

Guidance on Visual Inspection Disclosures

Agent Visual Inspections

California law requires agents representing buyers and sellers to conduct a reasonably competent and diligent visual inspection of residential property with one to four units and disclose to the prospective purchaser material facts revealed by the inspection. This statutory obligation is not typically waivable by a buyer during a transaction. In the unprecedented circumstances of COVID-19, it is possible, for their own protection, sellers of real property may not allow licensees access or real estate licensees may choose not to access the real property. In addition, local law may prohibit access. C.A.R. believes it is unlikely that a REALTOR® would face consequences for failing to conduct an in-person Agent Visual Inspection when they were legally prohibited from doing so.

What should an agent do if they are unable to visit the property to conduct their visual inspection?

If the agent had a chance to tour the property prior to the “safer-at-home” order, they should write down what they remember observing and make their disclosure based on what was observed at that prior visit. Another alternative may be to conduct a “virtual inspection.” If a virtual tour was created at the time of the listing, the agent could review that. If an independent third party is going to be present at the property, such as a contractor or home inspector, potentially that person could tour the property and live stream the tour to the seller or buyer’s agent, or both. In any event, agents should include language in their disclosure to explain the limited circumstances of their inspection (or in some cases, the lack of a visual inspection at all). The following are some sample clauses that could be included to address these circumstances:

Prior recollection inspection language:

“Buyer acknowledges that Agent has not conducted an in-person visual inspection of the property and that due to health concerns or local law stemming from Coronavirus (COVID-19), the Agent cannot go to the property prior to the close of escrow to conduct a visual inspection. This disclosure is based upon Agent’s recollection of the property from a visit to it by Agent prior to the Executive Order and, if checked, [] based upon photos and videos of the property provided by [] the Seller, or [] _____.”

Inspection based upon virtual review of in-person inspection by another language:

“Buyer acknowledges that Agent has not conducted an in-person visual inspection of the property and that due to health concerns or local law stemming from Coronavirus (COVID-19), Agent cannot go to the property prior to the close of escrow to conduct a visual inspection. This disclosure is based upon photos and videos of the property provided by _____ [insert third party here], who conducted an in-person inspection of the property on _____ (date).”

Inspection based upon review of photos and videos language:

“Buyer acknowledges Agent has not conducted an in-person visual inspection and that due to health concerns or local law stemming from Coronavirus (COVID-19), Agent cannot go to the property prior to the close of escrow to conduct a visual inspection. This disclosure is based upon photos and videos of the property provided by [] the Seller, or [] _____.”