



HOME HARDENING DISCLOSURE LAW

Legal Tools February 2021

WHAT IS HOME HARDENING?

- Building resistant materials and home features that protect a home from catching fire
- Cal Fire urges all homeowners within fire hazard zones to make needed home hardening retro-fits



Flying embers can destroy a home up to a mile ahead of a wildfire!

COMMON HOME HARDENING STEPS

- Replace wood or shingle roof
- Cover vents with metal mesh
- Eaves should be non-combustible
- Remove combustible landscaping within five feet of home
- Install dual paned, tempered glass windows
- Walls made of resistant material, not boards or shingles
- Decks and patio covers made of fire-resistant materials
- Screen or enclose rain gutters to prevent debris
- Chimney outlet metal screened
- Fix loose or missing bird stop/eave closure




NEW HOME HARDENING DISCLOSURE LAW

- Created by AB 38 (2019)
- Effective as of January 1st, 2021
- Applies to:
 - Residential 1 – 4 unit properties (including condos and manufactured homes)
 - Located within high or very high fire zones
 - Built before 2010
- Same cancellation rights and exemptions as TDS (including sales involving probate, REOs, foreclosures, bankruptcies and some types of trusts)



WHAT MUST DISCLOSURE INCLUDE?

- Required general notice about home hardening
- Seller must answer questions specifying which home hardening features the home **lacks** that make the home vulnerable to wildfire and flying embers
- Disclosure is based on the seller's actual knowledge
- Use C.A.R. Form FHDS

 CALIFORNIA ASSOCIATION OF REALTORS®

FIRE HARDENING AND DEFENSIBLE SPACE ADVISORY, DISCLOSURE, AND ADDENDUM
(C.A.R. Form FHDS, 5/21)

This is an advisory, disclosure, and addendum to the Purchase Agreement, OR Other _____ ("Agreement"), dated _____, on property known as _____ ("Property"), in which _____ is referred to as Buyer, and _____ is referred to as Seller.

1. FIRE HARDENING AND DEFENSIBLE SPACE ADVISORY:

A. LAW APPLICABILITY:

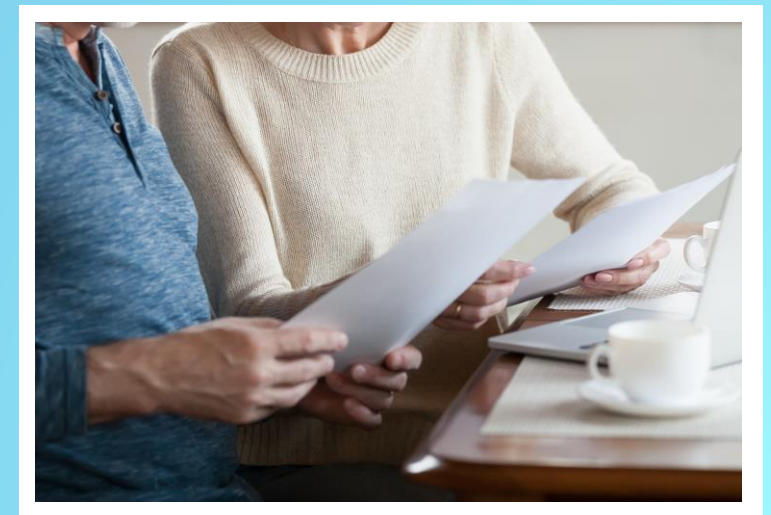
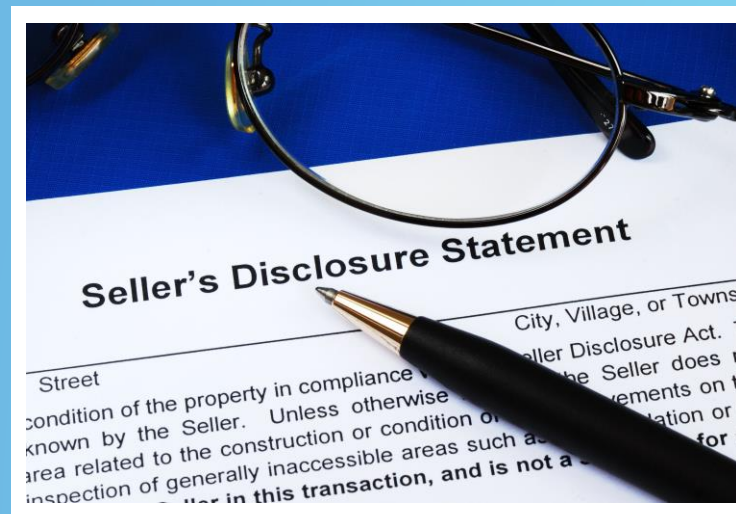
(1) **Fire Hardening Disclosure:** The disclosures specified in paragraph 3 are only required for sellers of residential properties: (i) that contain one to four units, (ii) that are constructed before January 1, 2010, and (iii) if the seller is required to complete a Real Estate Transfer Disclosure Statement (C.A.R. Form TDS); and (iv) that are located in either a **high or very high** fire hazard severity zone.

(2) **Defensible Space Compliance:** The disclosures and requirements specified in paragraph 4 are only required for sellers of residential properties: (i) that contain one to four units and (ii) if the seller is required to complete a Real Estate Transfer Disclosure Statement (C.A.R. Form TDS); and (iii) that are located in either a **high or very high** fire hazard severity zone.

(3) **Inspection Report including Fire Hardening/Defensible Space Compliance:** The disclosure of a final inspection report obtained under the specifications in paragraph 5 is only required for sellers of residential properties improved with one to four units if the seller is obligated to complete a Real Estate Transfer Disclosure Statement (C.A.R. Form TDS). Any seller may be required to provide a copy of such a final inspection report pursuant to a contractual or voluntary disclosure or as a material fact.

B. **WHERE TO LOCATE INFORMATION:** Seller has the obligation to determine if compliance with the fire hardening and defensible space requirements are applicable to Seller and the property. It may be possible to determine if a property is in a **high or very high** fire hazard severity zone by consulting with a natural hazard zone disclosure company or reviewing the company's report. This information may also be available through a local agency where this information should have been filed.

C. Even if the Property is not in either of the zones specified above, or if the Seller is unable to determine whether the Property is in either of those zones, if the Property is in or near a mountainous area, forest-covered lands, brush covered lands, grass-



NEW FORM FHDS



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DETERMINING WHETHER THE PROPERTY IS IN A HIGH OR VERY HIGH FIRE HAZARD SEVERITY ZONE

Option 1:

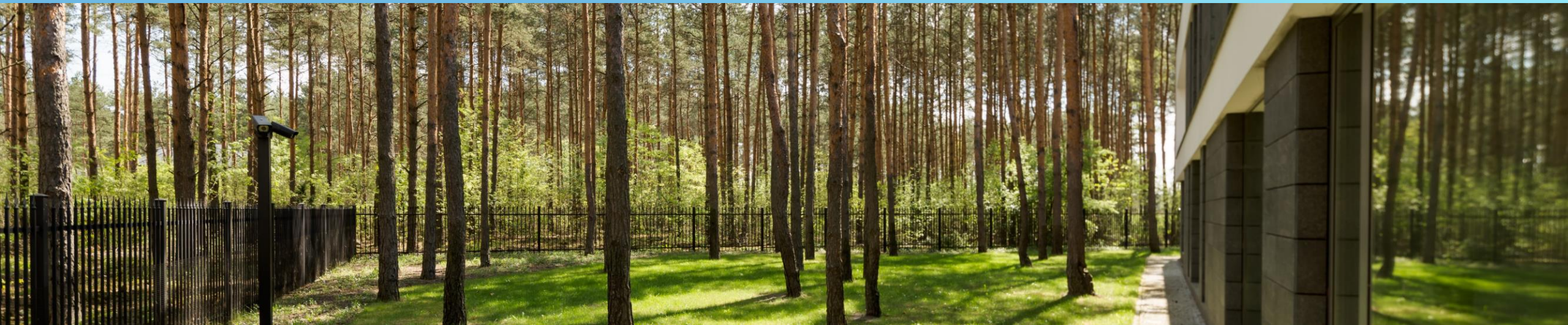
- View the NHD Statement to see if either of the boxes pertaining to fire zones have been checked
- If either of the boxes has been checked, it is safe to presume the property qualifies, and an agent may recommend seller fill out the home hardening disclosure

NOTE: This may result in an overbroad disclosure since the box for wildland area forest fire risks include not only high or very high fire severity zones, but also moderate zones.

DETERMINING WHETHER THE PROPERTY IS IN A HIGH OR VERY HIGH FIRE HAZARD SEVERITY ZONE

Option 2:

- Seek the guidance of a reputable NHD reporting company
- A representative of such a company may be able to point out specifically where within the NHD report it states which type of fire hazard severity zone, if any, that the property is located in

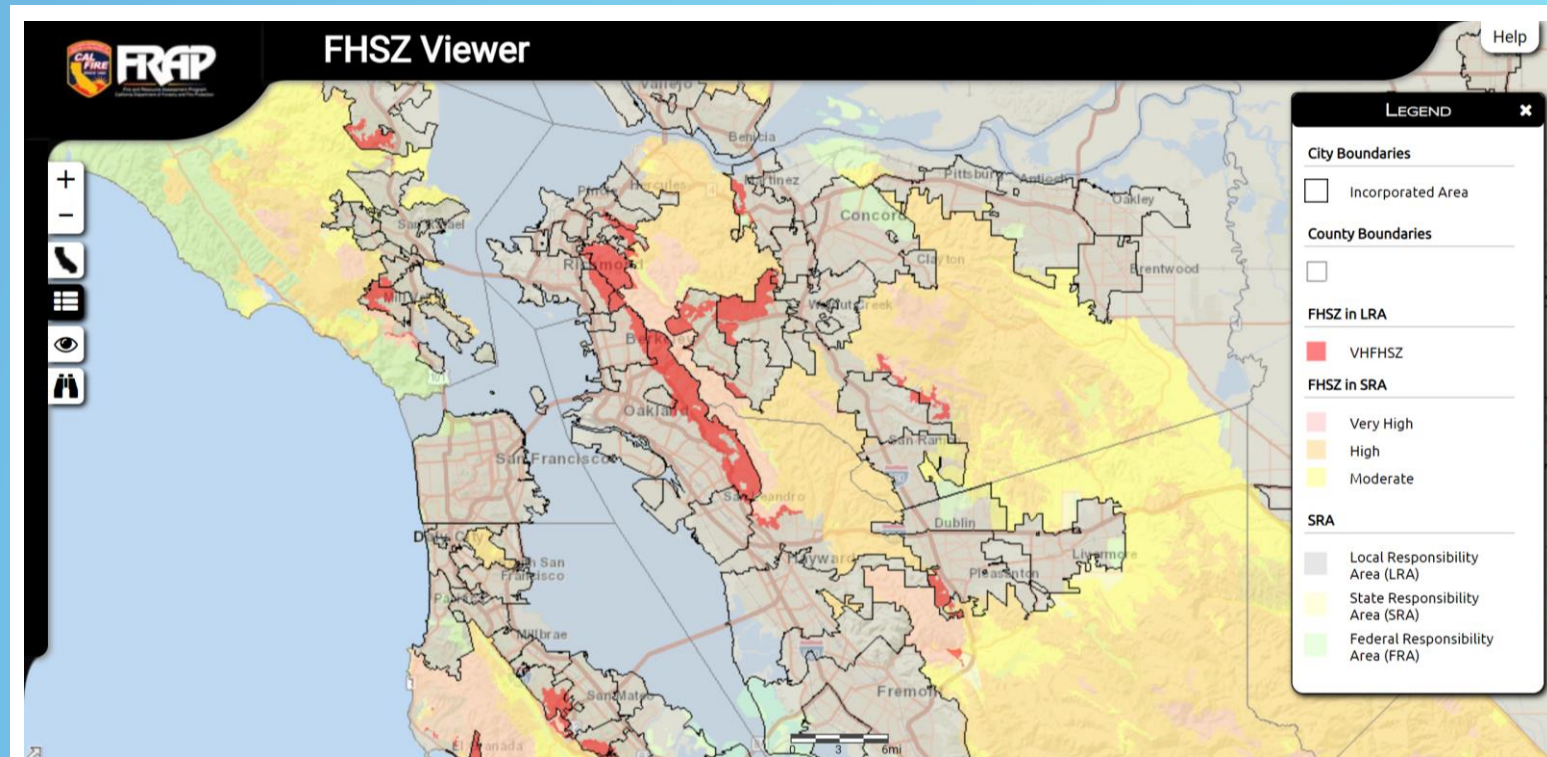


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Option 3:

- Cal Fire has made available a "Fire Hazard Severity Zone Viewer" (FHSZ Viewer) to allow anyone to input the property address and determine which fire hazard severity zone, if any, the property is located in
- FHSZ Viewer is available at <https://egis.fire.ca.gov/FHSZ/>

NOTE: Agents should not check the maps, or draw conclusions based upon those maps, for the seller. Limit help to providing the FHSZ Viewer link.



OTHER CONSIDERATIONS



- Form HHDA should be delivered with other seller disclosures. It carries the same cancellation rights as the TDS
- Even if the property is *not* located in one of the fire zones, if the property is located in or near a mountainous area, forest-covered lands, brush covered lands, grass-covered lands or land that is covered with flammable material, the seller may want to provide the HHDA to disclose material facts
 - Seller may also want to provide the disclosure if they are unable to determine if the property is in a fire zone

ADDITIONAL RESOURCES

- C.A.R. Legal Q&A
<https://www.car.org/riskmanagement/qa/disclosure-folder/Home-Hardening>
- Cal Fire Resource Website
<https://www.readyforwildfire.org/>
- Legal Live Webinars from November 2020, December 2020, and January 2021 <https://www.car.org/riskmanagement/live>