

Judicial Council Of California Civil Jury Instruction 1910

Judicial Council Of California Civil Jury Instructions | July 2023 Update
By the Judicial Council of California Advisory Committee on Civil Jury Instructions

Fraud or Deceit

1910 Real Estate Seller's Nondisclosure of Material Facts

[*Name of plaintiff*] claims that [*name of defendant*] failed to disclose certain information, and that because of this failure to disclose, [*name of plaintiff*] was harmed. In order to establish this claim, [*name of plaintiff*] must prove all of the following:

1. That [*name of plaintiff*] purchased [*describe real property*] from [*name of defendant*];
2. That [*name of defendant*] knew that [*specify information that was not disclosed*];
3. That [*name of defendant*] did not disclose this information to [*name of plaintiff*];
4. That [*name of plaintiff*] did not know, and could not reasonably have discovered, this information;
5. That [*name of defendant*] knew that [*name of plaintiff*] did not know, and could not reasonably have discovered, this information;
6. That this information significantly affected the value or desirability of the property;
7. That [*name of plaintiff*] was harmed; and
8. That [*name of defendant*]'s failure to disclose the information was a substantial factor in causing [*name of plaintiff*]'s harm.

New December 2009; Revised May 2020

Directions for Use

This instruction sets forth the common law duty of disclosure that a real estate seller has to a buyer. Nondisclosure is tantamount to a misrepresentation. (See [Calemine v. Samuelson \(2009\) 171 Cal.App.4th 153, 161 \[89 Cal.Rptr.3d 495\]](#).)

For certain transfers, there is also a statutory duty of disclosure. (See [Civ. Code, § 1102 et seq.](#)) The scope of the required disclosure is set forth on a statutory form. (See [Civ. Code, § 1102.6.](#)) The common law duty is not preempted by the statutory duty (see [Civ. Code, § 1102.1\(a\)](#)), but breach of the statutory duty can constitute proof of breach of the common law duty if all of the elements are established. (See, e.g., [Calemine, supra](#), 171 Cal.App.4th at pp. 164–165 [seller did not disclose earlier lawsuits, as required by statutory form].)

Sources and Authority

- Real Estate Buyer's Action Against Seller. [Civil Code section 1102.13.](#)
- “ ‘A real estate seller has both a common law and statutory duty of disclosure. . . . ‘In the context of a real estate transaction, ‘[i]t is now settled in California that where the seller knows of facts materially affecting the value or desirability of the property . . . and also knows that such facts are not known to, or within the reach of the diligent attention and observation of

the buyer, the seller is under a duty to disclose them to the buyer. [Citations.]’ [Citations.] Undisclosed facts are material if they would have a significant and measurable effect on market value. [Citation.]” ... Where a seller fails to disclose a material fact, he may be subject to liability ‘for mere nondisclosure since his conduct in the transaction *amounts to a representation of the nonexistence of the facts which he has failed to disclose*’ [citation].’ [Citation.]” (RSB Vineyards, LLC v. Orsi (2017) 15 Cal.App.5th 1089, 1097 [223 Cal.Rptr.3d 458], original italics.)

- Generally, whether the undisclosed matter was of sufficient materiality to have affected the value or desirability of the property is a question of fact.” (*Calemine, supra*, 171 Cal.App.4th at p. 161, internal citations omitted.)
- “Actual knowledge can, and often is, shown by inference from circumstantial evidence. In that case, however, ‘“actual knowledge can be inferred from the circumstances only if, in the light of the evidence, such inference is not based on speculation or conjecture. Only where the circumstances are such that the defendant ‘must have known’ and not ‘should have known’ will an inference of actual knowledge be permitted.” ’ ” (RSB Vineyards, LLC, *supra*, 15 Cal.App.5th at p. 1098, internal citation omitted.)
- “Generally, where one party to a transaction has sole knowledge or access to material facts and knows that such facts are not known or reasonably discoverable by the other party, then a duty to disclose exists.” (See *Shapiro v. Sutherland* (1998) 64 Cal.App.4th 1534, 1544 [76 Cal.Rptr.2d 101].)
- “Failure of the seller to fulfill [the] duty of disclosure constitutes actual fraud.” (*Lingsch v. Savage* (1963) 213 Cal.App.2d 729, 736 [29 Cal.Rptr. 201].)
- “When and where the action by the purchaser is based on conditions that are visible and that a personal inspection at once discloses and, when it is admitted that such personal inspection was in fact made, then manifestly it cannot be successfully contended that the purchaser relied upon any alleged misrepresentations with regard to such visible conditions. But personal inspection is no defense when and where the conditions are not visible and are known only to the seller, and ‘where material facts are accessible to the vendor only and he knows them not to be within the reach of the diligent attention and observation of the vendee, the vendor is bound to disclose such facts to the vendee.’ ” (*Buist v. C. Dudley De Velbiss Corp.* (1960) 182 Cal.App.2d 325, 331 [6 Cal.Rptr. 259].)
- “In enacting [Civil Code section 1102 et seq.], the Legislature made clear it did not intend to alter a seller’s common law duty of disclosure. The purpose of the enactment was instead to make the required disclosures specific and clear. (*Calemine, supra*, 171 Cal.App.4th at pp. 161–162.)
- “The legislation was sponsored by the California Association of Realtors to provide a framework for formal disclosure of facts relevant to a decision to purchase realty. The statute therefore confirms and perhaps clarifies a disclosure obligation that existed previously at common law.” (*Shapiro, supra*, 64 Cal.App.4th at p. 1539, fn. 6.)

Secondary Sources

1 California Real Estate Law and Practice, Ch. 71, *Real Property Purchase and Sale Agreements*, § 71.30 (Matthew Bender)

10 California Forms of Pleading and Practice, Ch. 103, *Brokers*, § 103.31 (Matthew Bender)

50 California Forms of Pleading and Practice, Ch. 569, *Vendor and Purchaser of Real Property*, § 569.11 (Matthew Bender)

2A California Points and Authorities, Ch. 31, *Brokers and Salesperson*, § 31.142 (Matthew Bender)

Greenwald et al., *California Practice Guide: Real Property Transactions*, Ch. 4-E, *Purchase and Sale Agreement—Terms and Conditions*, ¶ 4:351 et seq. (The Rutter Group)

© 2023 by the Judicial Council of California. All rights reserved. See front matter for a listing of Judicial Council Task Force and Advisory Committee members who have contributed to these jury instructions.