

## Updating Disclosure Documents

**Duty to disclose.** With limited exceptions, the seller of residential property improved with one to four units has a legal obligation to disclose to a buyer known material information affecting the value or desirability of the property by completing a statutory form called the Real Estate Transfer Disclosure Statement (C.A.R. Form TDS) and a contractual obligation to also complete a Seller Property Questionnaire (C.A.R. Form SPQ) as soon as practical before transfer of title. It is also common for seller or their agent to order a natural hazards (NHD) report from a third-party company that identifies if the property is located in certain “zones.” The seller can use the NHD report to make other disclosures, such as those addressing fire hardening of the property and defensible space around it. See C.A.R.’s Fire Hardening and Defensible Space Disclosure and Addendum (C.A.R. Form FHDS).

**Duty to modify a disclosure.** A seller is contractually obligated to amend a previously delivered TDS, SPQ or other disclosure if seller becomes aware of adverse conditions not previously disclosed or any material inaccuracy in such disclosures.

**Buyer Right to Rescind.** If these disclosures, or any amendment thereto, are made after a buyer has made an offer, then the buyer has a right to rescind the offer within a few days after receiving the disclosure.

### Delays between listing and selling.

**Seller disclosures.** It is common for a seller to complete the TDS and SPQ shortly after signing a listing agreement. The longer it takes to get the property into contract, the greater the possibility that there is a change in something that was disclosed at the time of the listing, or that the seller becomes aware of something that should be disclosed but wasn’t when the disclosure was originally provided. Listing agents should advise their seller clients to review all disclosures to make sure that all answers are still accurate, and if not to make a modification as soon as possible.

**Third party reports.** If a NHD report was ordered at time of listing, then the listing agent should contact the rep for the NHD reporting company to confirm that it is still accurate or if an updated report needs to be prepared. If the latter, the seller’s disclosures may need to be modified if the NHD report changes.

**How to modify a previous disclosure.** While a completely new disclosure can be prepared and signed by the seller, that will not be necessary in most circumstances. Instead, the seller can identify the modification by attaching an Addendum (C.A.R. Form ADM) to the TDS, SPQ or other disclosure. Make sure to check the box at the top of the page making the Addendum part of the TDS or checking “Other” and writing in the other document, such as SPQ. In the blank lines, identify the disclosure that needs to be changed by form name and paragraph number and make the modification in a clear and concise manner.

**Effect of addendum or amendment to previous disclosure.** If the previously prepared disclosure has not already been provided to the buyer, then the Addendum should be attached to it and provided to the buyer at the same time. Any rescission right associated with the TDS or other disclosure should not be affected. If the previously prepared disclosure has already been delivered to the buyer, the Addendum will act as an amendment to the disclosure and a new rescission right for the buyer will apply.