

## Seller Property Questionnaire

Sellers in real estate transactions have many disclosure obligations. Most significantly, sellers are required to disclose all material facts (of which they have knowledge) that may affect the value and desirability of the property. This can partially be accomplished by filling out the Transfer Disclosure Statement (TDS). However, sellers typically know more than is asked about on the TDS. This where the California Association of REALTORS® Standard Form "Seller Property Questionnaire" (SPQ) can help.

### **Is the SPQ required in real estate transactions?**

Yes, depending on which purchase agreement is used. Except for the Vacant Land Purchase Agreement (VLPA), most other C.A.R. purchase agreements require delivery of the SPQ. Form VLPA instead requires the Vacant Land Questionnaire, C.A.R. Form VLQ.

Since the SPQ is required by contract and not required by law, if a seller did not want to provide the SPQ, they could modify the terms of the purchase agreement, typically in a counter offer.

### **Are there any exemptions from providing the SPQ?**

Yes. In the residential purchase agreements other than the VLPA, the SPQ is required only when the TDS is also required. If the transaction is TDS-exempt, then the seller is contractually obligated to fill out and deliver to the buyer the, "Exempt Seller Disclosure" (C.A.R. form ESD).

### **When should the SPQ be completed and delivered to a buyer?**

The default language in all C.A.R. purchase agreements requires all disclosures – including the SPQ – to be delivered within seven days after acceptance of the contract. It is important for sellers to deliver the SPQ in a timely manner so as not to inadvertently create cancellation rights for the buyer. Delivery after the initial seven-day disclosure period may extend the buyer's contingency periods or even reinstate a cancellation right if the SPQ is delivered after contingencies have been removed.

### **What does the SPQ require the seller to disclose?**

The SPQ is designed to trigger the seller's memory about the property and prompt the seller to disclose specific material facts. The seller must disclose all *known* material facts, even if those facts relate to things that occurred in the past, including prior to the seller's ownership of the property. The seller should answer the questions based on the seller's actual knowledge, regardless of how much time has passed. Additionally, the last question of the SPQ asks the seller to turn over copies of reports, inspections, disclosures, warranties, maintenance recommendations, estimates, studies, surveys "or other documents" pertaining to the condition of the property.

**NOTE:** The SPQ is not a guarantee of the property's condition. Instead, it is a seller's good faith recollection about various aspects about the property. It is important to remember that the questions on the SPQ are phrased as "are you (seller) aware" of the information being asked, and if the seller is not aware the seller can and should mark "no" to those questions. Buyers should remember that the SPQ is not a substitute for the buyer's own inspections and investigations.