

Natural Hazard Disclosure (NHD) Statement

Sellers and agents of any real property must disclose to a prospective buyer if the property for sale is in certain types of natural hazard zones. For sales of certain properties, this disclosure must be made on a statutory form known as the Natural Hazard Disclosure Statement.

What is the NHD law? The NHD law, codified in California Civil Code ("Cal.Civ.Code") 1103 through 1103.15, imposes a duty to disclose, on the NHD Statement, if residential property improved with one-to-four units, or a mobile home, that is being sold is in one of six "natural hazard" zones. The six zones are: 1) A flood hazard zone as designated by the Federal Emergency Management Agency; 2) An area of potential flooding after a dam failure (also known as a "dam failure inundation area"); 3) A very high fire hazard severity zone; 4) A wildland fire area (also known as "state fire responsibility area" or "SRA"); 5) An earthquake fault zone; and 6) A seismic hazard zone.

Who is required to provide an NHD Statement? Both the seller and the listing agent must sign the NHD form. However, not all sales require the NHD Statement. If a seller is exempt from providing a Transfer Disclosure Statement, they are also exempt from providing the NHD Statement.

Is disclosure necessary even if the NHD Statement is not required? Yes, the obligation to disclose a property's location in any of the six zones applies to all real property. The obligation to disclose a property's location on the NHD Statement only applies to properties improved with one-to-four residential units where no exemption applies. The requirement to disclose the fact that a property is in one of these six natural hazard zones applies to all sales of any kind of real property, regardless of whether the NHD Statement must be provided. Such a disclosure may be made using a third-party disclosure reporting company.

What are the benefits of hiring a third-party company to provide the NHD reports? Cal.Civ.Code § 1103.4 provides that sellers and listing agents receive the benefit of a liability shield when they hire experts in natural hazard discovery to provide the reports disclosing that the property is in one or more natural hazard zones.

Neither the seller nor listing agent is liable for any errors, inaccuracies or omissions in any information provided in a third-party disclosure report, unless the seller or agent has personal knowledge of the error, inaccuracy, or omission.

When must the NHD Statement be provided during the transaction? Under the Residential Purchase Agreement (C.A.R. Form RPA) all disclosures, including the NHD Statement, must be provided to the buyer within seven days after acceptance of the offer. It is particularly important to deliver the NHD Statement as early as possible because its delivery triggers a 3-5 day right of rescission for the buyer, just like the Transfer Disclosure Statement.

What are the consequences of not providing the NHD Statement in a covered transaction? Failure to comply with this law will not allow a buyer to rescind the transaction; however, anyone who willfully or negligently violates or fails to perform their duty required by this law will be liable in the amount of actual damages suffered by the buyer.

Where can the seller find the NHD form to sign and deliver? By law, a third-party disclosure company must include a completed NHD Statement with their report, and the seller and listing agent should sign this form.