existence of homeowner's insurance and the like.

Additionally, in recognition of State landlord-tenant laws and San Francisco's Rent Ordinance, special attention should be given to structuring the relationship strictly as one in which the seller remains in possession as a mere guest for 29 days or less and does not pay rent.

The San Francisco Association of REALTORS® publishes a special form for use in this regard entitled, "Contract Addendum-Seller to Occupy After Close of Escrow." It covers many of the issues that have arisen in recent years in regard to sellers occupying real property after the close of escrow. But questions of a legal nature regarding the use of this form and the appropriate handling of a seller's occupancy, including but not limited to whether to accept payments from the seller as a guest or allow the seller to remain in possession for 30 days or more, should be referred to a qualified real estate attorney knowledgeable regarding San Francisco real property issues.

FINANCING AND INSURANCE

Purchase Financing - *Delays in the processing of a loan application can affect the buyer's ability to close escrow on time. These delays can be avoided if the buyer prequalifies for a loan. Regardless of the circumstances, care should be exercised by the buyer in deciding when to remove any financing contingency in the real property sale and purchase contract.*

Arranging for financing for the purchase of real property can be a complicated and time-consuming process. The process begins with the completion of a loan application which provides the lender with information concerning the borrower's credit, assets, employment history and annual income. While the information in the application is being verified, an appraisal of the property usually will be undertaken by an appraiser to determine its value. The appraisal is important because it must support the amount of the loan being requested. Once the information in the application has been verified and an appraisal of the property has been completed, a committee of the lender will meet to determine whether the loan can be approved.

Typically, a bank or mortgage loan broker will indicate likely approval of the application by the issuance of a letter containing a conditional "loan commitment." The letter usually will state conditions that must be satisfied in order for the loan to be funded. Until each of these conditions is satisfied, the loan may be declined by the lender. Care should be exercised by the buyer in deciding when to release any financing contingency in the purchase contract based upon such a "loan commitment." The buyer who releases the financing contingency based upon such a "loan commitment" risks being forced to breach the contract and the loss of all deposits if the conditions for the loan cannot later be fully met.

Each lender maintains its own qualification requirements and, before an application can be approved, the borrower must meet those requirements.

If conventional financing cannot be arranged, it is possible that some buyers will be able to qualify for a low-income loan available from any of a variety of different sources. However, such loans often carry higher interest rates, points and other terms that are more financially burdensome than would be found in a conventional loan.

Regardless of whether financing is conventional or nonconventional, buyers and sellers should be aware that delays in the processing of loan applications can occur and that these delays can affect the ability of the buyer to close escrow on the agreed upon date. Buyers often can avoid such delays by selecting a local office of a bank or local mortgage loan broker as soon as the search for real property begins and “prequalifying” for a loan, subject to the lender’s approval of the financing conditions of the real property sale and purchase contract.

It is the buyer’s obligation to obtain financing, not the real estate broker’s, and *time is of the essence* in this regard.

Further, it is the buyer’s obligation, not the real estate broker’s, to make all decisions regarding the type of financing to obtain. It is up to the buyer to carefully evaluate his or her personal financial condition and ability to perform all of a loan’s provisions during the entire term of the loan (typically 30 years). In this regard, buyers are cautioned to fully consider their ability to perform with respect to “interest only” and adjustable rate loans that convert to a fully amortized loan with adjusted interest rates within three years or less from their original funding date. And caution is especially suggested with respect to loans that are due in less than 30 years, such as in 7-10 years from funding, or that have interest rates that adjust frequently, have no upper limits on increases, and that are based upon benchmarks other than the 11th District Cost of Funds.

Seller Financing - *Seller “carryback” financing can help to facilitate a transaction but requires special attention and often comes with additional risks that a buyer should carefully consider before proceeding.*

In any economic environment, but particularly when loans from financial institutions are harder to obtain for buyers, a seller may offer carryback financing to the buyer. Under this type of financing, the seller receives a downpayment from the buyer and then assumes the burden of financing the purchase of the property by making a loan to the buyer for the difference between the deposit and the full or some portion of the purchase price. More often than not a seller carryback loan follows a financial institution’s loan as a matter of record and in terms of priority if foreclosure becomes necessary.

Seller financing can raise numerous burdens, risks and issues for a buyer. For example, the interest rates for seller financing can be higher than a financial institution’s loan and subject to escalation. Such financing might have large “balloon” (balance due) payments that come due more quickly than a financial institution’s loan. Further, seller financing might be unassignable. And, if an existing first loan is not paid off at the close of escrow, or assumed by the buyer, the seller carryback loan could trigger a “due on sale” clause in the first loan that results in the buyer losing the property if the buyer cannot fully satisfy the first loan.

Accordingly, any buyer or seller considering carryback financing should engage a qualified real estate attorney to draft the necessary promissory note and deed of trust and provide advice regarding the relevant legal issues. Real estate brokers are not qualified to provide these services.

Obtaining Homeowner's Insurance - *Buyers are urged to apply for homeowner's insurance as soon as the offer to purchase has been accepted and they should consider making the real property sale and purchase contract contingent upon obtaining homeowner's insurance.*

For years, insurers offering homeowners insurance in California have been reluctant to insure certain prospective homeowners due to their loss history or the loss history of the property they are purchasing. Reports abound that insurance premiums have become especially costly and that policies now contain unfavorable restrictions, as well as limits and exclusions they did not contain previously.

Many insurers have announced that while they will renew existing policies, they will not write new ones. In a few instances, insurers have indicated that they are contemplating withdrawing from the California insurance market altogether.

Because of the potential difficulty in obtaining homeowner's insurance, buyers are urged to investigate the availability of and to apply for such insurance as soon as their offer to purchase has been accepted. Buyers can further this process by making certain that there is a provision in the purchase contract requiring the seller to provide a "CLUE" (Comprehensive Loss Underwriting Exchange) report on himself or herself and the real property. Buyers also should order a CLUE report on themselves. Such reports are compiled from a commercial database that tracks the loss history for persons and properties for the past five years. The information in the reports greatly influences an insurance company's decision whether to issue homeowner's insurance to a person or for a property. Buyers should be aware that their inability to obtain homeowner's insurance might affect their ability to obtain mortgage financing for the property.

Sellers, on the other hand, should be aware that if obtaining financing is a contingency of the purchase contract, buyers may be able to cancel the contract in the event the financing contingency remains in effect and insurance is unavailable, since most lenders require insurance coverage. To reduce the likelihood of that occurring, the seller may elect to provide the buyer with a disclosure of any known insurance claims made against the property during the seller's ownership.

Some purchase contracts require the buyer to either remove the financing contingency within a certain time or cancel the contract. If the buyer cannot obtain insurance, this will put him or her in the difficult position of choosing cancellation or risking loss of the contract deposit. If the parties are operating under such a contract provision, the seller and/or the buyer could consider whether they each wish to agree to extend, in writing, the date for the removal of the financing contingency to allow additional time for the buyer to obtain insurance. Another option would be for the buyer to make the contract contingent on the obtaining of insurance so the provision operates independently of the financing contingency.

Any buyer or seller who has questions regarding homeowner's insurance should refer them to a qualified insurance broker. Real estate brokers are not qualified to give opinions in this regard.

Insurance for Condominiums - *The Federal Home Loan Mortgage Corporation imposes a surcharge on all condominium loans which it buys.*

The Federal Home Loan Mortgage Corporation (Freddie Mac) imposes a surcharge on all loans for condominium units in California which it buys. The surcharge is equivalent to one percent of the unpaid principal balance of the loan. The surcharge, however, can be reduced or waived under certain circumstances. These circumstances include the existence of earthquake insurance coverage for the condominium unit as well as the complex in which the unit is located and/or a favorable evaluation of the physical characteristics of the unit and the complex using a risk assessment system developed by Risk Management Solutions, Inc. (RMS) of Menlo Park.

Freddie Mac was created by Congress in 1970 to increase the availability of mortgage credit for the financing of housing. It does this by buying mortgages from lenders nationwide and packaging them as securities for resale to investors.

Homeowners' associations for condominium complexes generally buy insurance covering structural damage to the complexes on behalf of all of the owners. The owners themselves usually are responsible for insuring the contents of their units. But even when homeowners' associations obtain earthquake insurance, they often fail to set aside sufficient funds to cover the high deductible—typically 10 percent of the insured value of the property.

Anyone purchasing a condominium unit should be aware that if the homeowners' association for the complex in which the unit is located has not obtained earthquake insurance coverage or prefunded the deductible for an earthquake insurance policy, owners of units in the complex could be assessed to provide funds necessary to make repairs to the complex in the event an earthquake causes damage to the complex. In addition, it should be kept in mind that if the owner of any unit fails to pay such an assessment, the homeowners' association may have a right to foreclose against that owner's unit.

Earthquake Insurance - *Many private insurance companies provide earthquake insurance through the California Earthquake Authority ("CEA"), a publicly managed, privately funded organization created by the California legislature in 1996.*

Earthquakes can cause extensive damage to real property and loss of personal possessions. Obtaining earthquake insurance is a way to mitigate the losses caused by earthquakes.

Insurance companies used to provide earthquake insurance as an endorsement to homeowners insurance policies. However, after the Northridge Earthquake on January 17, 1994 it became much more difficult and expensive to obtain earthquake insurance.

Under California Insurance Code Section 10081, insurance companies that provide homeowners policies and policies for qualifying condominiums and apartments must also offer earthquake insurance coverage. Some insurance companies no longer offer homeowners policies at all in order to avoid offering earthquake insurance.

The mandatory offer of earthquake insurance must be made in writing, describe the coverage amounts, list the deductibles, and state the policy premium. (Cal. Ins. Code Section 10083.) The law prohibits an insurer from canceling, rejecting, or refusing to renew a residential property policy because the homeowner has accepted the offer of earthquake coverage. (Cal. Ins. Code Section 10086.5.)

Under California law, at a minimum, an offer of earthquake insurance coverage must include the following:

- (1) Dwelling coverage (essentially the cost to rebuild the structure on the property);
- (2) Contents coverage; and
- (3) Additional living expenses ("ALE").

The maximum deductible that an insurer can charge is 15% of the policy dwelling coverage. (Cal. Ins. Code Section 10089(b).) However, it is possible to purchase earthquake insurance with a lower deductible of 10% of the dwelling coverage.

Many private insurance companies provide their required earthquake insurance through the California Earthquake Authority ("CEA"), a publicly managed, privately funded organization created by the California legislature in 1996. Additional information about the CEA is available through its web site at www.earthquakeauthority.com. The CEA also can be contacted by telephone at 877-797-4300.

Earthquake insurance through the CEA is available with limits up to \$100,000 in contents coverage and \$15,000 for ALE. In addition, a policyholder can purchase the lower deductible of 10%. Condominium owners and renters are not eligible for the lower deductible but can purchase the higher limits for contents and ALE coverages.

The CEA is not the only way to obtain earthquake insurance in California. There are a few private insurance companies that offer earthquake insurance such as GeoVera, Pacific Select, and Axis U.S. among others. Please see your private insurance broker for further information about the available coverages and costs.

Whether or not to buy earthquake insurance is an important decision for every homeowner to make. It is recommended that every homeowner review the CEA web site and speak with CEA representatives and a knowledgeable local insurance broker before making that decision.

Involuntary Unemployment Insurance - *Involuntary unemployment insurance can provide peace of mind.*

Some insurance companies may offer policies of insurance under which a specified number of mortgage payments will be made to an institutional lender in the event the borrower becomes involuntarily unemployed. Loss of employment can be unexpected and devastating financially. Involuntary unemployment insurance, where available, can provide some peace of mind and an important financial safety net. For these reasons, it is suggested that buyers consider whether or not they wish to obtain this form of insurance.

SPECIAL CIRCUMSTANCE TRANSACTIONS

Probate Sales - *The sale of estate real property typically is subject to probate court confirmation.*

The representative of the estate of a decedent (i.e., the executor or administrator) may sell the real property of an estate where it is found to be in the best interests of the estate to do so. Under such circumstances, the sale of the property typically is subject to probate court confirmation. The following rules govern the sale of property subject to such confirmation:

The offer to purchase must be for a price that is not less than 90 percent of the appraised value of the real property. When such an offer is received, the representative may accept it, subject to probate court confirmation. When the court has set the matter for hearing, any interested person may bid on the property at the time of the hearing. To open the bidding, there must be an increase over the amount of the original offer of at least 10 percent of the first \$10,000 and five percent of the balance. Once the bidding has been opened, the court in its discretion may permit the bidding to continue on lesser increases until it declares a bid to be the highest and best obtainable. The sale then will be confirmed by the court to the maker of that bid.

The Independent Administration of Estates Act ("IAEA") provides a simplified method of probating estates with limited court supervision. Under IAEA administration of an estate, the estate representative may enter into an exclusive authorization and right to sell listing contract with a broker for a period not to exceed 90 days, without prior court approval, to market and sell the real property without court confirmation. The ability of the representative of an estate to market and sell real property without court supervision under IAEA rules, however, is conditioned upon there being no objections by interested persons (generally heirs) who are given the right to object under the Act.

Regardless of the method used to probate the estate of a decedent, real property always is sold "as is" and, generally, no Real Estate Transfer Disclosure Statement is required.

Court Confirmation - *Buyers are strongly advised to be in court whenever their offer to purchase is presented to the court for confirmation.*

Whenever the sale of real property is subject to open, competitive bidding, as in the case of a probate, conservatorship, guardianship, receivership or bankruptcy sale, it is strongly recommended that the buyer be in court at the time his or her offer to purchase is presented for confirmation. Buyers should understand that, in sales requiring court confirmation, the property may continue to be marketed by the broker and others, and that the broker and others may represent other competitive bidders prior to and at the court confirmation. Individuals who have questions or are seeking advice regarding probate sales are urged to contact a qualified real estate attorney knowledgeable regarding probate sales. Real estate brokers are not qualified to give opinions in this regard.

Short Payoff - *Tax consequences can be exceedingly important in short payoff situations.*

In some instances, particularly where real property values have declined, a property's value at the time of sale can be less than the current balance of the underlying mortgage. "Short payoff," also known as a "short sale," is a term used to describe a real property sale and purchase transaction in which the lender agrees to accept a payoff which is less than the amount of the borrower's debt. Such payoffs typically are arranged in cases where a borrower has defaulted on the loan secured by the property.

Tax consequences can be exceedingly important in short payoff situations. It is recommended that sellers seek the advice of an appropriate professional, i.e., a certified public accountant or qualified real estate attorney, before attempting to arrange a short payoff. Also, in any short payoff situation the seller should negotiate with the lender regarding how the payoff will be reported to credit reporting agencies. Prior to agreeing to a short payoff, the lender may require the seller to furnish a variety of documents, including a copy of the real estate sale and purchase contract covering the sale of the property and proof of the buyer's ability to purchase the property.

Finally, if the property being purchased contains 1-4 residential units and is the seller's principal residence and the buyer is an investor who will not use the property as her or his principal residence, special California laws designed to protect the sellers may apply. These laws create very serious risks for buyers and may result in criminal penalties. It is thus strongly recommended that an investor buyer contemplating such a transaction engage a qualified attorney. Real estate brokers are not qualified to provide advice in this regard.

Foreclosure, REO, Tax and Bankruptcy Sales - *"Distress" real property sales can result in lower prices but can also come with dangers.*

Lower purchase prices generally can be obtained when buying a property owned by a bank after a foreclosure. Such a property is commonly known as a "Real Estate Owned" or "REO" property. And similar opportunities may exist with respect to properties sold in connection with foreclosure proceedings, by tax authorities or a bankruptcy trustee. But such purchases are almost always "as is" with no disclosures whatsoever and there may be no right to sue the seller if there are any defects. Such transactions can also be complicated and include specialized documentation and payment requirements. Accordingly, it is strongly recommended that buyers considering making an offer to buy such a property engage both a qualified attorney to assist them in the transaction and a contractor to perform whatever inspections of the physical condition of the property that may be allowed. Real estate brokers are not qualified to provide any such legal advice or professional property inspection services.

ESCROWED FUNDS, FEES AND COSTS, TITLE INSURANCE

“Good Funds” - *The nature of funds deposited in escrow will determine when they may be disbursed.*

Special rules govern when escrowed funds can be disbursed by title insurance or controlled escrow companies. Under these rules, funds may be disbursed:

- On the same day as deposited if the funds are deposited in cash or by electronic transfer (“wired funds”);
- On the next business day if the funds are deposited by certified check; or
- On the day the funds must be made available to depositors for withdrawal (up to seven days) if the funds are deposited by any other type of instrument, including a personal or business check.

If it is important for an escrow to close on a certain date, the transfer of funds must be made well enough in advance of close of escrow to ensure the availability of the funds under the above-described rules.

Escrow Fees and Costs - *Funds deposited in escrow will not necessarily be released automatically when an escrow is canceled.*

In real property sale and purchase transactions, time almost always is of the essence. This means that the successful completion of every transaction depends on the timely performance of various acts described in the purchase contract. Such acts include obtaining inspections and arranging financing on the buyer’s part, and making appropriate disclosures on the seller’s part. If these acts are not performed on time, the purchase contract is subject to being terminated or canceled by giving appropriate notice, or it may be deemed terminated or canceled automatically by its terms, along with the escrow, depending upon how it was drafted, and the facts and circumstances surrounding the transaction. In the event a party is in breach, the other party may be entitled to remedies, which can include liquidated damages. (Please see **Liquidated Damages** on page 18.)

In the event a purchase contract and/or escrow is terminated or canceled, or a contract is not performed due to a breach, funds deposited in escrow or other trust fund accounts may not be released automatically, even when the liquidated damages clause in the purchase contract has been initialed by both the buyer and the seller. Fees and costs may be owing to title, escrow, inspection and other companies which provided services during the escrow period. These fees and costs may be subject to being paid from the above-described funds. Usually, funds deposited in escrow will not be released without the written consent of the buyer and the seller, or a court order. For that reason, if either party does not give this consent, there could be a delay in the funds being disbursed or a need for mediation, arbitration or court proceedings.

Title Insurance - *The choice of a policy of title insurance can have significant legal consequences.*

Generally, a title insurance policy is a contract indemnifying the owner of real property, as well as the lender, against loss arising out of the following matters in existence as of the date the policy becomes effective (if they are not excluded or covered by exceptions in the policy): recorded liens or encumbrances; defects in title; and lack of access to and from the land.

There are several types of title policies which vary in cost, extent of coverage and terms. Policies written by the California Land Title Association (CLTA) and the American Land Title Association (ALTA) are the policies which have established preeminence in California. The three title policies generally used by owners of residential real property are the CLTA standard coverage policy, the ALTA residential policy and the ALTA owner’s policy. CLTA policies generally are considered to offer the least coverage.

Typically, before issuing title insurance, the title insurance company will issue a "Preliminary Title Report" or "Preliminary Report." Buyers should carefully review this report, especially its exceptions and exclusions to coverage. But they should also understand that this report does not represent a guarantee by the title insurance company as to all important liens and other recorded documents affecting title to the real property being purchased. Instead, the report is only the basis upon which the title insurance company will consider issuing title insurance. Buyers nonetheless should consider requesting the title insurance company to provide copies of all recorded documents referenced in the report's exceptions so that they can review and approve or disapprove them before any title contingencies in the purchase contract expire.

Any questions regarding the type of policy to be issued, its coverage, the exclusions to coverage, the advisability of endorsements (which provide broader coverage than the policy itself) or the exceptions listed in the Preliminary Title Report should be discussed with the title company and a qualified real estate attorney. Decisions concerning these matters can have significant legal consequences.

TAXES

Transfer Taxes - *All counties and many cities impose a tax on the sale of real property. The matter of who pays the tax usually is dictated by custom.*

All counties in California impose a tax of at least .00110 percent on the purchase price of real property whenever the property changes hands. In addition, cities may increase the tax rate to generate additional local revenue. Some cities, such as San Francisco, have adopted tiered rates. San Francisco's rates, for the categories of property described, are as follows:

- Properties selling for between \$100.01 and \$250,000 - \$5 for each \$1,000 of property value or portion thereof;
- Properties selling for between \$250,000.01 and \$999,999.99 - \$6.80 for each \$1,000 of property value or portion thereof;
- Properties selling for between \$1 million and \$4,999,999.99 - \$7.50 for each \$1,000 of property value or portion thereof; and
- Properties selling for \$5 million or more - \$15.00 for each \$1,000 of property value or portion thereof.

Note: Transfers of leaseholds with a term of 35 years or more are subject to a transfer tax.

Since most transfer tax ordinances do not specify whether the tax is to be paid by the buyer or the seller, the custom which prevails in the jurisdiction in which the real property is located usually dictates whom will pay the tax. In San Francisco, it is the custom for the seller to pay the tax.

California Real Property Tax Reassessment - *Real property is reassessed upon change of ownership and, in certain circumstances, the construction of improvements. The new assessed value is equivalent to the purchase price and is subject to being increased by as much as two percent each year.*

Annually, each county in the State collects an ad valorem tax on real property. The tax is payable in two installments, one due on November 1 and delinquent after December 10, and the second due on the following February 1 and delinquent after April 10.

Under Proposition 13, passed by California voters in 1976, the ad valorem tax rate is set at one percent of the full cash (or assessed) value of real property. This limitation, however, does not apply to special assessments levied for the purpose of paying the interest and redemption charges on bonded indebtedness

approved by county voters. The assessed value of real property is subject to being increased by as much as two percent each year, or by a larger amount upon change of ownership.

Buyers should be aware that the assessed value of real property is adjusted upon change of ownership to an amount equal to the purchase price of the property. Also, under certain circumstances, the construction of new improvements to an existing property can trigger an adjustment to the assessed value of the property.

The real property tax due for any property can be calculated by multiplying the assessed value of the property by the real property tax rate for the county in which the property is located. In San Francisco, the tax rate for fiscal year 2008-09 is 1.163 percent.

After change of ownership, a supplemental tax bill may be issued to collect taxes owing for the current tax year based on the difference between the previous and the new assessed values of the real property. The seller is responsible for the payment of taxes due prior to close of escrow and the buyer is responsible for the payment of taxes due after close of escrow, including any supplemental tax bill(s).

Since the assessed value of real property cannot exceed the fair market value, State law provides a way to challenge the assessed value when the market value declines. For questions regarding ad valorem taxes, buyers and sellers should contact the county assessor's office at 415-554-5596, and a qualified real estate or tax attorney and/or certified public accountant. Real estate brokers are not qualified to give opinions in this regard.

Mello-Roos Act - *Sellers, in certain circumstances, must make a good faith effort to obtain a Mello-Roos tax levy disclosure notice from each agency levying a Mello-Roos tax and provide a copy to the buyer.*

Real property can be subject to continuing tax levies under the Mello-Roos Act. Such levies are used to finance certain designated public services and capital facilities. Among the services and facilities typically financed through "Mello-Roos districts" are police and fire protection services, ambulance and paramedic services, parks, elementary and secondary schools, libraries, museums and cultural facilities.

In connection with the sale of residential real property improved with one to four dwelling units subject to Mello-Roos tax levies, the seller is required to make a good faith effort to obtain a tax levy disclosure notice (a "Notice of Special Tax") from each agency levying a Mello-Roos tax. If such a notice is available, the seller must provide a copy of it to the prospective buyer. The notice must specify, among other things, the maximum tax which can be levied by the agency.

Most real property in San Francisco is subject to Mello-Roos tax levies.

* * *

Effective January 1, 2002, the seller of any real property subject to a continuing assessment to secure bonds issued pursuant to the Improvement Bond Act of 1915 (legislation which allows local governments to issue bonds to fund various projects) must make a good faith effort to obtain and deliver to the prospective buyer a notice of such assessment. The notice of assessment must be combined with any notices relating to Mello-Roos tax levies, to the extent feasible.

FIRPTA - *Buyers must withhold and transmit to the Internal Revenue Service 10 percent of the purchase price of real property if the seller is a nonresident alien individual or a foreign corporation.*

The Foreign Investment in Real Property Tax Act (FIRPTA) requires the buyer to withhold 10 percent of the gross purchase price of real property, and report and transmit the amount withheld to the Internal Revenue Service ("IRS") if the seller is a "foreign person" (i.e., a nonresident alien individual or a foreign corporation). No withholding is required if any of the following applies:

- The seller furnishes the buyer with an affidavit of nonforeign status;
- The real property is acquired for use by the buyer as the buyer's residence and sells for no more than \$300,000; or
- The transaction is a "non-recognition transaction" for the seller and the seller furnishes the buyer with a notice to that effect.

Failure of the buyer to withhold 10 percent of the purchase price of real property when required can expose the buyer to personal liability to the IRS for the tax. A buyer can avoid personal liability for the tax by having the seller complete and sign an affidavit of nonforeign status so long as the seller is an individual and the buyer has no knowledge that the affidavit is false. Pursuant to Internal Revenue Code Section 1445 (b) (2), the affidavit, under penalty of perjury, must provide the seller's United States taxpayer identification number and declare that the seller is not a foreign person.

Buyers and sellers are urged to review and discuss the requirements of FIRPTA with a qualified real estate or tax attorney and/or certified public accountant to determine their applicability to any specific real property sale and purchase transaction. Real estate brokers are not qualified to give opinions in this regard.

California Withholding - *Buyers must withhold and transmit to the State Franchise Tax Board 3 1/3 percent of the gross purchase price of investment real property as a prepayment toward State income taxes due from the seller, unless an exemption applies.*

Generally, under the California Foreign Investment in Real Property Tax Act (CAL FIRPTA), a buyer must withhold and transmit to the State Franchise Tax Board funds equal to 3 1/3 percent of the gross purchase price of investment real property as a prepayment toward the State income taxes due from the seller as a result of the transaction, unless an exemption applies. There are several exemptions, including, but not limited to, transactions where the purchase price of the property does not exceed \$100,000, the property is sold at a loss for California income tax purposes, the property is a part of an Internal Revenue Section 1031 exchange or the property is the seller's principal residence.

Additionally, a non-exempt seller may, as an alternative, elect to withhold from the sales proceeds an amount certified under penalty of perjury to be equal to the maximum California personal or corporate tax rate, which is currently 9.3 percent for individuals, multiplied by the anticipated recognized gain on the transferred property. There are penalties for underestimating this amount.

Buyers and sellers are urged to review and discuss all tax matters, including, but not limited to State withholding requirements, with a qualified real estate or tax attorney and/or certified public accountant to determine their applicability to any specific real property sale and purchase transaction. Real estate brokers are not qualified to give opinions in this regard.

Renting Apartment Units - *Owners offering apartment units for rent in structures with four or more units must obtain a business registration certificate and pay applicable taxes.*

If the real property being purchased includes apartment units, the buyer should be aware that the City and County of San Francisco considers letting such units in structures with four or more units to be a business. Any individual, partnership or corporation commencing business operations in San Francisco must file an application for a business registration certificate with the Office of the Treasurer and Tax Collector within 15 days of commencing such operations. A registration fee must accompany the completed and signed application.

For owners registering new businesses for the first time, the registration fee is based on the tax due on the business' estimated payroll expense. For 2009, the tax rate on payroll expense is 1.5 percent.

The certificate is issued for the calendar year, January 1 through December 31. It is renewed annually in October for the following tax year. There is a penalty equal to the amount of the fee for failure to renew by the due date of October 31. In addition to renewing the certificate each year, business owners must file an annual statement, including payroll expense, with the Office of the Treasurer and Tax Collector no later than the last day of February, even if the business has no payroll expense for the year. Businesses with a calculated tax amount of \$2500 or less that file in a timely fashion may claim the small business exemption and pay no tax. Failure to file a statement will subject the business owner to forfeiture of the small business exemption, plus penalties and interest. Businesses with calculated tax obligations under \$500 may send an official postcard in lieu of the statement if the postcard is filed in a timely fashion.

For further information, contact the taxpayer assistance hotline at 415-554-4400, send e-mail to treasurer.taxcollector@sfgov.org, or visit the Office of the Treasurer and Tax Collector in Room 140 at City Hall. (Please see **Apartment License Fee** and **Rent Ordinance Fee** below.)

Apartment License Fee - *Owners of apartment buildings with three or more units must pay an applicable apartment license fee.*

Owners of structures with three or more rental units must pay an annual apartment license fee to the City and County of San Francisco. The fee is added to the owners' annual property tax bill as a special assessment by the Department of Building Inspection ("DBI").

The amount of the fee is determined by the number of units in the structure and the year built, as follows:

<u>Units</u>	<u>Total Fee for Pre-1979 Buildings</u>
3	\$122.85
4-6	\$156.00
7-10	\$206.95
11-15	\$272.35
16-20	\$378.15
21-30	\$444.50
31+	\$444.50, plus \$55 for each additional 10 units.
<u>Units</u>	<u>Total Fee for Post-1979 Buildings</u>
3	\$111.85
4-6	\$142.00
7-10	\$187.95
11-15	\$248.35
16-20	\$344.15
21-30	\$404.50
31+	\$404.50, plus \$50 for each additional 10 units.

To inquire about the apartment license fee, please contact the housing inspection division of the DBI at 415-558-6220 or visit the DBI web site at www.sfgov.org/dbi.

Rent Ordinance Fee - *The fee is billed to landlords each year as a special assessment on their property tax bill.*

Chapter 37A of the San Francisco Administrative Code allows the city to collect a per-unit fee for each residential dwelling unit that is subject to the Residential Rent Stabilization and Arbitration Ordinance to defray the costs of operation of the Rent Board (the body charged with administering the ordinance). The fee is billed to landlords each year as a special assessment on their property tax statement, but because the Rent Board provides services to both tenants and landlords, the law permits landlords to collect half of the

fee from tenants in occupancy as of November 1 of each year. The fee for the 2008-09 tax year is \$29.00 per apartment/home/condominium unit and \$14.50 per residential hotel unit. The amounts that may be passed through to tenants for that year are \$14.50 per apartment/home/condominium unit and \$7.25 per residential hotel unit. Owner-occupied units are exempt from the fee unless there are tenants residing in the owner's unit. To avoid receiving a bill for the fee for an owner-occupied unit, a homeowner's exemption must be on file with the county assessor's office. Please call that office at 415-554-5542 or 415-554-5599 for details.

The manner in which the Rent Ordinance fee may be passed through to tenants and collected is described by the Rent Board as follows:

- "Section 37A.6 of the Administrative Code allows the landlord to recover 50% of the Rent Board fee from the tenant by deducting it from the security deposit interest payment due to the tenant each year. If there is no security deposit held by the landlord, then the landlord may bill the tenant directly. Landlords who pay the security deposit interest annually may bill for the Rent Board fee separately rather than deducting it from the interest payment owed.
- "Landlords may 'bank' the Rent Board fee since November 1999 and collect it in a later year. This means that a landlord does not have to collect the fee in the year that it was due, but is entitled to collect the Rent Board fee in later years if they so desire. Banking only applies to fees assessed from November 1999 on. A list of prior Rent Board fees since 1999 is available at the Rent Board's office and on our web site at www.sfgov.org/rentboard.
- "The billing statement must specifically state the fee amount owed by the tenant for each year and the amount, if any, of security deposit interest due the tenant for each year owing. The bill should also state that the purpose of the fee is to fund the Rent Board, and that the fee is due and payable within 30 days of the date of the bill.
- "Please note that a tenant's failure to pay the Rent Board fee is not a just cause for eviction. The landlord will have to go to Small Claims Court in order to collect the fee."

The Rent Ordinance fee is subject to change by the Board of Supervisors. For further information, contact the San Francisco Residential Rent Stabilization and Arbitration Board at 415-252-4600 or visit the board's web site at www.sfgov.org/rentboard. Additionally, buyers and sellers are urged to review and discuss any questions they may have with a qualified real estate attorney or certified public accountant knowledgeable regarding San Francisco business, real estate and tax issues. Real estate brokers are not qualified to give opinions in this regard.

DISPUTE RESOLUTION AND DAMAGES

Mediation and Arbitration - *Many real property sale and purchase contracts contain optional or mandatory mediation and/or arbitration provisions.*

Despite efforts that may be made to avoid them, disputes can sometimes arise in connection with real property sale and purchase transactions. If a dispute involves a significant issue and the parties are unwilling to come to an agreement concerning how it should be resolved, the filing of a lawsuit may seem to be the only remedy available.

In order to provide buyers and sellers of real property with a less formalized and often less costly form of dispute resolution, many real property sale and purchase contracts contain optional or mandatory mediation and/or arbitration provisions. Mandatory mediation clauses often provide that if a party fails or refuses to mediate, that party loses the right to later obtain its attorney's fees in an arbitration or court proceeding. Only a qualified attorney is competent to give legal advice regarding the advantages and disadvantages of mediation and arbitration.

Mediation is a non-binding process by which the parties to a dispute come together with a professionally trained and experienced mediator who assists them in attempting to resolve their dispute by negotiating a mutually acceptable settlement. The result of a successful mediation is a written settlement agreement which, when properly prepared and signed by all the parties to the dispute, should be legally enforceable. The settlement agreement is a document that should be reviewed by a qualified real estate attorney since its scope can affect important legal rights. If mediation is unsuccessful, the parties are left to pursue other forms of dispute resolution, such as arbitration or litigation.

The cost of mediation can vary depending on the mediator selected and the amount of time allocated for the mediation. Mediation fees can be as little as a few hundred dollars, divided equally between the parties, or they can involve an initial filing fee of several hundred dollars plus a substantial hourly fee for the mediator.

Arbitration is a binding process by which the parties to a dispute (either by themselves or through their attorneys) submit the dispute to a neutral arbitrator for resolution. A binding agreement to submit disputes to arbitration is effected when both the buyer and the seller initial the "Arbitration of Disputes" provision contained in most residential real property sale and purchase contracts. By agreeing to arbitrate disputes, the parties give up their right to have the dispute litigated in a court of law before a jury. Once the decision of an arbitrator is rendered, it generally is not appealable and is immediately subject to full legal enforcement.

The disputes subject to arbitration include only those arising out of matters described in the "Arbitration of Disputes" provision of the residential purchase contract. Further, under most purchase contracts, the brokers are not obligated to arbitrate any of these described matters. Buyers and sellers should read this provision carefully to determine which types of actions are included. Buyers and sellers are urged to consult with a qualified real estate attorney before initialing the "Arbitration of Disputes" provision of any purchase contract. The legal profession is divided concerning the relative merits of a jury trial as opposed to alternative forms of dispute resolution, such as arbitration. Buyers and sellers are urged to give careful consideration to the consequences of giving up their rights to a jury trial before electing to arbitrate instead.

Liquidated Damages - *Most residential real property sale and purchase contracts contain liquidated damages clauses which, if initialed, set the maximum amount of damages a seller may recover if the residential real property sale and purchase contract is breached.*

Whenever a buyer fails to perform a material obligation agreed to in a real property sale and purchase contract, the buyer is deemed to have breached the contract. Most residential purchase contracts contain a provision which allows the buyer and the seller to agree in advance on the maximum amount of damages (so-called "liquidated damages") a seller may recover through litigation if the contract is breached by the buyer. This limit is usually three percent (3%) of the purchase price.

For the liquidated damages provision of a purchase contract to become effective, it must be initialed by both the buyer and the seller. For any increased deposits to be subject to the provision, a separate, statutory liquidated damages form also must be signed.

Initialing or signing a liquidated damages provision or form is not a guarantee that the seller will recover liquidated damages. If the buyer disputes the provision, the seller still must prove in a court of law or in arbitration, among other things, that the contract was breached by the buyer. And even if the seller proves a breach, the buyer still can seek a return of the funds, or some portion of them, by challenging the "reasonableness" of the amount. Thus, for example, if within six months after the buyer defaults the seller can sell the property to another party for the same amount, the buyer may be entitled to a return of the deposit less any offsets for the seller's carrying costs (e.g., interest on loans secured by the property, etc.).

Generally, the liquidated damages provision in most residential purchase contracts, when initialed by both the buyer and the seller, has no effect on the damages the buyer may recover from the seller if the seller breaches the contract. Buyers and sellers are urged to discuss any questions they may have regarding

liquidated damages provisions with a qualified real estate attorney. Real estate brokers are not qualified to give opinions in this regard.

SIZE AND LOCATION OF REAL PROPERTY

Square Footage and Lot Size - *Buyers who require accurate square footage and lot size information should have the improvements measured by a qualified appraiser or other professional before removing any inspection contingencies.*

Representations sometimes are made by the seller or in marketing materials, the multiple listing service or in property tax records concerning the square footage of the improvements on and/or the lot size of the real property being purchased. Such representations should be considered approximations only. It also should be understood that generally any representations regarding square footage or lot size made by the broker are often based on information obtained from the seller, such as old appraisal reports, or from public property tax records and that the accuracy of the information provided is unverified and not reliable. Brokers do not independently verify the square footage and/or lot size of properties they list and/or sell. If a buyer requires accurate square footage information, he or she should have the improvements measured by a qualified appraiser or other professional before removing any inspection contingencies. Similarly, if a buyer requires accurate lot size information, the buyer should have the property surveyed by a professional surveyor before removing any inspection contingencies.

Boundary Lines and Encroachments - *Without a survey, a typical title insurance policy will not cover discrepancies and conflicts in boundary lines.*

Existing fences, walls, trees and other naturally occurring or man-made barriers or markers may or may not define the legal boundary lines of real property. Fences and the like may appear to be on a property but actually be located on an adjacent property (and hence “encroach”) or vice versa. Additionally, public right of way easements with accompanying rights to use a property may be recorded but not identified in a title report, marked by a sign posted on the property or actually known to the seller or brokers.

Buyers should understand that, without a survey, a typical title insurance policy will not cover such matters as “discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose and which are not shown by the public records.” Further, they should understand that real estate brokers do not independently verify the boundary lines of properties they list and/or sell or search the public records in that regard. Accordingly, if boundary lines are material in any way to the value or desirability of a given property or the buyer’s decision to purchase or the purchase price, the buyer should have the property surveyed by a professional surveyor before removing any inspection contingencies to determine the correct boundary lines of the property and the existence and extent of any encroachments.

AUTHORIZED USE OF PROPERTY AND CODE COMPLIANCE

Zoning and Other Restrictions - *It is the buyer’s responsibility to contact the local planning agency to confirm the authorized use of the property.*

Certain municipalities, including the City and County of San Francisco, require sellers of real property to provide buyers with copies of various public reports, prior to close of escrow, for the purpose of making buyers aware of the restrictions which apply to the use of the real property being purchased.

In some instances, such as with government “affordable housing” programs, no such public reports are required. Instead, the buyer must look at other documents for restrictions relating to the use of the property, including any additional encumbrances of record on the property (in the case of properties participating in certain affordable housing programs) or the original subdivision map (in the case of certain condominium projects), and/or the preliminary title report from the title company. But the preliminary title report may

not always identify the subject restrictions and if the seller is deceased, for example, his or her executor may not know of the restrictions and disclose them.

Properties also can be subject to various government-imposed special use restrictions, variances and occupancy limitations, and/or other zoning laws. These restrictions and limitations may be subject to change and buyers should not assume that they will remain the same after they purchase a specific property.

Buyers should not assume that the apparent use of a property is the use authorized by law, or that the information contained in a public report is necessarily accurate. It is their responsibility to contact the zoning administrator of the Department of City Planning at 415-558-6350 or other responsible governmental office to confirm the authorized use of the property and whether the property is subject to any special use permits, etc., and, if so, the duration of those permits.

Further, it is the buyer's responsibility to carefully review preliminary title reports and any recorded documents that may contain any governmental restrictions on use or resale of the property, including but not limited to restrictions limiting the amount of the purchase price or allowable income for a future buyer.

If the intended use of the property being purchased is different than the current use (such as using residential property for mixed or commercial use), it is the buyer's responsibility to conduct appropriate investigations to determine whether the intended use will be permitted. Buyers should complete any such investigation before removing any inspection contingencies in the purchase contract for the property being purchased.

Buyers should engage a qualified real estate attorney for assistance in this regard. Brokers, under the law, generally are not obligated to inspect public records.

Reports of Residential Building Record - *"3R" reports, among other things, state information regarding certain permits which have been issued for the property. But the information may not be accurate and it is the buyer's responsibility to verify the information and its completeness.*

Prior to the transfer of residential real property, many municipalities, including the City and County of San Francisco, require the seller or the seller's broker to obtain and deliver to the buyer a report of residential building record ("3R" report) prepared by the code enforcement agency for the jurisdiction in which the property is located. The report sets forth the existing authorized occupancy or use of the property, as well as other information, including permits issued for construction on the property. It does not warrant that any repairs or alterations made to the property comply with applicable code requirements. And, it excludes any plumbing or electrical permits which have been issued.

Buyers of residential real property in San Francisco should be aware that the information contained in "3R" reports may not be accurate for various reasons and must be verified before it can be relied upon. The errors vary and may include, without limitation, incorrect references to the number of dwelling units allowed, whether permits were ever obtained and, if so, whether the work was duly completed and approved after necessary inspections. Perhaps worse yet, on occasion, the reports erroneously state that information is "unknown."

Real estate brokers, under the law, generally are not under an obligation to confirm the accuracy of information contained in public records, including "3R" reports. For that reason, it is the buyer's responsibility to investigate the completeness and accuracy of such reports and make informed decisions based on their investigations. If advice is required in this regard, buyers should engage a qualified contractor, architect or other professional. Questions regarding the report can be directed to the San Francisco Department of Building Inspection at 415-558-6081.

Buyers should satisfy themselves as to the information contained in the "3R" report before removing any inspection contingencies in their sale and purchase contract.

Non-Permitted or Non-Conforming Rooms, Additions or Alterations - *Improvements and/or alterations made without permits may be non-conforming and, if discovered by local code enforcement agencies, may have to be removed.*

Buyers are advised that any real property may contain rooms, additions and/or alterations for which appropriate building permits and certificates of completion were not obtained. Such rooms, additions and/or alterations may be non-conforming and it may not be possible to legalize them because of zoning and/or code restrictions. Real estate brokers, under the law, generally are not under an obligation to inspect public records. For this reason, they are not generally in a position to know whether rooms, additions and/or alterations have been made to the property without permits. In many cases, even the current owner cannot provide reliable information regarding these matters, particularly where the improvements or alterations were made before the current owner purchased the property. Consequently, buyers are urged to investigate possible nonconforming improvements and/or alterations and to seek the advice of a qualified contractor, architect or other professional before removing any inspection contingencies.

Buyers should be aware that if local code enforcement agencies discover the existence of rooms, additions and/or alterations for which permits were not obtained, they may assess penalties against the current owner and require such improvements and/or alterations to be closed off, removed or made to comply with current code requirements.

Retrofitting - *It is customary for the cost of retrofitting work required by local ordinances and State statutes to be assumed by the seller.*

Certain local ordinances and State statutes require residential real property to be retrofitted with various devices and/or improvements before it can be sold. If any such ordinance or statute requires the installation of smoke detectors, impact hazard glazing, water conservation devices or other devices and/or improvements, it is customary for the cost of the retrofitting work to be assumed by the seller. If the retrofitting work must be inspected by city or county agencies or other professionals, it is the seller's responsibility to arrange for the required inspections and to obtain any required compliance reports and give appropriate notification(s) to the buyer and/or required governmental agencies. Notwithstanding the foregoing, if any laws require the installation of automatic fire extinguishing equipment at the property, it is customary for the cost of such equipment and its installation to be borne by the buyer.

Condominiums and Other Common Interest Subdivisions - *Buyers are responsible for reviewing and evaluating documents provided by a homeowners' association ("HOA") relative to the sale and purchase of real property in a subdivision or incorporated area.*

Real property located in common interest subdivisions, commonly known as condominiums, typically is subject to certain covenants, conditions and restrictions (CC&Rs). The CC&Rs, which impose limitations on the use of property, are administered by a HOA. Such associations usually collect dues from property owners residing in these areas to provide funds to maintain so-called "common areas." By law, such associations generally must provide buyers of properties within their jurisdictions with certain documents, as well as any addenda, amendments or revisions thereto, including but not limited to:

- CC&Rs;
- Bylaws;
- Articles of incorporation (if the HOA is incorporated);
- Rules and regulations and other governing documents;
- Statement of residency restriction based on age (if applicable);

- Statement of assessments and fees, including any unpaid charges which may become a lien against the property;
- Most recent financial statement distributed, as required by law, including a pro forma operating budget and a reserves study;
- Lien assessment and enforcement policy statement;
- Summary of HOA insurance coverages;
- Summary of any notices of unresolved violations of the governing documents by the seller;
- Preliminary list of defects for any construction defect lawsuit or if the case settled a list of the defects that will be corrected or replaced, a good faith estimate as to when the corrections or replacements will occur and the status of any claimed defects that are not on the correction or replacement list, and
- A copy of the latest information regarding any construction defect settlements including the status of any repairs and related matters.

Where an “SB 800” claim or process is identified in any disclosure document or otherwise discovered, buyers should carefully investigate the matter before removing any contingencies. SB 800 (California Civil Code §895 et seq.) is a California law that generally applies to newly constructed residential condominium projects unless the builder elected that its provisions not apply. This law is important because it requires certain notice, inspection, repair and mediation procedures for construction defect claims at a property. And, it requires that they be implemented before any lawsuit can be filed.

Buyers should not release any contingencies until they are fully satisfied regarding all information obtained from their investigation of a condominium unit, the “common area” and the HOA. Particular attention should be given to the financial statement provided by the HOA to determine the adequacy of reserves for repairs and replacements. It also is strongly advised that buyers both review the insurance policies of the HOA to determine whether it is adequate to cover any and all risks of loss, and request information and documents regarding any past or pending lawsuits, SB 800 proceeding or settlements pertaining to the common areas or physical condition of the property. And, finally, it is suggested that buyers review all minutes of the HOA that can be obtained from the seller, or otherwise, as they may provide information regarding the physical condition of the property or other matters of importance. Buyers may find a publication by the California Department of Real Estate entitled “Living in a California Common Interest Development” of interest. It can be found at the DRE web site (www.dre.ca.gov). Any questions concerning the aforementioned documents and information should be referred to a qualified real estate attorney.

Tenancy-in-Common - *There are risks that go along with any benefits arising from co-owning real property and relying on the co-owners to fulfill their obligations.*

Tenancy-in-common (“TIC”) is a form of real property ownership where two or more persons are owners of undivided interests in the property. Typically, TICs are formed when two or more persons purchase a multi-unit residential rental building for the purpose of individually occupying each unit as a primary residence.

Unlike condominiums, residential real property owned as a TIC generally is not subdivided. For that reason, there is no ownership of a particular unit as is the case with a condominium. Instead, with TIC ownership there usually is an unrecorded written agreement signed by all of the co-owners that assigns the exclusive use and occupancy of a particular part of the property, commonly known by a unit number or

address, to a particular owner. If there is no such agreement in place, each co-owner can occupy any area in the real property.

All forms of co-ownership involve the risks of sharing the use of a property with others and relying on them to fulfill their obligations to each other. Owners of TIC interests share major obligations such as mortgages, property taxes, and building maintenance and management. If an owner of a TIC interest fails to make a monthly payment due to unemployment, divorce or other reason and a mortgage default results, the lender could foreclose on the entire property. This could lead to all of the other owners losing their residences and possibly their equity. Judgment liens and bankruptcies of a TIC owner also can lead to the lender's declaring a default on the loan secured by the entire property. Careful attention should be given to reserve accounts and other measures designed to address such matters. The best way to minimize these risks is by a well-drafted TIC agreement.

Loans for the sale and refinancing of residential real property owned as a TIC can be more costly and difficult than for condominiums, which can affect the value and desirability of a TIC interest. This is due, among other things, to the risk to the lender that one TIC owner may default and the other TIC owners may not be able to satisfy the shared debt.

It is strongly recommended that tenants-in-common have a clear, comprehensive and updated written TIC agreement signed by each of the co-owners setting forth the rights and liabilities of the parties, including, but not limited to, the following: financial obligations of the co-owners, use of the property, management of the property, repairs, decision-making procedures, the action to be taken in the event of a co-owner's default, death, divorce, bankruptcy or incapacity, sale of a concurrent owner's interest, and dispute resolution. Buyers should be wary of older TICs that may be operating under agreements that do not address all important issues and thus should be amended, revised or replaced.

Before entering into TIC ownership, buyers are urged to consult with a qualified real estate attorney knowledgeable regarding San Francisco real property issues to review all aspects of the TIC, including, but not limited to, all existing or proposed agreements, the background and qualifications of potential and actual co-owners, the management of the TIC property, the existence of any reserve accounts, whether the individual interests of co-owners can later be sold and, if so, whether there are any rights of first refusal or other requirements, the existence and extent of any rights to inspect the condition of the property, the type of financing available, whether the real property is capable of being converted into condominiums, the potential cost of conversion and whether the property as a whole can be sold.

Buyers should be aware that because TICs represent undivided interests in real property, they may be harder to sell and finance than other properties and their value may be adversely affected. (Please see **Ordinance Regulating Formation of Tenancies-in-Common** on page 44)

The San Francisco Association of REALTORS® publishes a special disclosure form for TIC transactions. The form is entitled, "Tenancy-in-Common (TIC) Disclosure." Buyers and sellers are urged to review this disclosure before entering into any transaction involving a TIC interest.

Coastal Commission - *The commission has jurisdiction over properties within a specified distance of the coastline.*

The California Coastal Commission was created by the voters in 1972 for the purpose of preserving and providing public access to the California coastline. The jurisdiction of the commission extends to all real property located within a specified distance of the coastline. Buyers of real property located within the commission's jurisdiction should understand that modifications and/or additions to any improvements and any new construction may be subject to the commission's approval.

Conservancy Limitations - *Buyers should be aware that certain governmental agencies are allowed wide latitude in designating properties historical and/or architectural landmarks and placing limitations on how their use or appearance may be modified.*

In order to preserve properties deemed to be historically and/or architecturally significant, certain governmental agencies have been vested with authority to place limitations on the manner in which they may be used and their appearance modified. Buyers should be aware that wide latitude is allowed these governmental agencies in designating properties historical and/or architectural landmarks. Even in cases where a particular property is not so designated, it can be located in an historical district and subject to the same limitations that apply to individually designated properties.

Buyers should determine whether any property they are purchasing is subject to conservancy limitations. In addition, they should always be aware that certain properties may be designated historical and/or architectural landmarks and limitations placed on their use and the extent to which their appearance may be modified.

For further information concerning which properties are or may become subject to conservancy limitations in San Francisco, contact the planning information center at 415-558-6377.

Americans with Disabilities Act - *If part of a private residence is used for business purposes, that part may be covered by the Americans with Disabilities Act (“ADA”).*

The ADA prohibits discrimination against individuals on the basis of disability. It requires entities which operate “public accommodations” and “commercial facilities” to remove barriers in, design, construct or alter the buildings they occupy in compliance with specific accessibility guidelines issued by the U.S. Department of Justice.

Almost all commercial buildings are covered by the ADA. Residential buildings typically are not covered but may be subject to its provisions if used for certain purposes. For example, if part of a private residence is used for business purposes, that portion of the residence may be covered by the Act.

The ADA may require, among other things, buildings to be made readily accessible to the disabled. Different requirements apply to new construction, alterations to existing buildings, and the removal of barriers in existing buildings. Compliance with the ADA may require significant expenditures. Monetary and injunctive remedies may be incurred if the building is not in compliance.

Brokers do not have the technical expertise to either determine whether a building is in compliance with ADA requirements or advise buyers and sellers concerning the requirements of the ADA. For that reason, the parties to any real property sale and purchase transaction are advised to consult a qualified real estate attorney, contractor, architect, engineer or other qualified professional to determine the degree to which the ADA impacts a particular property, if at all. Real estate brokers are not qualified to give opinions in this regard.

CONDITION OF REAL PROPERTY

Transfer Disclosure Statement - *Sellers of residential real property with one to four dwelling units must provide the buyer with a Transfer Disclosure Statement (“TDS”) regarding the property.*

In most circumstances, the seller of residential real property improved with one to four dwelling units is required, as soon as practicable before transfer of title, to provide the buyer with a completed disclosure form called a Real Estate Transfer Disclosure Statement regarding the property. This requirement is applicable even in cases where the property is sold in an “as is” condition.

If the disclosures in the TDS, or any material amendment thereto, are provided to the buyer after execution of the offer to purchase, the buyer has three days after personal delivery of the TDS (five days if the TDS is delivered by mail) to terminate his or her offer to purchase. However, in circumstances where the disclosures are provided to the buyer prior to preparation of the offer to purchase, the buyer has no right to terminate the offer.

The TDS is divided into four sections - one to identify supplements, one for the seller to complete, one for the broker representing the seller to complete, and one for the broker representing the buyer to complete. Under the law, however, brokers are allowed to make their disclosures (the result of a reasonably competent and diligent visual inspection of the accessible areas of the property) in a document other than the TDS.

Neither the seller nor the broker(s) is/are liable for any error or inaccuracy in the TDS, provided the seller or the broker(s) had no personal knowledge of the error or inaccuracy, it was based on information provided by a public agency or in a report prepared by certain specified professionals, and the seller or the broker(s) used ordinary care in providing the information.

When more than one broker is involved in the real property sale and purchase transaction, the one who has obtained the offer to purchase is responsible for delivery of the TDS to the buyer.

Certain real property transfers are exempt from the requirement that the seller provide the buyer with a TDS regarding the property, including transfers made pursuant to a court order or from one co-owner to one or more other co-owners, or to a spouse, child, grandchild or further descendent.

Inspection of Physical Conditions - *Buyers are strongly advised to obtain inspections by contractors, engineers, architects and/or other such qualified professionals of any real property being purchased.*

Every buyer should be aware that under Section 2079.5 of the California Civil Code, he or she is charged with the “duty to exercise reasonable care to protect himself or herself, including (with respect to) those facts which are known to or within the diligent attention and observation of the buyer....”

Buyers should be aware that the present condition and useful life of the various components of the improvements on real property will vary and can only be determined through inspections by appropriate contractors, engineers, architects and/or other such qualified professionals. Even new construction can contain construction defects and, for that reason, should be inspected by such experts to determine the quality of construction and the materials used.

As a general rule, the physical condition of land and improvements offered for sale is not guaranteed by the seller except as specifically set forth in writing in the real property sale and purchase contract. No guarantees regarding the physical condition of the land and improvements are made by the broker.

The seller and the broker are required by law, however, to disclose to the buyer all material facts actually known to them which may affect the value or desirability of the land and improvements. In addition, a broker involved in the sale of residential real property improved with one to four dwelling units must conduct “a reasonably competent and diligent visual inspection of the property offered for sale and...disclose to the prospective buyer all facts materially affecting the value or desirability of the property that such an investigation would reveal.” A broker’s duty to inspect does not extend to areas that are “reasonably and normally inaccessible,” areas outside the site of the property, or public records or permits affecting the title or use of the property. Nor, as a general rule, is a broker responsible for offering conclusions concerning the ramifications of disclosed facts or an assessment of their affect on the value of the property. For that reason, whenever a buyer is put on notice by disclosure of a material fact, the buyer should investigate the matter further and, if necessary, engage an appropriate qualified professional, such as an attorney or contractor, to do so.

Regardless of what facts are disclosed, buyers are strongly advised to obtain inspections for any real property being purchased from duly licensed contractors, engineers, architects and/or other such qualified

professionals before removing any property inspection contingencies in the real property sale and purchase contract. The inspections should include, but not be limited to, structural elements, plumbing, heating, air conditioning, electrical and mechanical systems, built-in appliances, and the presence of hazardous or toxic substances (including asbestos and lead-based paint). Brokers are not qualified to conduct such inspections. A buyer may elect to purchase a property without the benefit of such inspections but it is strongly recommended that he or she not do so.

The following are some of the items to which buyers should give particular attention:

- **Roof** - Buyers are advised to have inspections to determine the condition and useful life of the roof, including all penetrations of the roof's surface, such as chimneys and skylights, as well as gutters, drains, etc. Although there may be no indication in the Real Estate Transfer Disclosure Statement ("TDS") that the roof leaks, that is no guarantee that with the next rain storm leaks will not develop. Roofs do not last indefinitely. They are exposed to the punishing effects of heat, cold and water and even the most soundly constructed roof will leak eventually.
- **Heating System** - Buyers are advised to have inspections to determine the condition of the heating system, particularly its internal parts, as well as the heating ducts which distribute heat throughout the improvements.
- **Water Intrusion** - Buyers are advised to have inspections to determine the susceptibility of the improvements to water intrusion. Such intrusion can cause damage to the improvements and/or personal property. Specific areas of concern are the foundation, garage, basement, crawl spaces, dead spaces, as well as all living areas. Buyers should carefully check the seller's Real Estate Transfer Disclosure Statement for notations relating to the presence of water and particularly whether the property can be subject to seeping, flooding or running water during seasonal rains.
- **Sidewalk Repair** - Buyers are advised that the maintenance of public sidewalks adjacent to any real property is the responsibility of the property owner. For that reason, sidewalks should be inspected regularly for cracking, settling or other hazardous conditions. (Please see **Sidewalk Repair Responsibility** on page 52.)
- **Foundation and Soils** - Buyers are advised to have inspections of the foundation and to obtain a soils and drainage report, particularly for older structures and any other property where sloping or cracked floors, ceilings, walls, slabs or driveways are observable.

Structural Pest Control Inspections - *Structural pest control inspections are part of most real property sale and purchase transactions.*

Structural pest control inspections are ordered for most improved real property being sold. The inspection must be performed by a company registered with the State Structural Pest Control Board. The purpose of the inspection is to discover the presence or absence of wood-destroying pests or organisms. The conditions found as the result of an inspection are described in a report prepared by the pest control inspection company, and must be in writing and given to the person requesting the inspection. If requested, structural pest control inspectors must delineate between evident infestation and potential infestation, in a two-tiered report. The report also must be filed with the Structural Pest Control Board before any registered company may commence work to correct conditions found as the result of an inspection.

The work recommended in a structural pest control inspection report may be done by the company preparing the report or the parties may use another contractor, or do the work themselves. After pest control work has been completed by a registered pest control company, a notice of work completed must be filed with the Structural Pest Control Board. If the parties elect to do the work themselves, they should make sure all applicable permits are obtained and that a structural pest control certification is issued upon completion of the work.

A structural pest control certification is a written statement by a registered pest control company attesting to the presence or absence of wood-destroying pests or organisms, describing work recommended in a structural pest control inspection report and indicating which recommendations, if any, have been completed at the time of certification. A copy of the inspection report and the notice of work completed, if any, must be attached to the certification.

Most real property purchase contracts require a termite inspection and contain provisions which provide several options to the buyer and seller concerning how the cost of any pest control repairs will be handled. This cost can be substantial and it is important that both the buyer and the seller have an understanding of the manner in which the option which is chosen will operate. Buyers should not remove the pest inspection contingencies in the purchase contract until they are fully satisfied in that regard.

Any person may request from the Structural Pest Control Board a certified copy of any inspection report and completion notice filed on a particular property during the preceding two years by any pest control inspection company. The address of the board is 2005 Evergreen Street, Suite 1500 Sacramento, CA 95815 or contact it at 1-800-737-8188 or PestBoard@DCA.CA.GOV.

Proximity to Industrial Uses - *Under local laws, a seller or lessor ("transferor") of real property is required to deliver a specific written disclosure to the buyer or lessee ("transferee") of all real property having a residential use that is inside or within 150 feet of an "Industrial Use Zoning District."*

San Francisco's total land area is only 49 square miles. Buildable land in the city is almost nonexistent, except in areas zoned for industrial activity. In recent years, developers have constructed residential structures, usually lofts, in these industrial areas. While these structures can provide their occupants with an attractive and desirable living environment, the proximity to industrial activity, with the attendant noise and smells at different hours of the day and night, can cause dissatisfaction. Many occupants of such structures fail to understand that the area in which they have settled is zoned for industrial activity and the industrial activity in almost every case was there before they moved into the area.

To make prospective transferees aware of the proximity of such structures to industrial activity and lessen the friction that often developments between homeowners and renters and their industrial operator neighbors, the Board of Supervisors in 2006 passed the Residential and Industrial Compatibility Protection Act.

The Act requires a seller or lessor ("transferor") of real property to deliver a prescribed written disclosure to the buyer or lessee ("transferee") of real property having a residential use that is inside or within 150 feet of an "Industrial Use Zoning District." Most of the real property subject to the Act is located in supervisorial districts six, nine and 10 (generally, south of Market Street, from the waterfront west to Dolores Street and south to Candlestick Park). But transferors are cautioned to review available City Planning Department maps (http://www.sfgov.org/site/planning_index.asp) before marketing any property for sale or lease. This is because "Industrial Use Zoning Districts" are sprinkled throughout many of the other supervisorial districts, too.

The timing of the new disclosure is as follows: (1) For a sale, the same as for the statutory Transfer Disclosure Statement (i.e., "as soon as practicable before transfer of title"); and, (2) For a lease, "prior to tenant(s) signing a lease...."

The transferor is required under the Act to sign an affidavit under penalty of perjury stating that the transferor provided the disclosure to the transferee. Further, the transferor is required to store and maintain the original signed affidavit attached to a copy of the disclosure for two years following its delivery to the transferee in the event the city or transferee requests a copy. The required affidavit is built into a form published by the San Francisco Association of REALTORS® entitled, "Disclosure of Adjacent Industrial Uses."

Transferees under the Act have the following right to sue for noncompliance: "The current or former transferee...may institute a civil proceeding for money damages of not less than \$500 for each failure to

provide the disclosure...and whatever other relief the Court deems appropriate. The prevailing party shall be entitled to reasonable attorneys' fees and costs pursuant to an order of the Court. The remedy available under this [Act] shall be in addition to any other existing remedies that may be available to the transferee."

Questions regarding whether a property is inside or within 150 feet of an "Industrial Use Zoning District" can be directed to the City Planning Department which is located at 1650 Mission Street, Suite 400 Floor, San Francisco, CA (telephone: 415-558-6378). Questions of a legal nature should be referred to a qualified real estate attorney.

Geological Inspections - *Buyers are encouraged to have any real property they are purchasing inspected by a qualified geologist or other qualified professional.*

California is known throughout the world for its natural beauty. But the State's dramatic coastlines and rugged mountain ranges bear witness to a turbulent geological past. Many of the geological forces which have shaped California's landscape are still active today and anyone purchasing property in California should understand that these forces still can pose risks to land and improvements, particularly where the property is located on hillsides, near creeks or other bodies of water, or in other high risk areas. The condition of the soil and the underlying bedrock on which improvements are constructed can greatly influence the manner in which the improvements will react to geological changes. The fact that improvements have been constructed on level ground is no guarantee that they will not be affected by geological events.

Brokers are not geological experts and cannot advise buyers regarding the manner in which properties may be affected by geological changes. Buyers are encouraged to have any property they are purchasing inspected by a qualified geologist or other qualified professional.

Homeowner's Guide to Earthquake Safety - *Sellers of residential real property with one to four dwelling units constructed before January 1, 1960, of conventional light frame wood construction, are required by law to deliver to the buyer, before transfer of title, a copy of the "Homeowner's Guide to Earthquake Safety."*

California is a seismically active area. A building, depending on its location, construction type and age, may be vulnerable to damage or collapse in the event of a significant seismic event. Buyers of real property should be aware that such an event could cause damage to public facilities and seriously disrupt public services. The availability of electricity, water and gas could be affected and transportation could be disrupted or made impossible for varying periods of time.

Sellers of residential real property improved with one to four dwelling units constructed before January 1, 1960, of conventional light frame wood construction, are required by law to deliver to the buyer, before transfer of title, a copy of the "Homeowner's Guide to Earthquake Safety." Furthermore, the seller must complete an earthquake hazards disclosure form found on the inside back cover of the guide (or prepare a separate statement) identifying specific deficiencies (such as the absence of anchor bolts, the existence of unreinforced masonry walls, or a hot water heater which is not strapped or braced) within the actual knowledge of the seller. The homeowner's guide and the completed earthquake hazards disclosure form (or other statement) must be delivered to the buyer as soon as practicable before transfer of title. A broker's responsibility under the law is limited to providing the seller with a copy of the guide.

In addition, sellers of precast concrete, reinforced or unreinforced masonry buildings with wood frame floors or roofs constructed before January 1, 1975, are required by law to deliver to the buyer a copy of the "Commercial Property Owner's Guide to Earthquake Safety."

Exemptions from the requirements set forth above are basically the same as those relating to providing other general disclosure documents (such as the Real Estate Transfer Disclosure Statement) in real property sale and purchase transactions, i.e., transfers made pursuant to a court order or from one co-owner to one or more other co-owners, or to a spouse, child, grandchild or further descendent, with an added exemption in

cases where the buyer agrees in writing that the property will be demolished within one year of the date of transfer.

* * *

Buyers of unreinforced masonry buildings (“UMBs”) are advised that the owner of any such building who has actual knowledge that the building is located in a “Seismic Zone 4” (an area where the likelihood of a damaging earthquake is the highest) must post a sign at the entrance to the building stating that the building is constructed of unreinforced masonry and may be unsafe in an earthquake. There is no obligation to post the notice, however, in cases where the walls of the building are non-load bearing with steel or concrete frames.

Buyers further are advised that if the owner of a UMB does not bring the building into compliance with applicable retrofit standards within five years from the date of actual or constructive notice that the building is located in a Seismic Zone 4, he or she is not eligible for any State assistance for earthquake damage until all other applicants have been paid. (Please see **Unreinforced Masonry Buildings** on page 37.)

More than half of California is in a Seismic Zone 4, including the entire western half of the State.

Seismic Hazard Zones - *Sellers of real property in a seismic hazard zone (or their brokers) are required to disclose the fact that the property is located in such a zone to prospective buyers.*

The Division of Mines and Geology of the California Department of Conservation has responsibility for identifying areas of the State where there may be a significant potential for liquefaction, earthquake-induced landslides, amplified or strong ground shaking or other ground failure and seismic hazards in the event of an earthquake. These areas have been or are in the process of being designated on seismic hazard zone maps. Eventually, maps are planned to be issued for all areas in California subject to seismic hazards. New development in a seismic hazard zone will only be permitted if the developer can show that geologic hazard mitigation can make the site acceptably safe.

(Seismic hazard zone maps differ from earthquake fault zone maps—formerly known as special studies zone maps—which show areas designated by the State geologist as areas containing one or more active or potentially active faults which can pose potential hazards to structures from surface faulting or fault creep.)

Sellers of real property located in a seismic hazard zone (or their brokers) are required to disclose the fact that the property is located in such a zone to prospective buyers. The disclosure must be given for all real property sale and purchase transactions subject to Civil Code §1102 et seq. relating to the Transfer Disclosure Statements.

For further information, buyers should contact the California Geological Survey at 916-324-7299 or the Department of Building Inspection at 415-558-6088.

Natural Hazard Zones - *If real property is located in a natural hazard zone, it may affect a buyer's ability to develop the property, obtain insurance or receive assistance after a disaster.*

The State of California has identified six natural hazard zones and created a statutory form known as the Natural Hazard Disclosure Statement (“NHD”) to be used by sellers and sellers’ brokers to disclose to prospective buyers that a property offered for sale is located within one or more of the zones. The form is required to be used only in real property sale and purchase transactions subject to the Real Estate Transfer Disclosure Statement (“TDS”). If the transaction is not subject to the TDS law, no NHD is required, even though the property is located within a zone. However, if the property in a non-TDS transaction is known to be located within a zone, that fact still must be disclosed to the buyer in some manner since the requirement to disclose all known material facts applies to all sales of real property.

Certain local conditions may not be disclosed on State maps, but may be disclosed on local regional maps. Buyers may wish to consult a local soils engineer or whatever local regional maps of natural hazard zones are available, in addition to those disclosing State-designated hazard zones.

Under applicable law, the buyer has the same right of rescission after receipt of an NHD as after receipt of a TDS. (Please see **Transfer Disclosure Statement** on page 24.)

There is one circumstance under which sellers and sellers' brokers are relieved of the duty of having to provide a NHD and that is where a disclosure report is duly prepared and provided by a proper outside expert.

It should be understood that if real property is located within one or more natural hazard zones, that fact may limit a buyer's ability to develop the property, obtain insurance or receive assistance after a disaster.

Environmental Hazards - *Buyers are strongly advised to have any real property they are purchasing inspected to determine the presence of environmental hazards.*

Various materials used in construction contain substances that have been or may in the future be determined to be toxic, hazardous or undesirable and may need to be specially handled and/or removed from certain real property.

The California Department of Real Estate and the California Department of Health Services jointly have published a booklet entitled, "Environmental Hazards—A Guide for Homeowners and Buyers," designed to educate and inform consumers regarding environmental hazards which are commonly located on and which affect real property. The booklet identifies common environmental hazards, explains their significance, identifies ways to mitigate the hazards, and lists sources which can provide further information to consumers. Hazards which are covered include asbestos, formaldehyde, hazardous wastes, lead, mold, radon and other contaminants. Most properties contain one or more of these hazards.

When the booklet is provided to a buyer, neither the seller nor the broker needs to provide further information concerning environmental hazards unless the seller or the broker has actual knowledge of the existence of such hazards on or affecting the property.

Buyers should be aware, however, that the scientific community has begun investigating suspected new environmental hazards, such as electromagnetic fields, not described in the environmental hazards booklet. (Please see **Electromagnetic Fields** on page 33.)

Real estate brokers are not qualified to determine the presence of environmental hazards on or affecting real property being offered for sale or, if their presence is known, to offer an evaluation of their potential health risks. Buyers are strongly advised to have any real property they are purchasing inspected by appropriate experts to determine the presence of environmental hazards on or affecting the property and, if such hazards are present, whether their presence constitutes a health risk.

Lead-Based Paint - *The Federal Residential Lead-Based Paint Hazard Reduction Act of 1992 creates lead paint disclosure responsibilities for sellers and lessors of real property built prior to 1978.*

Lead can be extremely toxic, can impair the physical and mental development of young children and can possibly lead to increases in high blood pressure in adults. The U.S. Environmental Protection Agency ("EPA"), the Department of Housing and Urban Development, and the Consumer Product Safety Commission have moved to restrict people's exposure to lead.

The presence of old lead-based paint in housing is the most significant remaining cause of lead poisoning, particularly in young children. The principal means of exposure is through ingestion of peeling or pulverized paint, which is a significant problem in inner city, lower income areas where housing may be

older and poorly maintained. Lead poisoning also can result if young children chew on surfaces that have perfectly intact lead-based paint covering them (e.g., window sills, door edgings, banisters, etc.).

* * *

The Federal Residential Lead-Based Paint Hazard Reduction Act of 1992 creates lead paint disclosure responsibilities for sellers and lessors of real property built prior to 1978.

In brief, the Act requires that, before a buyer or lessee is obligated under any contract to purchase or lease “target” (pre-1978) housing, the seller, lessor or the person’s real estate broker must:

- Provide the buyer or lessee with the federally prescribed pamphlet entitled, “Protect Your Family from Lead in Your Home.” (Note: The EPA has approved the use of the State-prescribed “Environmental Hazards: Guide for Homeowners and Buyers” booklet as a substitute for the federal pamphlet in real property sale and purchase transactions only. Look for language on the cover of the booklet indicating that it incorporates the federal pamphlet);
- Disclose to the buyer or lessee the presence of any known lead-based paint or lead-based paint hazards in any “target” housing, and provide to the buyer or lessee any lead hazard evaluation report available to the seller or lessor; and
- Permit the buyer ten days, or any mutually agreed upon period of time, to conduct a risk assessment or inspection of the property for the presence of lead-based paint hazards.

The Act also requires that contracts for the sale and purchase of any interest in “target” housing contain a lead warning statement and a statement signed by the buyer that the buyer has:

- Read the lead warning statement and understood its contents;
- Received a lead hazard information pamphlet; and
- Been allowed ten days, or other mutually agreed upon period of time before becoming obligated under the contract to purchase the housing, to conduct a risk assessment or inspection for the presence of lead-based paint hazards.

The mandatory lead warning statement, which is to be printed on a separate sheet, reads as follows:

“Every buyer of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller’s possession and notify the buyer of any lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.”

* * *

The San Francisco Board of Supervisors has passed legislation intended to reduce lead hazards in housing occupied by children with elevated blood levels of lead. The law gives health department officials authority to: issue nuisance abatement orders against defined lead hazards in dwelling units; temporarily relocate lead-poisoned children; and levy penalties against owners who fail to abate lead hazards. Enforcement is triggered by the discovery, through testing, of a child with elevated blood lead levels residing in a housing unit.

Mold - *Health concerns have been raised about the presence of mold in dwelling structures.*

In the last few years, health concerns have been raised about the presence of mold in dwelling structures.

Many of the molds we encounter in daily living do not pose a health threat to humans. However, some molds release spores that are toxic and when the spores are confined within a dwelling structure, they can reach concentrations which make them a serious health threat. In fact, some people can have such an extreme reaction to certain mold-born spores that it is impossible for them to live in any dwelling structure in which the spores are present. But a person's reaction to mold may vary and what may cause a severe reaction to one person may be tolerable to another. For this reason, even where mold is detected, its impact on an individual can be difficult to access.

Since mold can grow in inaccessible areas of a structure or otherwise be invisible to the naked eye, it may be that the seller is unaware of the presence of mold even though it may exist on the property. For this reason, it is recommended that buyers engage a qualified environmental inspector or consultant to determine whether the property contains mold or other health hazards before removing any inspection contingencies. This is especially important if disclosure documents or inspection reports indicate the presence of moisture, standing water, water intrusion or mold of any kind, or the buyer notices any smell or odor.

Real estate brokers are not experts on environmental hazards, such as mold, and are not qualified to advise buyers or sellers concerning the presence or absence of molds in any dwelling structure or the health risks molds may pose.

Beginning on January 1, 2002, sellers of residential real property containing one to four units must use the revised version of the Real Estate Transfer Disclosure Statement which includes a question asking the seller if he/she is aware of the presence of mold on the property, which may be an environmental hazard. (Most real properties have mold, and mold may be an environmental hazard, so most sellers are likely to answer the question by checking "Yes.") For the time being, sellers have no further disclosure requirements regarding toxic mold. However, if the property has been tested for mold, that fact must be disclosed. (Please see **Transfer Disclosure Statement** and **Inspection of Physical Conditions** on pages 24 and 25.)

Flood Hazard Areas - *Sellers of real property located in flood hazard areas are required by law to disclose that fact to buyers.*

Certain areas have been designated by the Federal Emergency Management Agency (FEMA) as being subject to flooding. Sellers of real property located in these areas are required to disclose that fact to buyers. If a property is so located, it may affect the buyer's ability to obtain financing secured by the property, as well as the cost of homeowner's insurance and the extent of coverage.

A flood hazard boundary map, which sets forth designated flood hazard areas, can be obtained by contacting the FEMA Map Service Center at 800-358-9616.

Sewers and Waste Disposal Systems - *Buyers should arrange to have whatever sewer or waste disposal system is on the real property inspected by a qualified professional.*

Some real property is not connected to a public sewer system. If such is the case, it is the seller's responsibility to warrant that some form of waste disposal system exists and that the system is in proper working order. Brokers do not have the expertise to make representations concerning the existence and/or condition of any waste disposal system. For that reason, buyers should arrange to have the property inspected by a qualified professional. In cases where the property is new construction, buyers are advised that the existence of a sewer permit does not necessarily mean that there is a sewer connection to the property.

Electromagnetic Fields - *Scientists have become concerned about the health risks associated with prolonged exposure to electromagnetic fields ("EMFs").*

Electric utility power lines and even household wiring and appliances give off EMFs. Recently, scientists have become concerned about the health risks associated with prolonged exposure to EMFs. Studies to determine the effects of such exposure have been inconclusive, but research is continuing.

Although the federal government has no guidelines concerning EMF exposure, some state and local governments have attempted to regulate exposure to EMFs emanating from high voltage power lines. There are no known laws requiring the disclosure of the presence of EMFs on or around real property in California. Buyers who are interested in knowing their degree of exposure to EMFs should arrange to have the property tested by an environmental consultant.

For further information on EMFs, contact the electric utility company serving the jurisdiction in which the real property is located or an environmental consultant.

ORDINANCES AND STATUTES

Residential Energy Conservation Ordinance - *The seller, before transfer of title, must obtain a valid energy inspection of the real property and install all applicable conservation measures.*

Under San Francisco's Residential Energy Conservation Ordinance, the seller or the seller's broker, before transfer of title of any residential building, must obtain a valid energy inspection by a qualified energy inspector and install all applicable conservation measures enumerated in a form prescribed by the Department of Building Inspection ("DBI"). The seller also must furnish a copy of the completed inspection form, showing compliance with prescribed energy conservation measures, to the buyer. In addition, a certificate of completion must be recorded with the county recorder's office prior to or concurrent with the transfer of title.

No energy inspection is required for any residential property for which proof of compliance with the energy conservation requirements has been recorded with the DBI and the county recorder's office.

In no case is any seller required to spend more than one percent of the purchase price or one percent of the assessed value of the building, whichever is greater, to comply with the requirements of the ordinance, nor, in the case of one- or two-unit buildings, shall the cost exceed \$1,300.

The seller may transfer responsibility for compliance with the ordinance to the buyer providing, before transfer of title, a valid energy inspection has been performed and a written agreement is signed by the buyer and the seller containing the buyer's agreement that the required energy conservation measures will be installed within 180 days of the transfer of title and the seller's agreement that funds equal to one percent of the purchase price will be deposited in escrow.

For further information, contact the DBI at 415-558-6088.

Residential Water Conservation Ordinance - *Buildings with no record of compliance are charged higher water rates.*

Under San Francisco's Residential Water Conservation Ordinance, the owner of any residential or commercial real property, including tourist hotels and motels, must equip the dwelling or building with the following water conservation measures:

- Low-flow devices on all accessible showerheads having a maximum rate flow of not more than 2.5 gallons per minute. (Showerheads of the ball-joint type that cannot easily be removed from the wall without structural alteration are exempt from the requirement.)

- Aerators attached to sink faucets which are designed to accept such devices. The aerators must have flow restrictors.
- Low-flow toilets (3.5 gallons per flush or less) or one of the following permanently installed devices:
 - Quick-closing flapper device;
 - Dual-option flushing mechanism;
 - Water-saving kit for flushometer toilets;
 - Flush valve device which lowers the volume of water needed to flush the toilet; or
 - Water displacement devices, such as toilet dams, are acceptable and meet these criteria.

In 1990, the Plumbing Code was changed to require the installation of toilets with a 1.6-gallon maximum capacity for any toilets moved, replaced or added. The base of the toilet should have information regarding its capacity.

Toilet devices such as quick-closing flappers are available for approximately \$15. Low-flow showerheads are available for approximately \$10 and faucet aerators range in price from \$4 to \$8 per aerator. The devices are available at most hardware stores.

Before transfer of title, the seller or the seller's broker must obtain a valid water conservation inspection by a qualified inspector and install all required water conservation measures. Compliance with these requirements is to be achieved concurrently with the requirements of the Residential Energy Conservation Ordinance.

The costs of compliance with the water conservation ordinance are not included in the dollar limitation established for compliance with the energy conservation ordinance. The owner may file an affidavit provided by the city's Water Department affirming that the water conservation devices required by the water conservation ordinance either have been installed or an exemption is applicable. Buildings with no record of compliance are charged higher water rates.

For further information, contact the Water Department at 415-551-3000.

Water Heaters - *State law requires water heaters to be braced, anchored or strapped.*

Under State law, all water heaters must be braced, anchored or strapped to resist falling or horizontal displacement due to earthquake motion. In addition, in San Francisco, water heaters which are moved or newly installed must be raised 18 inches off the ground.

Sellers of any real property also must certify to a prospective buyer that the State bracing requirement has been satisfied, along with the requirements of local codes relating to water heaters. The certification must be in writing and may be accomplished in existing transactional documents, including, but not limited to, the "Homeowner's Guide to Earthquake Safety", a real property sale and purchase contract, the Real Estate Transfer Disclosure Statement or a local option disclosure statement.

For further information, contact the Department of Building Inspection at 415-558-6088.

Boiler Ordinance - *All low-pressure commercial-type water heating and steam-generating boilers located in residential buildings must be inspected and approved for operation annually.*

Under an ordinance which became effective in San Francisco on July 1, 1993, all low-pressure commercial-type water heating and steam-generating boilers located in residential buildings must be inspected annually. A low-pressure water heating boiler is one which furnishes hot water at pressures not exceeding 160 psi and at temperatures not exceeding 250° F. A low-pressure steam-generating boiler is one which furnishes steam at pressures not exceeding 15 psi. Low-pressure boilers do not include household-type water heaters furnishing hot water at temperatures not exceeding 210° F.

City inspectors will not inspect boilers. Each boiler must be inspected and approved for operation by a qualified inspector. Qualified inspectors are classified as any State-licensed “boiler, hot water heating and steam fitting contractor” (Class C-4 license holders) or a certified boiler inspector in the employ of the insurance underwriter for the building in which the boiler is located.

The ordinance resulted from complaints concerning the questionable safe operation of some boilers and their ability to provide minimum standards of heating comfort to the occupants of the buildings in which they are located. The ordinance provides that, upon a determination that a low-pressure boiler meets reasonable standards of safe operation, the property owner is to be issued a permit for its continued operation.

For further information concerning permit application procedures under the boiler ordinance, contact the plumbing inspection division of the Department of Building Inspection at 415-558-6054.

Smoke Detectors - *Every dwelling unit must be equipped with approved smoke detectors.*

Both the San Francisco Board of Supervisors and the California legislature have enacted comprehensive laws requiring the installation of smoke detectors in dwelling units.

Under these laws, every dwelling unit intended for human occupancy must be equipped with approved smoke detectors which receive their power from the electrical system of the building in which they are located. In single- and two-family dwellings, however, battery operated detectors are deemed to satisfy the requirements of these laws.

Generally, a smoke detector must be installed at a point centrally located in the corridor (or area) giving access to each sleeping room (or area). When the dwelling unit has more than one story and in dwellings with basements, a detector must be installed on each story and in the basement. In dwelling units where a story or basement is split into two or more levels, a detector must be installed on the upper level, except that when the lower level contains a sleeping area, a detector must be installed at each level. When sleeping rooms are on an upper story, a detector must be installed at the ceiling of the upper story in close proximity to the stairway. For apartment buildings, there generally must be smoke detectors in all units and in stairwells.

Under State law, for the sale of a single-family dwelling, the seller must deliver to the buyer a written statement confirming that the dwelling is in compliance with the State smoke detector law. The statement must be included in the real estate sale and purchase contract, in an addendum to it or in a separate document. The statement should be delivered as soon as practicable before the transfer of title. It is considered delivered by law if it is received in person or by mail by the buyer or the authorized agent of the buyer.

For any new construction, any additions, alterations or repairs exceeding \$1,000 and for which a permit is required, or when one or more sleeping rooms are added regardless of the cost, a smoke detector must be installed in each sleeping room and also at a point centrally located in the corridor or outside the sleeping

room(s). The required detectors must receive their power from the electrical system of the building and be equipped with a battery backup.

Buyers are encouraged to perform an inspection of the property being purchased to determine whether applicable smoke detector requirements have been satisfied.

Roofing Materials - *Areas designated as having a high fire hazard must use fire retardant roofing material where 50 percent or more of the roof area is reroofed.*

After the fire storm which destroyed over 3,000 residential dwellings in the Oakland hills in 1993, the State legislature enacted a law to require the use of fire retardant roofing material in areas designated by either the Department of Forestry and Fire Protection or local agencies as having a high fire hazard. Under the law, which became effective January 1, 1997, fire retardant roofing material that is classified as Class A or better must be used for all new or existing structures where 50 percent or more of the roof area is reroofed. Certification of the classification of the material must be made by a qualified installer. In addition, any wood roof covering must pass a 10-year weather and rain test.

In areas not designated by the department or local agencies as having a high fire hazard, the law requires that at least Class C or better fire retardant roofing material be used for the above-described structures.

Spark Arresters - *State law requires all chimneys to be equipped with mesh spark arresters.*

Uniform Building Code Section 3703 requires all chimneys to be fitted with mesh spark arresters. Local ordinances sometimes prescribe additional requirements relating to the type of arrester to be installed, maintenance of chimneys, and disclosure obligations on the part of sellers. Buyers should have the chimney system of any real property they are purchasing professionally inspected to determine whether it complies with applicable legal requirements.

Abandoned Underground Storage Tanks - *Whenever an abandoned underground storage tank ("UST") is discovered on or under a real property, the owner must file a plan for the closing or permitting of the tank within 30 days of its discovery.*

There are thousands of abandoned USTs in San Francisco's residential neighborhoods. These tanks remain potential sources of contamination of the ground and ground water, and can pose other dangers to the public health and the environment.

Any owner of real property in San Francisco having reason to believe that an abandoned UST is located on or under the property, or under the surface of any public street, sidewalk, alley, court or other place subject to an easement for public access that is immediately adjacent to the property, must make a reasonable effort to locate and identify the tank. Whenever an abandoned UST is located, the owner must file a plan for the closing or permitting of the tank within 30 days of its discovery.

All closures (and removals) of USTs require the approval of the Department of Health, compliance with the Health Code and applicable provisions of the California Health and Safety Code, as well as the payment of applicable fees. Any person who is in violation of the applicable provisions of the codes is liable to the City and County of San Francisco for costs incurred in cleaning up and abating the effects of the violation or taking other remedial action.

Buyers of real property located in San Francisco are advised to have the property inspected to determine the presence of abandoned USTs prior to removing the inspection contingency in the real property sale and purchase contract. If a UST is found on the property, it can be extremely expensive to remove and clean up any contamination.

For further information on tank closure and removal, contact a licensed contractor or environmental consultant specializing in USTs. These individuals can be found in the Yellow Pages under “Environmental & Ecological Services,” “Tanks Abandoned, Filled & Removed” and “Tank Testing & Inspection.” Or, contact the Department of Public Health at 415-252-3800.

Hazardous Wastes - *The applicant for any building permit is required to have the soil on the parcel of land on which the construction is to occur analyzed to determine whether hazardous wastes are present.*

Under San Francisco's Hazardous Wastes Ordinance, the applicant for any building permit is required to have the soil on the parcel of land on which the construction is to occur analyzed by a certified laboratory for the purpose of determining the presence of hazardous wastes and, where applicable, complete certain site mitigation measures approved by federal and State authorities when:

- The permit is for a construction project that involves the disturbance of 50 cubic yards of soil or more; and
- The parcel of land on which the construction will occur is located either bayward of the high tide line as indicated on certain historic San Francisco maps, prepared by the State Lands Division and filed with the Recorder of the City and County of San Francisco, or in any area designated by the director of the Department of Public Works (“DPW”).

The director may waive the requirements imposed by the ordinance if the applicant demonstrates that the real property has been continuously zoned as residential under the Planning Code since 1921, has been in residential use since then and the director has no reason to believe that the soil may contain hazardous wastes.

The seller or the seller’s broker, in the sale and purchase or exchange of real property located within San Francisco, is required to provide the buyer with a summary of the Hazardous Wastes Ordinance, prepared by the director of the DPW, and to obtain a written receipt therefore in cases where the real property is located bayward of the high tide line indicated on certain historic San Francisco maps or within areas designated by the director. A map showing the areas covered by the ordinance, along with a statement of the procedures to be followed in submitting site histories and completing soil samplings and analyses, can be obtained from the Department of Building Inspection located at 1660 Mission Street, San Francisco, CA 94103, or by calling 415-558-6088.

Methamphetamine Lab Clean-Up Order Disclosure - *An owner subject to a pending clean-up order for a methamphetamine lab must provide written notification to a prospective buyer or tenant.*

Effective January 1, 2006, a property owner selling any real property (except for mobilehomes and manufactured homes in a “park”) is required by Health & Safety Code Section 25400.28 to notify a prospective buyer in writing of a pending clean-up order for a property contaminated by a methamphetamine lab. The prospective buyer must acknowledge, in writing, receipt of the pending order.

Upon the issuance of any such order, the property owner and any existing tenants must vacate their units pending mandated remediation. In addition, the owner of such a property must give written notice to a prospective tenant before entering into a rental agreement by providing to the prospective tenant a copy of the order. The prospective tenant must acknowledge receipt of the order in writing before entering into a rental agreement. If the property owner does not comply in this regard, the prospective tenant may void the rental agreement.

Unreinforced Masonry Buildings - *Owners of unreinforced masonry buildings (“UMBs”) containing five or more units are required to comply with retrofitting requirements prescribed by law in San Francisco.*

The Department of Building Inspection (“DBI”) has identified over 2,000 UMBs in San Francisco that will be at risk of collapse during a severe earthquake.

UMBs have exterior walls of brick, stone, concrete block or similar materials, and wood or concrete slab floors and roofs. UMBs are unreinforced because their masonry walls do not have any steel or other type of reinforcement and are typically not well anchored to the floors or roof. UMBs are designed to resist gravity loads. They are not designed specifically to withstand significant side-to-side forces.

Owners of UMBs are required to comply with retrofitting requirements prescribed by law in San Francisco. Retrofitting deadlines are based on the building's location and occupancy. Deadlines for some buildings have already passed.

The minimum standard to be applied to the seismic strengthening of most UMBs is "Bolts Plus." This level of retrofitting involves anchoring walls to floors and the roof, and installing wall supports to reduce out-of-plane failures.

Assembly, educational and institutional buildings, those with rigid floor systems and those over six stories in height must be retrofitted to more stringent Uniform Code for Building Conservation ("UCBC") standards.

It can be extremely expensive to comply with applicable retrofitting requirements.

For further information, contact the Seismic Safety Division of the DBI at 415-558-6083 and a qualified contractor, engineer, architect and/or other qualified professional. Real estate brokers are not qualified to give opinions in this regard.

Tenant Security Deposits - *In San Francisco, residential rental property owners must pay interest to tenants on all security deposits held for at least one year.*

An owner of residential rental property in San Francisco must pay interest each year to his or her tenants on all security deposits held for a period of at least one year. The rate of interest payable is determined annually by the Residential Rent Stabilization and Arbitration Board. The rate is based on the rate of the six-month certificate of deposit posted by the Federal Reserve on the Federal Reserve Statistical Release internet site. The rate for March 1, 2009 to February 28, 2010 is 3.1 percent.

Interest on tenant security deposits accrues until the tenancy terminates. A tenant may be given accrued interest in the form of either a direct payment or a credit against the tenant's rent. Effective January 1, 2003, security deposit means any payment, fee, deposit or charge, including advance payments or fees. A residential landlord, with some exceptions, can only charge a security deposit equal to two months rent for unfurnished units and three months for furnished units. A landlord cannot exceed the allowable limit, except if an exception applies, by labeling the security deposit as something else, such as a move-in fee, cleaning fee or last month's rent.

Effective January 1, 2004, if the landlord seeks to deduct from the security deposit cleaning and repair charges that exceed \$125 after a tenant vacates, the landlord must provide an itemized statement and copies of the receipts for any labor and materials used to repair or clean the premises. If the landlord or his or her employee performed the work, the landlord must provide an itemized statement describing the work performed, time spent and the hourly rate charged, which must be reasonable.

Buyers and sellers are urged to discuss any questions they may have regarding security deposits with a qualified real estate attorney knowledgeable regarding San Francisco real property issues.

Residential Rent Stabilization and Arbitration Ordinance - *Buyers and sellers are responsible for determining any rights and obligations they may have under San Francisco's Rent Ordinance.*

All residential rental units in San Francisco, with the exception of those in structures for which a certificate of occupancy was first issued after June 13, 1979, and certain single-family dwellings and condominium units, are subject to San Francisco's Residential Rent Stabilization and Arbitration Ordinance. The ordinance limits the landlord's ability to increase rents and evict tenants, among other things.

Under the ordinance, landlords may only impose rent increases on tenants in occupancy in accordance with the provisions of the ordinance, and the rules and regulations of the Rent Board (the body charged with administering the ordinance) as they relate to such matters as the annual allowable rent increase, banking, the cost of utilities, charges for excess water use, certain property tax increases, the certified costs of certain capital improvements, rehabilitation and energy conservation measures and, in the case of units affected by Proposition I, a 1994 ballot measure which extended rent control to owner-occupied properties with 2-4 residential rental units, extraordinary circumstances or past rent histories. Landlords who seek to impose certain other rent increases must request an arbitration hearing. Whenever a landlord gives a tenant legal notice of a rent increase, the landlord must inform the tenant in writing of the components of the rent increase. A successor in interest to the landlord may be required to refund rent increases improperly collected by a previous landlord.

Additionally, the ordinance requires any eviction of a tenant to be based upon at least one of 14 "just cause" grounds. This greatly limits the ability of a landlord to evict a tenant in a rent controlled property in San Francisco. Indeed, so long as a tenant pays his or her rent, the tenancy may continue indefinitely, as a practical matter.

Failure to comply with the ordinance can subject a landlord to civil and criminal liability. The civil remedies created by the ordinance include a tenant's right to "treble" (triple damages) and attorney's fees.

The Rent Ordinance is amended regularly by the Board of Supervisors, as are the rules and regulations by the Rent Board. Buyers and sellers are responsible for determining whether any amendments in the ordinance or the rules and regulations may be applicable to them.

Information concerning San Francisco's Rent Ordinance can be obtained by contacting the Rent Board at 415-252-4600 or visiting the board's web site at www.sfgov.org/site/rentboard.

Brokers are not qualified to advise buyers and sellers concerning the rights and obligations of residential property owners under the Rent Ordinance. Buyers and sellers must make their own determinations concerning their rights and obligations under the ordinance and, in that regard, are urged to contact a qualified real estate attorney knowledgeable regarding San Francisco real property issues.

Owner Move-In Evictions - *San Francisco has enacted strict controls regulating the right of an owner to move into any multi-unit residential rental property he or she owns.*

On August 20, 1998, citing a "worsening residential rental crisis", former supervisor Sue Bierman introduced owner move-in reform legislation. The legislation subsequently was passed by the Board of Supervisors and signed into law by the mayor. Among other things, the Bierman legislation:

Prohibits residential rental property owners from recovering possession of a unit after July 1, 1997, unless the owner has at least a 50 percent interest in the property; prohibits rental property owners from recovering possession of a unit unless possession is recovered for at least 36 continuous months; prohibits rental property owners from recovering possession of a unit if any comparable unit owned by the landlord is available; and prohibits rental property owners from recovering possession of a unit for a

relative unless the unit is a single-family property or a multi-unit property in which the owner currently resides or plans to reside.

The Bierman legislation also provides that certain tenants cannot be evicted from their units by an owner for his or her occupancy, or the occupancy of relatives. The tenants who are protected are: (1) tenants who are 60 years of age or older and have resided in the unit for 10 years or more; (2) disabled tenants who have resided in the unit for 10 years or more; and (3) catastrophically ill tenants who have resided in the unit for five years or more.

On November 3, 1998, subsequent to the enactment of the Bierman legislation, the voters in San Francisco passed Proposition G (commonly known as "Prop. G"). The proposition includes many of the provisions contained in the Bierman legislation, as well as some which are different. For instance, Prop. G contains a provision which provides that once an owner recovers possession of a unit, any other current or future owner is prevented from recovering possession of any other unit in the same building. It also contains a provision that sets the ownership interest a property owner must have to recover possession of a unit at 25 percent, instead of 50 percent, as in the Bierman legislation.

Under both the Bierman legislation and Prop. G, the provision prohibiting an owner from recovering possession of a unit if the owner receives notice that the tenant in the unit is protected from eviction does not apply to either single-family dwellings or condominium units, provided that the owner owns only one condominium unit in the building. Another circumstance where the provision does not apply to condominium units is where an owner owns more than one unit in a building, resides in one of the units and intends to move a qualified relative who is 60 years of age or older into a unit occupied by a tenant otherwise protected from eviction.

Soon after the passage of Prop. G, the proposition was challenged on constitutional grounds in a lawsuit filed by the San Francisco Association of REALTORS® and other plaintiffs in the Superior Court of the State of California, County of San Francisco. In a ruling issued in 2003 in favor of the plaintiffs, the Superior Court held elements of Prop. G unconstitutional "as applied" to the plaintiffs. The court said that by creating "coerced lifetime tenancies" in the plaintiffs' properties, the proposition "effectuates a permanent invasion of the rights of plaintiffs." The court also said that since the proposition provides no compensation for affected landlords, it also "effectuates an unconstitutional per se taking of property as applied to each plaintiff."

According to some legal authorities, the practical effect of ruling Prop. G unconstitutional "as applied" is to permit persons in similar situations, but who were not plaintiffs in the lawsuit, to apply the court's reasoning to prevent the challenged provisions of Prop. G from being applied to them. But the city attorney's office appears to disagree with this view. It has taken the position that the ruling only applies to other properties owned by the plaintiffs in the lawsuit, not to persons who were not plaintiffs or their properties. Because of this divergence of opinion, there is no present certainty that in future cases the Superior Court will rule the same way or even rely upon the Prop. G ruling in addressing the issues.

However, there now appears to be certainty on the question of the ownership interest a property owner must have to recover possession of a unit. Initially, the appellate department of the Superior Court for the City and County of San Francisco for cases involving amounts in controversy under \$25,000 held, in an unpublished decision, that the 50 percent Bierman legislation requirement was applicable. That decision, according to legal authorities, could not be cited as binding precedent in other cases. But the decision was well known to the tenants' bar and resulted in subsequent trial rulings that 50 percent was required in all instances. But the conflict between the Bierman legislation and Prop. G seems to have been settled definitively by a recent reported decision of the Appellate Division of the Superior Court for the City and County of San Francisco. That decision held that the 25 percent ownership interest required by Prop. G controls and applies.

Owners of multi-unit residential rental property should understand that there are considerable risks involved in recovering possession of a unit for their own occupancy or the occupancy of a relative. It is

extremely important that buyers who plan to move into a multi-unit residential rental property they are purchasing, and particularly multiple buyers of such property, understand that great uncertainty—both legal and political—surrounds the subject of owner and relative move-in evictions in San Francisco. Buyers who are contemplating the eviction of a tenant or tenants from residential rental property they are purchasing are urged to consult a qualified real estate attorney knowledgeable regarding San Francisco real property issues for advice concerning their right to do so or any questions they may have regarding owner and relative move-in evictions.

Determining Whether Tenants Are Protected from OMI Eviction - *A request may be served on tenants in a building to determine whether any of them claim to be protected from owner or relative move-in eviction.*

A request may be served on all tenants in a building to give them an opportunity to indicate whether any of them are protected from owner and relative move-in eviction under San Francisco's Residential Rent Stabilization and Arbitration Ordinance. The tenants then are given a period of 30 days to respond as to whether they are protected. The request must contain a warning that a tenant's failure to submit a statement within the 30-day period will be deemed an admission that the tenant is not protected. If tenants do not respond to the request within the 30-day period, they are precluded from claiming that they are protected in the future. If, on the other hand, they claim they are protected, the ordinance provides a mechanism by which the rental property owner can contest the claim. A copy of any request served on a tenant must be filed with the Rent Board by the property owner within 10 days of service.

Sellers and/or buyers with additional questions concerning the use of the request described above, or any other related matter, are urged to consult a qualified real estate attorney knowledgeable regarding San Francisco real property issues.

Ordinances to Discourage Tenant Evictions - *Sellers of real property consisting of two or more residential units are required, among other things, to give written notice to buyers disclosing the reason for the most recent termination of tenancy for every unit delivered vacant at close of escrow.*

To "discourage tenant evictions," the Board of Supervisors in 2002 passed and the mayor signed into law amendments to the city's Rent Ordinance, proposed by Supervisor Chris Daly. Of particular interest to buyers and sellers of real property covered by the ordinance is a provision which makes it unlawful for a landlord to knowingly fail to disclose in writing to the buyer, prior to entering into a contract for the sale and purchase of any real property consisting of two or more residential units, the specific ground(s) for the termination of the tenancy of each residential rental unit to be delivered vacant at close of escrow. Originally, the new law contained other provisions relating to the recovery of rental units by landlords. Two of these provisions—the so-called "Ellis bluff" (a landlord threatening to commence an Ellis Act proceeding to withdraw the property from the rental market for the purpose of persuading the tenants to move out voluntarily) and the requirement that tenants be represented by an attorney in order to be allowed to enter into a binding waiver of rights under the ordinance with a landlord—have been held unconstitutional by the courts.

In 2006, voters in San Francisco narrowly approved a ballot measure requiring the owners of multi-unit residential properties to disclose in writing to "prospective purchasers" certain details relating to the eviction history of the property. More specifically, the measure requires a "landlord/owner" when offering a property for sale in San Francisco with two or more residential units to disclose to any prospective purchaser the specific ground(s) for the termination of the tenancy of each residential rental unit to be delivered vacant at close of escrow and whether any evicted tenant was elderly or disabled.

And in early 2008, the Board of Supervisors passed and the mayor signed into law amendments to the city's Rent Ordinance, proposed by Supervisor Daly, to require sellers and buyers of multi-unit residential properties subject to rent control to disclose in writing to tenants certain legal rights. More specifically, the

measure requires a seller “before selling” to provide a specific set of disclosures in a particular type-size to all tenants and the buyer to do likewise within thirty (30) days after close of escrow.

Buyers and sellers are urged to discuss all aspects of the above-mentioned laws that may be pertinent to a specific real property sale and purchase transaction with a qualified real estate attorney knowledgeable regarding San Francisco real property issues.

Relocation Payments for No-Fault Evictions - *Each eligible tenant who receives a covered no-fault eviction notice is entitled to receive relocation expenses from the landlord.*

In 2006, voters in San Francisco approved Proposition H, a measure that requires rental property owners to pay “relocation expenses” to “eligible tenants” for no-fault evictions. (Note: Relocation expenses payable to tenants for evictions resulting from use of the State Ellis Act are specified in Section 37.9A(e)(3) of the city’s Rent Ordinance and are similar but not identical to those specified in Proposition H. The Ellis Act allows owners of residential rental buildings to remove a building from rental use.) Proposition H applies to all notices to quit served on or after August 10, 2006.

Covered under Proposition H are notices to quit based on Sections 37.9(a) (8), (10), (11) or (12) of the city’s Rent Ordinance. Those sections apply to landlords who seek to recover possession of a rental unit for the following purposes:

- (8) For the landlords’ use or occupancy as his or her principal place of residence or for the use or occupancy of the landlord’s relatives as their principal place of residence;
- (10) To demolish or to otherwise permanently remove the rental unit from housing use;
- (11) To remove temporarily the unit from housing use in order to be able to carry out capital improvements or rehabilitation work; or
- (12) To carry out substantial rehabilitation work.

Under Proposition H, each eligible tenant, defined as any authorized occupant of a rental unit regardless of age who has resided in the unit for 12 or more months, who receives a covered no-fault eviction notice is entitled to receive relocation expenses from the landlord in the amounts specified in Section 37.9C(2) of the Rent Ordinance. Those amounts are:

- A payment of \$4,500 to each eligible tenant receiving a covered no-fault eviction notice—\$2,250 of which shall be paid at the time of the service of the notice to quit, and \$2,250 of which shall be paid when the unit is vacated. However, in no case, shall the landlord be obligated under this to provide more than \$13,500 in relocation expenses to all eligible tenants in the same unit.
- In addition, a payment of \$3,000 to each eligible tenant who is 60 years of age or older or who is disabled within the meaning of Section 12955.3 of the California Government Code, and each household with at least one eligible tenant and at least one child under the age of 18 years—\$1,500 of which is to be paid within 15 calendar days of the landlord’s receipt of notice from the eligible tenant of entitlement to the relocation payment, along with supporting evidence, and \$1,500 of which is to be paid when the eligible tenant vacates the unit. Within 30 days after notification to the landlord of a claim of entitlement to additional relocation expenses because of disability, age, or having children in the household, the landlord is to give written notice to the Rent Board of the claim for additional relocation assistance and whether or not the landlord disputes the claim.

Each year on or about March 1, the relocation expenses, including the maximum relocation expenses per unit, are to increase, rounded to the nearest dollar, at the rate of increase in the “rent of primary residence” expenditure category of the Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-San Jose Region for the preceding calendar year, as that data is made available by the United States

Department of Labor and published by the city's Rent Board. For March 1, 2009 through February 28, 2010 the amounts are \$4,941 for each eligible tenant (an authorized occupant, regardless of age, who has resided in the unit for 12 or more months) with a cap of \$14,825.per unit, with an additional \$3,295 for each eligible tenant who is 60 years of age or older or who is disabled within the meaning of Section 12955.3 of the California Government Code, and each household with at least one eligible tenant and at least one child under the age of 18 years.

For further information on relocation payments for no-fault evictions, contact the city's Rent Board at 415-252-4600.

Condominium Conversion Ordinance - *In San Francisco, subject to certain requirements, the conversion of apartment units to condominiums is limited to 200 per year in buildings with six or fewer units.*

Subject to certain requirements and restrictions, conversions of apartment units to condominiums in San Francisco are currently limited, under a lottery system, to 200 per year. Generally, only 2-6 unit properties may be converted.

To be eligible for conversion, an apartment building improved with four or fewer units may be entered into the lottery only if one of the units has been occupied continuously by one of the owners of record for at least three years.

By contrast, an apartment building improved with five or six units is eligible for the lottery only if 50 percent or more of the units have been occupied continuously by one or more of the owners of record for at least three years. Such buildings also must comply with strict State Subdivision Code requirements.

To convert, the owner(s) must correct code violations and provide tenants with a right to purchase their units. Tenants who do not purchase may continue their occupancy for one year. Tenants who move are entitled to relocation assistance. Tenants 62 years of age or older, or permanently disabled, are entitled to lifetime leases.

Two-unit buildings, in cases where both units are owner-occupied for one year prior to the submission of the application for conversion, are exempt from the ordinance, subject to certain restrictions imposed by a new local law (the "compromise legislation" discussed below).

The foregoing rules have been modified several times in the last few years. The more significant modifications are described below:

- Where the owners of a two-unit building are seeking to convert to condominiums and they qualify for the exemption described above, they must certify that since November 16, 2004, no eviction of a senior (60 years of age or older and residing in the unit for 10 years or more), disabled person or catastrophically ill tenant has occurred.
- The lottery process for buildings with 2-6 units has an additional requirement that applicants for the first 175 of the 200 units in the lottery must certify that since November 16, 2004, no eviction of a senior, disabled person or catastrophically ill tenant has occurred. The remaining 25 units will be allocated in accordance with the current lottery process and will be available to all lottery participants, including the owners of 2-6 unit buildings where the above-described evictions have occurred.
- Priority in the lottery is given to properties that have lost the lottery three or more times. Under certain limited circumstances, all of the buildings in a high priority grouping of buildings under the new law will qualify for conversion. Otherwise, they will be subject to a lottery process that is calculated to create a greater statistical likelihood of success than under the old system. The senior, disabled person or catastrophically ill tenant restrictions discussed above remain in effect. Moreover,

any buildings with evictions regarding any such tenants since January 1, 1999 will be precluded from the priority benefits of this law.

Conversions are prohibited entirely for properties where there have been two or more evictions involving different units under the Ellis Act or certain construction-related provisions of the Rent Ordinance or the ordinance's "owner move-in" provisions have been utilized. Also prohibited are conversions where there has been one eviction to any unit involving a senior, disabled or catastrophically ill tenant. This law is effective for any such eviction resulting from an eviction notice issued on or after May 1, 2006.

Buyers should thus understand that there is no guarantee or certainty of success in the condominium lottery or that a given property can be converted to condominiums. Any buyer intending to convert units in an eligible property is strongly advised to consult with a qualified real estate attorney specializing in conversions before making a decision to purchase. They should also understand that the laws relating to the conversion of units to condominiums are extremely complicated and subject to change.

Ordinance Regulating Formation of Tenancies-in-Common - *The Ordinance to Regulate the Formation of Certain Condominium-Type Ownership Structures, otherwise known as the "McTIC" ordinance, was declared unconstitutional and is no longer in effect.*

In July of 2001, the Board of Supervisors enacted an ordinance to "regulate the formation of certain condominium-type ownership structures." Known as the "McTIC" ordinance after the person who introduced it, Supervisor Jake McGoldrick, the ordinance sought to regulate the formation of tenancies-in-common (TICs), a form of real property ownership in which two or more persons own undivided interests in real property. TICs typically are formed when two or more persons purchase a multi-unit residential rental building with the intention of individually occupying each unit as a primary residence. Sometimes, as part of the process, tenants are displaced. It was the prevention of these tenant displacements that was the supervisors' primary purpose in enacting the legislation.

The McTIC ordinance sought to prevent tenant displacement by prohibiting an owner of an undivided interest in real property containing three or more units from having the right of exclusive occupancy of any unit except pursuant to a subdivision approved by the City and County of San Francisco. Real property containing only two units, where at least one unit was owner-occupied for one year prior to the filing of an application for conversion, were exempted from the subdivision approval process. But this exemption was tied to a provision of the ordinance that automatically suspended it if anyone filed a lawsuit challenging the prohibition on exclusive occupancy or any other aspect of the ordinance.

In 2002, several parties interested in preserving TICs as affordable home ownership opportunities in San Francisco, including the San Francisco Association of REALTORS®, filed a lawsuit challenging the McTIC ordinance in Superior Court. Early in 2003, the Superior Court ruled that the entire McTIC ordinance was unconstitutional, but the City and County of San Francisco appealed the ruling. In October 2004, the California Supreme Court denied the appeal and, as a consequence, the Board of Supervisors repealed the McTIC ordinance, effective December 1, 2004. This means that the formation of tenancies-in-common with rights of exclusive occupancy now is allowed and the prior law regarding the subdivision of 2-6 unit buildings, as amended, is reinstated. (Please see **Condominium Conversion Ordinance** on page 43.)

Because of the complexities surrounding the formation of TICs, buyers and sellers of TIC interests are strongly advised, before proceeding with the sale or purchase of any such interest in a residential building, to consult with a qualified real estate attorney regarding San Francisco real property issues.

Ellis Act - *Owners of residential rental property, under certain circumstances, may avail themselves of a State law, which, subject to certain restrictions, allows the owners to withdraw their property from rental use.*

Because of the excessive restrictions imposed on the owners of residential rental property by San Francisco law, some owners have utilized a State law which allows them to withdraw their property from residential rental use. Individuals who are buying residential rental property as “tenants-in-common” for their own occupancy commonly use this law to be able to evict existing tenants. The law, known as the Ellis Act, generally preempts or overrides San Francisco law, if properly invoked, but it does not preempt or override local law which establishes various procedural protections consistent with the Act. Invoking the Ellis Act carries with it long term implications for the property that should be carefully considered before proceeding.

The Ellis Act contains detailed procedural requirements that relate to the eviction of existing tenants. They include, but are not limited to, notice, filing and recordation requirements. Also, after the Act is invoked, the right to rent the property in the future is restricted. Since the Act binds the invoking owner and the owner’s successors and assigns, this may affect the value and desirability of the property if it is later marketed for sale. These and other important considerations should be carefully evaluated before an owner elects to proceed under the Ellis Act or a buyer purchases a property that has been subject to an Ellis Act proceeding.

Supervisor Aaron Peskin obtained passage of a local ordinance that expands tenant relocation eligibility where units are withdrawn from the rental market pursuant to the Ellis Act. The ordinance became law without the mayor’s signature on February 20, 2005. Under the ordinance, when residential units are withdrawn from the rental market pursuant to the Ellis Act, each tenant who is relocated will be entitled to a payment of \$4,500, up to a maximum total of \$13,500, if the tenant resided in the unit on or after August 10, 2004. The payment amounts are to be increased on March 1 of each year, according to the “rent of primary residence” expenditure category of the Consumer Price Index for the preceding 12 months. In addition, owners may not withdraw defined residential hotel units from the rental market pursuant to the Ellis Act if the hotel’s occupancy permit was issued prior to January 1, 1990, and if the hotel did not file a notice of intent prior to January 1, 2004, to withdraw the units from the rental market.

The ordinance also provides that the existing additional relocation payment of \$3,000 to each senior (62 or older) or disabled tenant displaced will increase annually on March 1 of each year, according to the “rent of primary residence” expenditure category of the Consumer Price Index for the preceding calendar year. The amounts due from March 1, 2009 through February 28, 2010 are \$ 4,945.46 for each tenant with a cap of \$14,836.35 per unit, with an additional \$3,296.96 for each elderly (62 years of age or older) or disabled (within the meaning of Section 12955.3 of the California Government Code) tenant.

Individuals who have questions or are seeking advice regarding the Ellis Act are urged to contact a qualified real estate attorney knowledgeable regarding the Ellis Act and San Francisco real property issues. Real estate brokers are not qualified to give opinions in this regard.

Security Bars - *Homes with window bars, under State law, must have an emergency release mechanism on at least one window in each bedroom and one other window.*

To increase security, many real property owners have installed bars on first-story windows. Window bars do not always have emergency release mechanisms and, if they do not, can pose a safety threat to occupants by not allowing egress from the property in the event of a fire.

In 1997, the State of California enacted legislation requiring cities and counties to require that homes with window bars have an inside emergency release on at least one window in each bedroom and one other window. The new State law also requires that newly installed window bars have an emergency release mechanism.

If bars have been placed over the windows of the property being purchased, the buyer should have them professionally inspected to determine whether they comply with applicable legal requirements.

Locks - *Landlords are required to have deadlock locks installed on each entry door.*

While the residents of most large cities are presented with a wide array of cultural and recreational amenities, they also are exposed to some of the negative aspects of urban life, such as overcrowding and crime. The most common urban crime is burglary. Burglary, however, can be discouraged by taking a few simple security precautions. To reduce burglaries and increase the security of residential dwellings, the California legislature has enacted a law which requires the landlord (or his or her broker) of any building intended for human habitation to do all of the following:

- Install and maintain operable deadbolt locks on each main swinging entry door of a dwelling unit. When in locked position, the bolt must extend a minimum of 13/16 of an inch in length beyond the strike edge of the door and protrude into the doorjamb;
- Install and maintain operable window security devices or locks for windows that are designed to be opened; and
- Install locking mechanisms that comply with applicable fire and safety codes on exterior doors that provide access to and from common areas in multi-family buildings.

Under the State law a “dwelling unit” is defined as “a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.” Thus, a single-family unit or an apartment unit is covered by this definition.

There are three exceptions to the provisions of the State law:

- Deadbolt exception: The new law does not apply to horizontal sliding doors or to existing deadbolts of at least one-half inch in length.
- Window security exception: The new law does not apply to windows that are more than 12 feet vertically or six feet horizontally from the ground, roof, or other platform. Louvered windows and casement windows also are exempt.
- Exterior door exception: The new law does not require the installation of a door or gate where none existed on January 1, 1998.

Automatic Garage Doors - *If the property has a garage equipped with an automatic garage door opening device, the law requires the device to have an automatic reversing mechanism.*

If the real property has a garage equipped with an older automatic garage door opening device, the device may not have an automatic reversing mechanism required by California Health and Safety Code Section 19890. Buyers should investigate the operation of any garage door opening device to determine whether it complies with applicable legal requirements.

Pools and Spas - *Local law may require pools, spas, etc. to have protective fencing and/or an alarm system.*

If the real property has a pool, spa or hot tub, local law may require that the facilities be surrounded by protective security fencing and, in some cases, equipped with an alarm system. Buyers of such property should determine whether any security measures are required by law and, if so, whether the facilities are in compliance.

Urban Forestry - *In San Francisco, it is unlawful for any person to plant or remove a street tree without obtaining a valid permit.*

In San Francisco, owners of real property, under the Urban Forestry Ordinance, are responsible for the routine maintenance of all street trees fronting their properties. Upon a finding by the director of the Department of Public Works that a street tree is being improperly maintained by the property owner, the director, after notifying the responsible party, may perform the necessary work and collect the costs of such work from the responsible party.

The Urban Forestry Ordinance recently was revised by the Board of Supervisors, and now includes protection for certain trees on private property that are close to the public right-of-way. Called, "significant trees," these trees are within 10 feet of the public right-of-way and also meet one of the following size requirements: 20 feet or greater in height, 15 feet or greater canopy width, 12 inches or greater diameter trunk measured at 4.5 feet above grade. These trees are granted the same protections as street trees, and a permit is required before any significant tree can be removed.

It is unlawful for any person to plant or to remove a street tree without obtaining a valid permit for such work from the Urban Forestry Division of the Department of Public Works.

For more information buyers or sellers should call the San Francisco Department of Public Works at 415-554-6920 and ask for the Urban Forestry Division. The division's offices are located at 2323 Cesar Chavez Street, Building A, San Francisco, CA 94103.

Ordnance Locations - *In some circumstances, sellers must give notice of ordnance (explosive munitions) locations to the buyer.*

Under California Civil Code Section 1102.15, the seller of any residential real property improved with one to four units who has "actual knowledge" of a former federal or State ordnance location within one mile of the property must give written notice of that fact to the buyer before transfer of title.

NEIGHBORHOOD CONDITIONS

Neighborhoods - *It is the responsibility of the buyer to determine the degree to which the real property being purchased can be affected by changing neighborhood conditions.*

Each neighborhood has its own distinctive character. But neighborhoods are not static and their character can be affected by numerous factors such as alterations to existing improvements and/or its landscaping, new construction, increased or decreased local services, lack of maintenance and neglect, and societal changes. As a neighborhood evolves, views, noise levels, traffic conditions and the safety neighborhood residents enjoy can change. In recent years, for example, some neighborhoods have begun to be affected by another phenomenon—the presence of homeless people. Buyers should understand that since anti-loitering laws were declared unconstitutional in the early 1980s, there is little that law enforcement agencies can do to remove loiterers, including the homeless, as long as they are not occupying privately owned real property.

Matters relating to the character of neighborhoods are outside the control of the seller and the broker and it is the buyer's responsibility to consult with appropriate governmental agencies, and other authorities and individuals to determine, to the degree possible, the manner in which real property can be affected by changing neighborhood conditions.

Neighborhood conditions can greatly affect the value, desirability and enjoyment of any real property. It is the buyer's responsibility to satisfy whatever concerns he/she may have in this regard.

Parking - *Most neighborhoods are densely populated and finding curbside parking can be a challenge.*

San Francisco is one of the most desirable cities in the world in which to live. Yet, it has a land area of only 49 square miles. With approximately 346,525 dwelling units in the city and a high percentage of single-family homes having attached side walls, it is no wonder that most neighborhoods are densely populated and finding curbside parking can be a challenge.

To discourage long-term parking in certain neighborhoods by people who do not live in them, the City and County of San Francisco has established a preferential residential parking system. Under the system, residential parking permit stickers are issued to neighborhood residents applying for them. The stickers allow residents to park their cars close to where they live during certain hours of the day. Cars not having the permit stickers are subject to being cited.

Most neighborhoods have a very small number of garages available for rent. Buyers of real properties without garages should be aware that these garages are exceedingly expensive and may not be available at all.

For further information on the preferential residential parking system, contact the Residential Permit Parking office at 415-503-2020 or the Traffic Engineering Division at 415-701-4686.

Commute Traffic - *Buyers should familiarize themselves with traffic conditions in the area surrounding any real property they are purchasing.*

Buyers should be aware that traffic in some neighborhoods is heavier during commute hours, especially on streets considered “cut-through” streets. In addition, if real property is located in the vicinity of a school, a park or a recreational area, traffic may become congested during certain hours of the day, and during weekends and holidays. Also, curbside parking in some residential areas may be subject to restrictions and property owners may be required to obtain permits to park on the street for extended periods of time. It is strongly advised that buyers familiarize themselves with the traffic conditions in the area surrounding any property they are purchasing, as well as the noise generated by such traffic, particularly during commute hours.

Noise in General - *Buyers should investigate sources of noise in the area surrounding the real property being purchased.*

Noise can affect people differently. What is acceptable to some can be intolerable to others. Some people, for example, are particularly disturbed by the noises made by the mechanical lifting devices of garbage trucks. The fact that most waste disposal companies collect garbage during early morning hours simply adds to the aggravation.

Noise is a natural concomitant of urban life. Buyers should not rely on the subjective judgments of sellers or brokers concerning acceptable noise levels affecting the real property being purchased. Buyers should investigate sources of noise or engage appropriate engineers or other qualified professionals to do it for them, and make their own determinations concerning acceptable noise levels before removing any property inspection contingencies in the purchase contract.

Hospitals and Fire Stations - *Real property located in close proximity to hospitals and/or fire stations may be subject to disturbances caused by the use of emergency vehicles.*

It is not unusual for hospitals and fire stations to be located in residential areas. Because these facilities use emergency vehicles, the peaceful enjoyment of real property surrounding them may be disturbed, from time to time, by the sound of sirens. Buyers should investigate whether the real property they are purchasing is located in close proximity to a hospital and/or fire station. If it is, they should understand that they might be subjected to disturbances from time to time caused by the use of emergency vehicles.

Airport Noise - *Buyers should determine whether the real property they are purchasing is affected by the noise of low-flying aircraft.*

San Francisco International Airport is one of the busiest airports by volume in the world. Tens of thousands of residential properties are located near the flight paths of the airport. Noise levels at any property so located may be affected by low-flying aircrafts. Buyers should thoroughly familiarize themselves with the degree to which noise levels at any property they are purchasing are affected by such aircrafts. For further information on the flight paths of local airports and the noise generated by low-flying aircrafts, contact the aircraft noise abatement center at San Francisco International Airport at 650-821-5100.

On January 1, 2004, the Airport Noise Disclosure law became effective and requires sellers to disclose to prospective buyers that residential property is in the vicinity of an airport ("Airport Influence Area") in three circumstances. First, subdividers are required to disclose in their public reports whether the property offered for sale is in an Airport Influence Area. Second, CC&R's for common interest developments recorded after January 1, 2004 must provide notice that the property is in an Airport Influence Area. Third, natural hazard disclosure companies and other experts who prepare natural hazard disclosures are required to include notice that the property is in an Airport Influence Area in their reports and such reports are deemed substituted disclosures for purposes of complying with the disclosure requirements of the Real Estate Transfer Disclosure Statement.

Views and Outlooks - *Neither the seller nor the broker can guarantee that the view which exists today will remain undisturbed in the future.*

Whether it is the Golden Gate Bridge, the Bay or just a grove of trees on an adjoining lot, an attractive view or outlook can greatly enhance the value, desirability and enjoyment of owning real property. But views are not static and they can change with time as a result of either natural or man-made obstructions. Neither the seller nor the broker can guarantee that the view which exists today will remain undisturbed in the future. Buyers are urged to investigate whether there are any projects planned by neighboring property owners or government entities which could affect views. If a view is material to a decision to purchase or the amount to be paid for the property, the buyer should investigate whether means are available, through legal and/or other governmental processes, to preserve views in the area in which the property is located. Further, they should engage qualified contractors or other professionals to investigate such matters from public records and otherwise in order to fully satisfy any concerns they might have before removing any inspection contingencies in the purchase contract.

Also, buyers should be aware that if a real property has "lot line windows" and a new structure is built up to the lot line on the adjoining lot, the owner may be required to remove the windows.

Odors - *Odors can emanate from many sources and, depending on the circumstances, affect the enjoyment of real property.*

Odors can be found everywhere in today's environment. They can emanate from such obvious sources as lakes, ponds and other bodies of water, as well as certain plant species. Odors can be carried by the wind many miles from their source.

Brokers as a general matter cannot be reasonably expected to know how a real property might be affected by odors. Buyers, accordingly, are advised to investigate sources of odors in and around any property they are purchasing. They also are encouraged to speak to neighbors concerning odors which are present in the area where the property is located. Further, they should engage qualified contractors, environmental consultants or other professionals to investigate such matters and fully satisfy any concerns they might have before removing any inspection contingencies in the purchase contract.

Landfill - *Structures built on landfill can be at greater risk of collapse during a severe earthquake.*

To increase the amount of land available for development near San Francisco Bay, many tidelands have been covered over with soil. Structures built on these landfills can be at greater risk of collapse during a severe earthquake because of a phenomenon known as liquefaction, where water deep within the soil rises to the surface. The City and County of San Francisco maintains certain historic maps which indicate the original high tide line of the Bay. The U.S. Geological Survey has similar maps which show the location of Bay mud deposits. Buyers should contact either the city assessor/recorder's office at 415-554-4176 or the U.S. Geological Survey at 888-275-8747 to obtain a copy of a tidelands/mud deposits map; or a qualified geologist should be retained to determine whether the real property they are purchasing is located on landfill.

Residential Care Facilities - *Residential care facilities can be located in any neighborhood and are protected by State law.*

Buyers should be aware that residential care facilities, which provide housing and other services to individuals who are unable to care for themselves, can be located in any neighborhood and are protected by State law which exempts them from the operation of local zoning ordinances.

Golf Courses - *Stray golf balls can pose hazards.*

For some, real properties adjacent to or near golf courses could not be more ideally located. But buyers of such properties should be aware that stray golf balls can pose a physical hazard to the occupants of or visitors to such properties, as well as a potential for damage to their windows, roofs, automobiles, etc.

Megan's Law - *Unless exempt, contracts for the sale and purchase of real property with one to four units and every rental or lease agreement for residential real property are required to include a statutorily-defined notice regarding the existence of public access database information regarding sex offenders.*

In 1996, California enacted legislation requiring certain sex offenders to register with State and local agencies and requiring State and local agencies to release relevant information about certain sex offenders to protect the public. Pursuant to Civil Code Section 2079.10a, contracts for the sale and purchase of real property with one to four units and every rental or lease agreement for residential real property entered into by the parties on or after April 1, 2006 must contain, in not less than eight-point type, the following notice:

“Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides.”

Upon delivery of the foregoing notice to a buyer or lessee, the seller, lessor or any broker is not required to provide information in addition to that contained in the notice. The information in the notice also shall not give rise to any cause of action by a registered sex offender against the disclosing party.

Nothing in Section 2079.10a, however, relieves or alters any existing duties of the seller, lessor or any broker. While a seller's portion of a Real Estate Transfer Disclosure Statement does not contain any questions about sex offenders, a prudent seller should disclose any actual knowledge of sex offenders living in the neighborhood and fully disclose his or her actual knowledge regarding sex offenders in response to any questions regarding the same.

Individuals who have questions or are seeking advice regarding Civil Code Section 2079.10a are urged to contact a qualified real estate attorney.

MISCELLANEOUS

Lockboxes - *Lockboxes provide a repository for a key which can be used to gain access to a real property.*

To facilitate the showing of real property being offered for sale, a lockbox frequently is installed at the property by the listing broker. Lockboxes provide a repository for a key which can be used to gain access to the property by other brokers accompanied by prospective buyers. Lockboxes have a tempered steel clasp or elongated ring which allows them to be secured to a door knob at the property. The electronic lockboxes in use today contain tiny computer chips and are powered by lithium batteries which allow them to be opened with an electronic battery-powered keypad which is about the size of a credit card. Electronic lockboxes have a lockout feature which allows them to be programmed to permit access to the property during certain hours of the day only.

The policies and procedures governing use of the electronic lockbox system operated by the San Francisco Association of REALTORS® for the benefit of users of its multiple listing service provide that no real estate licensee may enter a property with a lockbox without obtaining the authorization of the listing broker. Blanket authorization may be provided to all licensees utilizing the association's multiple listing service or authorization may be given to licensees on an individual basis. A listing broker may not place a lockbox on listed property without obtaining the written authorization of the seller. The California Association of REALTORS® publishes a lockbox authorization form which provides a means by which such authorization can be given. The form advises the seller to safeguard or remove valuables located inside the property. It also provides that neither the listing nor the selling broker, association or multiple listing service is an insurer against loss of personal property. And, it advises the seller to verify the existence of or to obtain appropriate personal property insurance coverage.

Home Warranty Plans - *Buyers can protect themselves from loss resulting from the failure of certain systems found inside residential real property.*

Various home warranty plans are available which provide protection from loss, for a specified period of time after close of escrow, resulting from the failure of certain identified major appliances, fixtures or systems (heating, air conditioning, etc.) commonly found inside residential real property. A home warranty plan does not replace the need for home insurance, which covers the building structure itself. Unless otherwise agreed, it usually is understood that neither the seller nor the buyer has elected to purchase such a plan. A list of companies which offer home warranty plans may be obtained from most brokers.

Public Schools - *School-age children may not be able to attend schools nearest the real property.*

Buyers should understand that because of overcrowding in the public schools and the maintenance by school districts of "open enrollment" policies, it may not be possible for school-age children to attend schools nearest the property being purchased. In addition, the area served by each school is subject to being changed each year. If children are required to attend a school at a more distant location, they may need to be transported to that location by bus, or if bus transportation is not available, by other means. If the quality or suitability of school facilities is material to either the decision to purchase or the amount to be paid for a property, buyers are strongly advised to contact the offices of the school district that serves the area in which the property is located to determine the manner in which children are assigned to individual schools.

Mandatory Recycling – *The City of San Francisco mandates recycling by owners of residential real property.*

San Francisco law requires owners of residential or multifamily properties that generate refuse to subscribe to, pay for, and provide an accessible location for sufficient levels of service for recycling. The city also requires owners to pay a "Special Reserve Surcharge" (new landfill fee). Information concerning San Francisco's recycling program, costs of compliance and laws can be obtained from the city's Environment Department at 415-554-7329 or its web site (www.sfenvironment.org).

Water Shortages (Rationing) - *Limitations may be imposed on the amount of water real property owners may use.*

California experiences intermittent droughts which can affect the ability of utilities to supply water to customers for use in the home and outdoors. These utilities may impose either voluntary or mandatory rationing plans, or increase water rates in order to obtain water conservation. Buyers are advised to contact the utility which provides water to the property they are purchasing in order to determine whether water conservation measures are in effect. Once this information has been obtained, a determination should be made concerning the degree to which rationing or rate increases will affect the enjoyment of the property. Information concerning water rationing and water rates in San Francisco can be obtained by contacting the city's Water Department at 415-923-2420.

Fire Hazards - *Buyers should determine the fire danger in and around any real property being purchased.*

California is a semiarid region and receives little or no rain during the late spring, summer and early fall. As a consequence, a high fire danger exists during this period, particularly in areas where there is a substantial amount of dry underbrush. The severity of the danger can vary depending on the climate of the region, the topography and the quality of the fire suppression services available in the immediate area. Certain types of materials used in construction, such as wood shingles, can add to the risk. Buyers should contact the local fire department and their insurance agent to discuss with them the fire danger on and around any real property being purchased.

Garage Improvement Restrictions - *If a property has no garage or the buyer wishes to change the existing garage in some manner, local laws may restrict or prohibit what can be done.*

The City and County of San Francisco in recent years has placed greater restrictions on what is allowed relative to residential garage construction and renovations. Buyers who wish to add a garage or make changes to an existing garage on property they are purchasing are urged to consult a qualified architect prior to removing any inspection contingencies in the purchase contract. Otherwise, they may close escrow and find out that their plans are prohibited.

Sidewalk Repair Responsibility - *It is the responsibility of owners to maintain the sidewalk in front of their property, not the City and County of San Francisco's.*

Owners, not the City and County of San Francisco, are responsible for maintaining the sidewalk in front of their property. If anyone trips and falls or is otherwise injured due to an alleged negligently maintained sidewalk, the owner could be held liable. Buyers should direct any questions they have in this regard to the San Francisco Department of Public Works at 415-554-5810.

Private Roads - *The buyer should ascertain the existence of any recorded joint maintenance agreement.*

If the real property being purchased is accessed by a common-use private road which also provides access to other properties, the buyer should ascertain the existence of any recorded joint maintenance agreement and determine the owners' obligations thereunder. If no agreement exists, Civil Code Section 845(c) provides that "the cost [of maintenance] shall be shared proportionately to the use made of the easement by each owner."

Referrals - *Before selecting a service provider, the provider should be interviewed.*

Brokers sometimes are asked to make recommendations concerning referrals to service providers, such as lending institutions, loan brokers, title insurers, escrow companies, inspectors, pest control operators, contractors, repairmen, attorneys and the like. Such recommendations and referrals are always made with the understanding that:

- Many companies and persons operate in a particular field;
- Costs and the quality of services may vary;
- Any recommendation or referral is based upon the broker's past experience and future performance cannot be guaranteed; and,
- Buyers and sellers are free to select service providers other than those recommended.

When requesting a recommendation of or referral to a service provider in a particular field, buyers and sellers should ask to be provided with more than a single name. Before making a selection, each service provider should be interviewed and its/his/her references checked to ensure that the selection is an informed one.