

Wildfire Issues:

Defensible Space and Fire Insurance



C.A.R.
LEGAL
TOOLS



Current Wildfire Issues in California

- Defensible Space Compliance Law
- Availability of Fire Insurance and Effect on Transactions



Defensible Space Requirements

What is Defensible Space?

- Creating a “buffer zone” around the property between the structure and plants or other combustible materials
- Slows the spread of wildfire and protects the safety of firefighters defending homes
- 100 feet of space divided into two zones



Defensible Space Law

- Effective as of July 1st, 2021
- Applies to sales of Residential 1-4 unit Properties
 - Located in High or Very High Fire Hazard Severity Zones
 - Unless Seller is exempt from the TDS
- Unlike Fire Hardening disclosure, year built does not matter



Defensible Space Law

- Requires documentation of compliance with state or local defensible space laws OR for buyer to agree to obtain the documentation of compliance
- Slightly different requirements depending on whether local jurisdiction has an ordinance requiring owner to obtain proof of compliance
- Watch out for local ordinances with actual point of sale requirement



Defensible Space Law

- Areas without a local ordinance requiring an owner to obtain documentation of compliance:
 - Either the buyer must agree to obtain documentation of compliance within one year after closing escrow, OR
 - If the seller has obtained documentation of compliance within 6 months prior to entering into contract, the seller must provide that documentation to the buyer and provide information on the local agency from which a copy of that documentation may be obtained.



Defensible Space Law

- For areas that have enacted a local ordinance requiring an owner to obtain documentation that the property is in compliance:
 - Either the buyer must agree to comply with the requirements of the local ordinance, if the ordinance allows the buyer to do so, OR
 - The seller shall provide the buyer with a copy of the documentation that complies with the requirements of that local ordinance and information on the local agency from which a copy of that documentation may be obtained.



REQUIRED

Defensible Space Form

- Use the form Fire Hardening and Defensible Space Disclosure and Addendum (C.A.R. Form FHDS).
 - The FHDS form lays out 6 potential ways to comply so the parties may indicate which method of compliance applies to their transaction.
- This requirement is part of the same law that requires sellers to provide the TDS, and has the same exemptions and cancelation rights as the TDS law in general.
- Per the Residential Purchase Agreement, the seller needs to provide the FHDS within 7 days after Acceptance. If the buyer and seller cannot agree on who will be responsible for defensible space compliance by the contingency removal date, the seller may deliver a Notice to Buyer to Perform and cancel the contract (RPA 11G2).

Fire Insurance Issues

- Increasing occurrence of wildfires continues to complicate the process of obtaining fire insurance
- Buyers should be prepared and consider the ways that cost and availability of fire insurance may impact their transaction
- Buyers should begin this process early in the transaction



Insurance Coverage and Contingencies

- There is a specific contingency in the Residential Purchase Agreement for the buyer to obtain fire insurance
 - Once the insurance contingency has been waived or removed the buyer cannot cancel based on the lack of fire insurance coverage for the property
 - Buyers cannot use the loan contingency as a back-up



Fire Insurance Due Diligence

- The increasing frequency of wildfires has made it more difficult to obtain insurance coverage in many parts of the state.
- Buyers should discuss fire insurance possibilities with an insurance agent. Factors to consider include:
 - The location of property in a state or local fire zone
 - Fire hardening of potential property
 - Proof of compliance with defensible space laws
 - Whether an insurer is admitted in California; and
 - The scope of coverage available, including policies from the California Fair Plan

Fire Insurance Must be Maintained

- Important Note: A buyer who acquires fire insurance to complete a property purchase cannot let that policy lapse without exposure to financial risk!
 - If the buyer has obtained a loan secured by the property, the lender will typically include a **forced-payment clause** that allows the lender to acquire fire insurance on the owner's behalf, at the owner's expense, if the owner's fire insurance policy is no longer effective for any reason.
 - Policies obtained through a forced-payment clause are usually designed to primarily protect the lender's secured interest, and not the owner's ability to fully recoup losses in the event of fire. Such policies can be expensive and have limited coverage.
 - Even if a property is not secured by a loan, the buyer is exposed to all of the losses and costs to rebuild in the event of a fire if there is no fire insurance policy in effect at the time of fire.

Homeowner Protections

- California has enacted restrictions on an insurer's termination rights and certain minimum coverage requirements. Insurers must:
 - Continue and/or renew coverage for at least one year from the date of a declaration of emergency,
 - Pay for necessary additional living expenses for up to 24 months
 - Allow owners 36 months to rebuild because of the difficulty in finding coverage and contractors after a widespread wildfire
- Note: If the fire insurance carrier is not admitted in California, these requirements may not apply.

Additional Resources

Defensible Space

- CalFire Website <https://www.readyforwildfire.org/prepare-for-wildfire/get-ready/defensible-space/>
- Defensible Space Law Legal Q&A <https://www.car.org/riskmanagement/qa/disclosure-folder/Defensible-Space-Law>
- Quick Guide -> <https://www.car.org/-/media/CAR/Documents/Transaction-Center/PDF/QUICK-GUIDES/Quick-Guide---Defensible-Space-52621.pdf?la=en&hash=F462342369F136E33BFA8923D61533320B93BCE6>

Additional Resources

Fire Insurance Issues

- Department of Insurance Wildfire Resources
<http://www.insurance.ca.gov/01-consumers/200-wrr/>
- Fire Insurance Informational One Sheets
<https://www.car.org/marketing/clients/fireinsurance>
- C.A.R. Insurance Tips
<https://www.car.org/difference/realtorscare/cawildfireresources/Homeowner-Insurance-Tips>
- Fire: Basic Real Estate Legal Issues Q&A
<https://www.car.org/riskmanagement/qa/disasters-folder/firestorms>