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11 Urban Legends - Disclosure



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ARCADIA
ASSOCIATION OF
REALTORS®

The Common Claims

- **Failure to disclose**
- **Negligent inspection & disclosure**
- **Misrepresentation**



California Civil Jury Instructions-

4109. Duty of Disclosure by Seller's Real Estate Broker to Buyer

- A real estate broker for the seller of property must disclose to the buyer all facts known to the broker regarding the property or relating to the transaction that materially affect the value or desirability of the property. A broker must disclose these facts if the broker knows or should know that the buyer is not aware of them and cannot reasonably be expected to discover them through diligent attention and observation. The broker does not, however, have to disclose facts that the buyer already knows or could have learned with diligent attention and observation.

Easton v. Strasberger (1984)

[California SUPREME Court]

We hold that the duty of a real estate broker, representing the seller, to disclose facts, as that fundamental duty... includes the affirmative duty to conduct a **reasonably competent and diligent inspection** of the residential property listed for sale and to disclose to prospective purchasers all facts materially affecting the value or desirability of the property that such an investigation would reveal



Civil Code Section 2079

The duty:

1. To a prospective purchaser of
2. Residential real property
3. One to four dwelling units
4. Reasonably competent & diligent visual inspection,
5. Disclose all facts materially affecting value or desirability that such an inspection would reveal.

Myth #1



“It’s As-Is, so that covers it regarding disclosure”

Lingsch v. Savage (1963); Gallop v. Century 21 Casa (2002)

Myth # 2



“Put ‘Home inspection recommended’ in the TDS and we’re good”

Myth #3



- “If I know of a problem, I’ll just say ‘Buyer to verify...’”
- [square footage, permits, condition...]

Myth #4



- “I didn’t hear it from THIS seller.... so it’s not my obligation to disclose it”

Myth #5



- “Contingencies have all been released, so no need to disclose any newly discovered facts.”

Myth #6 (and 6b)



- “My AVID visual inspection is only about the interior...”
- ...and it’s only visual

Myth #7



- “I TOLD THEM ABOUT IT”

Myth #8



- “Someone else in the office might know about it, but that doesn’t apply to me”

- [Michel v. Palo Verde Network
- Horiike v. Coldwell Banker]

Myth #9



- “It’s fixed, no need to disclose”

[Barnhouse v. Pinole]

Myth #10



- The SPQ is *optional*

Myth #11



- “It’s too late” – the 11th hour revelations

Bonus - Myth #12

[No extra charge!]



“I don’t need to ask questions”

Robinson v. Grossman... but

Field v. Century 21; Easton v. Strasberger



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THANK YOU, any questions?

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