



Isn't "Approximate" Enough? Square footage and property legal description

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Arcadia Association of Realtors
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Square footage – recipe for lawsuits

- Commercial real estate treatment of the subject:
- Residential real estate treatment of the subject –
 - Approximately
 - Approximately
 - Approximately
 - Approximately
- Buyer/Tenant agrees to the stated size of the property regardless of its actual measurement
- BOMA measuring standards

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The legal theories asserted

- Misrepresentation (agent AND client)
- Negligent misrepresentation (agent AND client)
- Breach of fiduciary duty (agent)
- Negligence (claim from client against own agent)
- Breach of contract (client)

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SBSA

10. SQUARE FOOTAGE, LOT SIZE, BOUNDARIES AND SURVEYS: Buyer and Seller are advised that only an appraiser or land surveyor, as applicable, can reliably confirm square footage, lot size, Property corners and exact boundaries of the Property. Representations regarding these items that are made in a Multiple Listing Service, advertisements, and from property tax assessor records are often approximations, or based upon inaccurate or incomplete records. Fences, hedges, walls or other barriers may not represent actual boundary lines. Unless otherwise specified by Broker in writing, **Brokers have not verified any such boundary lines or any representations made by Seller** or others concerning square footage, lot size, Property corners or exact boundaries. Standard title insurance does not insure the boundaries of the Property. If the exact square footage or lot size or location of Property corners or boundaries is an important consideration in Buyer's decision to purchase the Property and/or how much Buyer is willing to pay for the Property, then Buyer must independently conduct Buyer's own investigation through appropriate professionals, appraisers, or licensed surveyors and rely solely on their data, recognizing that all measurements may not be consistent and that different sources may have different size assessments. Brokers do not have expertise in this area.

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A very good (should be mandatory) form...

CALIFORNIA ASSOCIATION OF REALTORS®
SQUARE FOOTAGE AND LOT SIZE DISCLOSURE AND ADVISORY
 (C.A.A. Form SFLA 1058)

Form Approved 10/25/2016, CA REG. 13,000,000, 1/25/2016 (Formerly)

1. DIFFERENT SOURCES OF SQUARE FOOTAGE MEASUREMENTS: Measurements of structures vary from source to source and the data is often contradictory. There is no single, better source or a standard method of obtaining correct structural area, interior space or square footage. Buyer should not rely on any advertised or disclosed square footage measurements and should obtain their own reports to measure structure size and/or square footage during their contemplation period. It may be necessary for Buyer to obtain square footage to determine whether to purchase the Property and/or to verify a prior per square foot to determine their purchase price. They can square foot calculations are generally based on exterior only, which can vary greatly depending upon ground conditions, type of property and structure, such calculations should not be relied upon by Buyer and the accuracy of any such figures should be independently verified by Buyer with their own accounts including, but not limited to, a licensed appraiser.

2. PROPERTY LOT SIZE, DIMENSIONS, CONFIGURATIONS, AND BOUNDARIES: Factors, topography, earth retaining walls, and other barriers or markers may not correspond with any legally-defined property boundaries, and existing structures or amenities may not be located within the legal property boundaries or local setback requirements. For lot size, dimensions, property configurations, boundary lines, and locations of improvements, the applicant to Buyer is obligated to provide, at the price Buyer is willing to pay. When Buyer should independently investigate by retaining the services of a licensed surveyor, the only professional who can accurately determine lot dimensions, boundary locations and acreage for the Property.

3. BROKER OBLIGATIONS: Brokers and Agents do not have expertise in determining the exact square footage and lot size. Broker has a duty to act and verify the accuracy of any reported statements regarding square footage, room dimensions, and lot size, or the location of boundaries.

4. DISCLOSURE OF MEASUREMENTS AND SOURCES: Square footage and/or lot size numbers inserted into the spaces below, if any, were taken from the referenced source and are for informational only. Other measurement data may exist from other sources.

Source of Information	Sq. Footage	Lot Size	Additional Information	If checked, report attached
Public Records				<input type="checkbox"/>
Multiple Listing Service				<input type="checkbox"/>
Seller			Measurement comes from the following source:	<input type="checkbox"/>
Appraiser #1				<input type="checkbox"/>
Appraiser #2				<input type="checkbox"/>
Commonwealth MapPlan				<input type="checkbox"/>
Architectural Drawings				<input type="checkbox"/>
Other Measurements				<input type="checkbox"/>
Survey				<input type="checkbox"/>
Other				<input type="checkbox"/>

By signing below, Seller: (i) represents that Seller is not aware of any other measurements of the Property; and (ii) acknowledges that Seller has read, understood, and received a Copy of this Square Footage and Lot Size Advisory and Disclosure. Seller is encouraged to read it carefully.

Seller: _____ Date: 10/12/2024 1:51:13 PM
 Single Agent: _____ Date: _____

By signing below, Buyer acknowledges that Buyer has read, understood, and received a Copy of this Square Footage and Lot Size Advisory and Disclosure. Buyer is encouraged to read it carefully. If no acknowledgment is provided, ANY OF THESE MEASUREMENTS, DIMENSIONS, CONFIGURATIONS, AND BOUNDARIES SHOULD NOT BE RELIED UPON BY BUYER AND THE ACCURACY OF ANY SUCH FIGURES SHOULD BE INDEPENDENTLY VERIFIED BY BUYER WITH THEIR OWN ACCOUNTS INCLUDING, BUT NOT LIMITED TO, A LICENSED APPRAISER. BUYER IS ADVISED THAT THE ACCURACY OF ANY SUCH FIGURES SHOULD BE INDEPENDENTLY VERIFIED BY BUYER WITH THEIR OWN ACCOUNTS INCLUDING, BUT NOT LIMITED TO, A LICENSED APPRAISER. BUYER IS ADVISED THAT THE ACCURACY OF ANY SUCH FIGURES SHOULD BE INDEPENDENTLY VERIFIED BY BUYER WITH THEIR OWN ACCOUNTS INCLUDING, BUT NOT LIMITED TO, A LICENSED APPRAISER.

Buyer: _____ Date: _____
 Single Agent: _____ Date: _____

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REGISTRATION LABEL LFLP-R-02-25

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Why doesn't "approximate" end the discussion?

- Shortfalls of 10% or more are often considered **material breaches** of the contract.
- So a misstatement about that item could also be "material"
- Could a shortfall of less than 10% be considered "material" in a particular setting?
 - (Do you want to find out?)
 - Lesson – DON'T believe the forms absolutely protect you!

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Why cannot you rely on the Assessor?

Does the Assessor define property?

NO

Is the Assessor calculating the property size for YOUR benefit and use?

NO

If the Assessor info is wrong, is the County liable?

NO

So, can you rely upon the Assessor as a defense?

NO

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Which County Dept. RECORDS the definition (and therefore the dimensions) of property?

- Of course, yes, the County Registrar/Recorder
- But they don't calculate lot, building or condo size – no need – Recorder just records the boundary information (tract map, condominium plan)

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Condominiums and the Assessor

- Condominiums are almost CERTAINLY measured incorrectly by the Assessor
 - Air space condos
 - Lot line condos
- Developers AND the Assessor often use the same architectural plan to “measure”
 - Can also throw off CC&R assessment calculations.

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Square footage – special significance

- Salahutdin v. Valley of California (1994)
- Negligent Misrepresentation
- “A careless misstatement may constitute constructive fraud even though there is no fraudulent intent.”

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Square footage – “You should have noticed”

- Furla v. Jon Douglas (1998)
- 5,500 square feet? Per Assessor
- Or
- 4,300 square feet?
- Court says 20% discrepancy is NOT covered by “approximate”
 - Sent back to trial court to determine, among other things, if was an AVID violation

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Square Footage – how you might “know”

- Horiike v. Coldwell Banker (2019)(Calif. Supreme Court)
- 2 offices, 2 agents, one agency... knowledge of one is imputed to the other
- (also Michel v. Palo Verde Network)

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Square footage – when it is LARGER than Assessor....

- Dead giveaway – Illegal addition/ADU conversion

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How to protect the buyer

- Compare appraisal report to Assessor information

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How to protect YOU

Use all available CAR forms:

- Buyer's Representation Agreements 6(B)(viii)
- Buyer's Inspection Advisory 3(B)
- Buyer Material Issues 4(B)(viii)
- Statewide Buyer and Seller Advisory A(10)
- Square Footage and Lot Size Disclosure and Advisory

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How to protect YOU – custom disclosure

- Buyer shall in its inspections independently measure the property; Buyer understands Seller has not measured the property and is not responsible for relaying any representations as to size of the property. If Buyer elects not to measure the property, Buyer specifically agrees that the stated size of the property is as stated, regardless of any later measurement taken of the property.
 - CHECK WITH YOUR BROKER'S COUNSEL FOR RECOMMENDED LANGUAGE

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How to Protect YOU

- EDUCATE YOUR CLIENTS
 - Square footage information often inaccurate
 - Assessor information not reliable legally
 - Check the appraisal report BEFORE closing escrow
 - Expect the condominium size to be overstated