

-TDS Exemptions for 1-4 unit Residential Properties

In addition to the following, we are always required to disclose any “material facts”. If the client is exempt from the TDS requirement, they should at least provide a Exempt Seller Disclosure (C.A.R. Form ESD), even if all the answers are “No”.

Certain types of transfers are specifically exempted by California Civil Code § 1102.2. These are as follows:

1. Transfers requiring a public report pursuant to § 11018.1 of the Business and Professions Code and transfers pursuant to § 11010.8 of the Business and Professions Code where no public report is required.
2. Transfers pursuant to court order (such as probate sales, sales by a bankruptcy trustee, etc.).
3. Transfers by foreclosure (including a deed in lieu of foreclosure and a transfer by a beneficiary who has acquired the property by foreclosure or deed in lieu of foreclosure).
4. Transfers by a fiduciary in the course of the administration of a decedent’s estate, guardianship, conservatorship, or trust. NOTE: An exception to this exemption occurs when the property is held in a revocable trust and the trustee is a natural person who is the sole trustee of the trust as well as the former owner of the property or an occupant in possession of the property within the year preceding the transfer.
5. Transfers from one co-owner to one or more other co-owners.
6. Transfer made to a spouse or to a child, grandchild, parent, grandparent or other direct ancestor or descendant.
7. Transfers between spouses in connection with a dissolution of marriage or similar proceeding.
8. Transfers by the State Controller pursuant to the Unclaimed Property Law.
9. Transfers as a result of failure to pay property taxes.
10. Transfers or exchanges to or from any government entity.

However, a real estate licensee still has a duty to conduct a reasonably competent and diligent visual inspection of accessible areas in almost all of the above situations. In other words, although the seller of residential one-to-four property may be exempt from having to provide a TDS in certain situations, a licensee is not exempt and must conduct this inspection, and disclose the results of the inspection, in almost all residential transactions involving one to four units.

C.A.R. Form AVID may be used by the real estate licensee for this purpose.