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2009 REO Disclosure Chart

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Member Legal Services
Tel 213.739.8282
Fax 213.480.7724
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The recent resurgence of sales of real estate owned by banks (known as REO properties) raises many questions about the disclosure requirements when selling these properties. This chart provides REALTORS® and their clients with an easy-to-use reference guide for determining the general applicability of common disclosure laws for residential real properties of one-to-four units. This chart, however, pertains only to REO properties acquired by a lender through the foreclosure process or by deed in lieu of foreclosure.

The list of disclosure requirements in this chart is in alphabetical order. Immediately below the name of each disclosure requirement is, in parenthesis, any applicable C.A.R. standard form that may be used to satisfy that disclosure requirement. This chart also indicates whether a disclosure is legally required, recommended, or not required, and provides an explanation for each determination. For more information, the legal authorities for the disclosure laws cited in the explanation boxes are available at leginfo.ca.gov for California statutes and www.gpoaccess.gov/uscode/index.html for federal statutes.

This chart does not cover all disclosure requirements. Examples of items not covered in this chart are disclosure requirements pertaining to local city and county requirements, new subdivisions, government housing, manufactured homes, and others.

For a printer-friendly version of the REO Disclosure Chart (Sales of Residential 1-4 Real Property) [Click Here](#)  (PDF file--Adobe Acrobat Reader Required**)

** [Acrobat Reader](#) is free downloadable software that will enable members to read any PDF files.

DISCLOSURE (and C.A.R. Form ¹)	DELIVERY TO BUYER	EXPLANATION
Agency Disclosure Statement (C.A.R. Form AD ¹)	Required	A real estate agent must provide an agency disclosure statement for a transaction involving one-to-four residential units, except certain subdivision sales (Cal. Civ. Code § 2079.14). There is no exemption for an REO sale. However, if the seller or buyer refuses to sign an acknowledgement of receipt, the agent shall set forth, sign, and date a written declaration of the facts of the refusal (Cal. Civ. Code

		§ 2079.15).
Agent's Duty to Visually Inspect and Disclose (C.A.R. Form AVID ¹)	Required	For residential property with one-to-four units (except for certain subdivisions), a real estate agent is required to conduct a reasonably competent and diligent visual inspection and to disclose to the buyer all facts materially affecting the value or desirability of the property that an investigation would reveal (Cal. Civ. Code § 2079). There is no exemption from this requirement for REO sales. C.A.R. Form AVID is not a legally-mandated form, but an agent is strongly advised to use the form to document that he or she has performed the legally required visual inspection.
Airport in Vicinity	Not Required	An REO lender is exempt from the requirement of providing an NHD Statement (Cal. Civ. Code § 1103.1(a)(2)), but is not exempt from other provisions of California law requiring a seller to disclose that a property is located in any of six natural hazard zones. It is therefore highly advisable for an REO lender to obtain an NHD Statement from a third-party disclosure reporting company. The NHD expert is required to include the fact that the property is "within an airport influence area" (Cal. Civ. Code § 1103.4(c)(1)). Although the REO lender is exempt from this disclosure requirement, the lender must nevertheless disclose any known material facts that may affect the value or desirability of the property (see Material Facts below).
C.A.R.'s Combined Hazards Book (3-part booklet)	Part 1: Recommended Part 2: Required Part 3: Recommended	REO lenders and agents are strongly encouraged to provide C.A.R.'s 3-part Combined Hazards booklet to prospective buyers. <ul style="list-style-type: none"> * Part 1 is the Residential Environmental Hazards booklet, which is not required for any transaction. However, the law expressly shields a seller and agent from liability by deeming delivery of the booklet as adequate in informing the buyer about common environmental hazards (Cal. Civ. Code § 2079.7(a)). * Part 2 is "Protect Your Family From Lead in Your Home," and required for most residential properties built before 1978 (see Lead-Based Paint Hazards below), including REO sales. * Part 3 is the Homeowner's Guide to Earthquake Safety (and the Residential Earthquake Hazards Report). Although an REO sale is exempt from this disclosure requirement, delivery is highly advisable as the law deems it as adequate in informing the buyer about geologic and seismic hazards in general (Cal. Civ. Code § 2079.8(a)).
Condominium or Other Common Interest Development Documents (C.A.R. Form HOA ¹)	Required	The seller of a condominium or other separate interest in a common interest development must provide the governing documents and other items to a prospective buyer (Cal. Civ. Code § 1368(a)). There is no exemption from this requirement for an REO sale. The seller may use C.A.R. Form HOA to request a Homeowners' Association to provide these condominium documents.
Farm or Ranch Proximity	Not Required	An REO lender is exempt from the requirement of providing an NHD Statement (Cal. Civ. Code § 1103.1(a)(2)), but is not exempt from other provisions of California law requiring a seller to disclose that a property is located in any of six natural hazard zones. It is therefore highly advisable for an REO lender to obtain an NHD Statement from a third-party disclosure reporting company. The NHD expert is required to include the fact that the property is located within one mile of a farm or ranch as designated on a GIS map (Cal. Civ. Code § 1103.4(c)(3)). Although the REO lender is exempt from this disclosure requirement, the lender must nevertheless disclose any known material facts that may affect the value or desirability of the property (see Material Facts below).
Flood Insurance for	Required	If federal disaster relief assistance conditioned upon obtaining flood insurance has been provided for a property, the

Disaster Relief Assistance (C.A.R. Form SPQ or SSD ¹)		transferor must disclose the requirement of obtaining flood insurance to the buyer in writing (42 U.S.C. § 5154a). There is no exemption from this requirement for an REO sale. C.A.R. Form SPQ or SSD may be used to disclose any disaster relief assistance.
Industrial Use Zoning	Not Required	A residential seller must generally disclose any actual knowledge that a property is affected by or zoned to allow commercial, manufacturing, or airport use (Cal. Civ. Code § 1102.17). An REO lender is exempt from this disclosure requirement, but must nevertheless disclose any known material facts that may affect the value or desirability of the property (see Material Facts below).
Lead-Based Paint Hazards Disclosure (C.A.R. Forms RPA-CA, FLD ¹ , and C.A.R.'s Combined Hazards Book)	Required	Under federal law, a seller of residential property built before 1978 must generally disclose lead-based paint hazards. An REO lender is not exempt from this law, which requires: (1) Providing the buyer with an EPA-approved lead hazard pamphlet (such as "Protect Your Family From Lead in Your Home" in Part 2 of C.A.R.'s Combined Hazards Book); (2) Providing the buyer with a 10-day opportunity to inspect for lead-based paint hazards, unless otherwise agreed in writing (e.g., C.A.R. Form RPA-CA paragraph 14B(1)); (3) Providing the buyer with a lead-based paint disclosure statement (e.g., C.A.R. Form FLD); and (4) Disclosing any known lead-based paint or lead-based paint hazard in the property (e.g., C.A.R. Form FLD) (42 U.S.C. 4852d and 40 C.F.R. § 745.107).
Material Facts (C.A.R. Form SPQ or SSD ¹)	Required	A seller is required to disclose any known material facts affecting the value or desirability of the property. Whether something is material or immaterial will ultimately be decided, if necessary, through the legal process by a judge, jury, or arbitrator, based on the facts and circumstances of the case. There is no exemption from this disclosure requirement for an REO sale. C.A.R. Form SPQ (or SSD) is not legally mandated, but an REO lender is strongly advised to complete the SPQ or SSD, which works like as a checklist, to help satisfy its duty to disclose material facts.
Megan's Law Disclosure (C.A.R. Form RPA-CA, paragraph 5C)	Required	A residential seller must generally disclose the availability of a database of registered sex offenders in at least 8-point type font (Cal. Civ. Code § 2079.10a). There is no exemption from this requirement for an REO sale. If an REO lender drafts its own sales contract, rather than use C.A.R. Form RPA-CA, the Megan's Law disclosure is still required.
Mello-Roos Tax and 1915 Bond Act Assessment Notice	Not Required	A residential seller must generally make a good faith effort to obtain a notice of a Mello-Roos special tax or a 1915 Bond Act assessment. An REO lender is exempt from this requirement (Cal. Civ. Code § 1102.6b), but must nevertheless disclose any known material facts that may affect the value or desirability of the property (see Material Facts above).
Meth Lab Clean-Up Order (C.A.R. Form SPQ or SSD or MCN ¹)	Required	A seller must disclose in writing to a buyer a pending order issued by a local health officer prohibiting the use or occupancy of a property contaminated by meth lab activity. The seller must also give a copy of the pending order to the buyer to acknowledge receipt in writing. (Cal. Health & Safety Code § 25400.28.) There is no exemption from this requirement for an REO sale.
Military Ordnance Location	Not Required	A residential seller must generally disclose any actual knowledge of a military ordnance location within one mile (Cal. Civ. Code § 1102.15). An REO lender is exempt from this requirement, but must nevertheless disclose any known material facts that may affect the value or desirability of the property (see Material Facts above).

<p>Natural Hazard Disclosure Statement</p> <p>(C.A.R. Form NHD¹)</p>	<p>Recommended</p>	<p>An REO lender is exempt from the requirement of providing an NHD Statement (Cal. Civ. Code § 1103.1(a)(2)), but is not exempt from other provisions of California law requiring a seller to disclose that a property is located in any of six natural hazard zones. It is therefore highly advisable for an REO lender to obtain an NHD Statement from a third-party disclosure reporting company or to complete C.A.R. Form NHD.</p> <ul style="list-style-type: none"> · Special Flood Hazard Area (Cal. Gov't Code § 8589.3); · Area of Potential Flooding (Cal. Gov't Code § 8589.4); · Very High Fire Hazard Severity Zone (Cal. Gov't Code § 51183.5); · State Fire Responsibility Area (Cal. Pub. Res. Code § 4136); · Earthquake Fault Zone (Cal. Pub. Res. Code § 2621.9); and · Seismic Hazard Zone (Cal. Pub. Res. Code § 2694).
<p>Private Transfer Fee Notice</p>	<p>Not Required</p>	<p>A residential seller must generally provide a Notice of Transfer Fee to a buyer (Cal. Civ. Code § 1102.6e). An REO lender is exempt from this requirement, but must nevertheless disclose any known material facts that may affect the value or desirability of the property (see Material Facts above).</p>
<p>REO Advisory</p> <p>(C.A.R. Form REO¹)</p>	<p>Recommended</p>	<p>C.A.R. Form REO is a supplement to the C.A.R. purchase agreements that addresses issues pertaining to REO transactions, such as the disclosure requirements. It also informs the seller and buyer that brokers cannot give legal advice on lender-prepared agreements and other documents. Form REO is not legally required, but it is highly recommended for an REO sales transaction.</p>
<p>REO Advisory (Listing)</p> <p>(C.A.R. Form REOL¹)</p>	<p>Recommended</p>	<p>C.A.R. Form REOL is a supplement to the C.A.R. listing agreements that addresses issues pertaining to REO listings, such as the disclosure requirements. Form REOL is not legally required, but it is highly recommended when taking a listing for an REO property.</p>
<p>Seller's Affidavit of Nonforeign Status (under FIRPTA) and California Withholding Exemption</p> <p>(C.A.R. Form AS¹)</p>	<p>Recommended or Tax Withholding May Be Required</p>	<p>Under federal FIRPTA law, a buyer must withhold 10 percent of the sales price from the seller's proceeds, and send that amount to the IRS, unless an exemption applies. An exemption is available if, for example, an REO lender provides a written certification it is a nonforeign corporation (26 U.S.C. § 1445). Similarly, under state law, a buyer must withhold 3 1/3 percent of the sales price, and send that amount to the FTB, unless an exemption applies. An exemption is available if, for example, an REO lender provides written certification that it is a corporation qualified through the California Secretary of State or has a permanent place of business in California (Cal. Rev. & Tax Code § 18662(e)(3)D)(v)).</p>
<p>Smoke Detectors</p> <p>(C.A.R. Form SDS or WHSD¹)</p>	<p>Required</p>	<p>The seller of a single-family dwelling must deliver to the buyer a written statement of compliance with the smoke detector law (Cal. Health & Safety Code § 13113.8(b)). There is no exemption from this requirement for an REO sale.</p>

Statewide Buyer and Seller Advisory (C.A.R. Form SBSA ¹)	Recommended	C.A.R. Form SBSA advises both the seller and buyer of various factors that may affect a sales transaction. Form SBSA is not legally required, but it is a highly recommended form to use in any real estate transaction, including an REO sale.
Supplemental Property Tax Notice	Not Required	A residential seller must generally deliver a Notice of Supplemental Property Tax Bill to a buyer (Cal. Civ. Code § 1102.6c). An REO lender is exempt from this requirement, but must nevertheless disclose any known material facts that may affect the value or desirability of the property (see Material Facts above).
Title Insurance Notice	Required	If title insurance will not be issued to the buyer of an owner-occupied residential property with one-to-four units, a notice of the advisability of title insurance must be provided in a separate document to the buyer (Cal. Civ. Code § 1057.6). There is no exemption from this requirement for an REO sale.
Transfer Disclosure Statement (TDS)	Not Required	A residential seller must generally provide a TDS to the buyer disclosing the features and condition of a property (Cal. Civ. Code § 1102). An REO lender is exempt from this requirement, but must nevertheless disclose any known material facts that may affect the value or desirability of the property (see Material Facts above).
Water Heater Bracing (C.A.R. Form WHSD)	Required	The seller of any real property containing a water heater must certify in writing to the buyer that the existing residential water heater is properly braced, anchored, or strapped (Cal. Health & Safety Code § 19211). There is no exemption from this requirement for REO sales.

1. California Law sometimes requires that a specific form (or exact language as indicated in the statute) be used. Examples are the AD, FLD, TDS, MHTDS, and the NHD. Other times, the law may require a disclosure but doesn't mandate that particular language be used. C.A.R. provides forms for that purpose as well as informational purposes. The law doesn't require use of these forms. Examples are the AVID, MCN, SBSA, SDS, SSD, SPQ, AS, WHS, WHSD, REO, and REOL.

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The information contained herein is believed accurate as of January 1, 2009. It is intended to provide general answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney.

