



# Defensible Space Law

## Member Legal Services

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### Introduction

Defensible space is the term for a buffer zone that homeowners create between a structure on the property and any flammable grass, trees, shrubs, or wildland area that surround it. Existing state and local laws require certain property owners to maintain defensible space on their property. Beginning July 1<sup>st</sup>, 2021, sellers of such properties will need to provide documentation that their property is in compliance with defensible space laws, or buyers will be required to agree to obtain such documentation of compliance in the future. This law applies to:

- Sales of residential one to four properties; condominiums or other common interest development units; or manufactured homes;
- Where the property is located in a high or very high fire hazard severity zone;
- When TDS is required.

In addition to defensible space requirements, the law may also require the buyer or seller to comply with a local "vegetation management" ordinance. "Vegetation management" is a less precise term but in the context of this law will generally mean clearing vegetation that may create fire hazards.

There are four ways to comply with this law.

- For areas *without* a local ordinance requiring an owner to obtain documentation of compliance with the defensible space or vegetation management laws:
  - 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.
- For areas that *have enacted* a local ordinance requiring an owner to obtain documentation that the property is in compliance with defensible space or vegetation management laws:
  - If the local law requires compliance before close of escrow 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. (However, a true point-of-sale such as this which mandates the seller's compliance before closing is quite rare. It is much more likely that a local ordinance does not pertain to the transfer of title at all). OR
  - Assuming the ordinance does not create an actual point of sale requirement, If the local law permits compliance after close, the buyer and seller may agree that the buyer will comply with the requirements of the local ordinance.

This requirement is part of the same law that requires sellers to provide the Real Estate Transfer Disclosure Statement (the "TDS"). Consequently, the new defensible space compliance law has the same exemptions and cancellation rights as the TDS law in general.

To assist sellers and agents in complying with this new legal obligation, C.A.R. has created a new form

called the Fire Hardening and Defensible Space Advisory, Disclosure, and Addendum (C.A.R. Form FHDS).

**NOTE:** The FHDS addendum must be included in all contracts for properties located in high or very high fire hazard severity zones that close escrow on or after July 1<sup>st</sup>, 2021. If the FHDS is not included with the original offer it should be added via seller counter offer.

### **Q1. What is defensible space??**

**A1.** Defensible space is the name for a 100 foot area that owners of properties located in fire zones must maintain around structures on their property. Creating and maintaining defensible space is important to slow the spread of wildfire and reduce the likelihood that the structure will catch fire. It also is important for protecting firefighters who may be on the property defending the structure.

Defensible space is comprised of two zones. Zone 1 extends 30 feet (although some localities could extend it further) from buildings and other structures on the property. Within Zone 1, property owners are required to:

- Remove all dead plants, grass and weeds (vegetation).
- Remove dead or dry leaves and pine needles from your yard, roof and rain gutters.
- Remove branches that hang over your roof and keep dead branches 10 feet away from your chimney.
- Trim trees regularly to keep branches a minimum of 10 feet from other trees.
- Relocate wood piles to Zone 2.
- Remove or prune flammable plants and shrubs near windows.
- Remove vegetation and items that could catch fire from around and under decks.
- Create a separation between trees, shrubs and items that could catch fire, such as patio furniture, wood piles, swing sets, etc.

Zone 2 extends 100 feet out from buildings and other structures. Property owners must do the following within Zone 2:

- Cut or mow annual grass down to a maximum height of 4 inches.
- Create horizontal space between shrubs and trees.
- Create vertical space between grass, shrubs and trees.
- Remove fallen leaves, needles, twigs, bark, cones, and small branches. However, they may be permitted to a depth of 3 inches.

For more information, please see Cal Fire's website discussing defensible space requirements at <https://www.readyforwildfire.org/prepare-for-wildfire/get-ready/defensible-space/>

### **Q2. What is vegetation management?**

**A2.** The phrase vegetation management is not precisely defined but means simply controlling vegetation to reduce fire hazards. The ambiguity of this phrase presents a problem since much of the law hinges on determining whether a locality such as a city or county has adopted a "vegetation management" ordinance.

### **Q3. What are the defensible space laws?**

**A3.** The state Defensible State Law can be found in California Public Resources Code § 4291. This law requires that owners of property located in high and very high fire hazard severity zones maintain the required defensible space around their structures in order to minimize fire risk. Additionally, many cities and counties have enacted local vegetation management ordinances for that same purpose.

### **Q4. What does this new law do?**

**A4.** Existing law(s) already require homeowners to maintain defensible space on their property if their property adjoins a mountainous area, forest-covered lands, brush-covered lands, grass-covered lands, or land that is covered with flammable material. This new law expands that requirement by mandating that when selling such properties, either the seller or the buyer, depending on the situation, must obtain documentation that the property is in compliance with the relevant defensible space laws.

**Q5. When does the new defensible space compliance law go into effect?**

**A5.** The law takes effect for all transactions that close on or after July 1, 2021.

**Q6. When must the defensible space addendum be included in the purchase contract?**

**A6.** The defensible space addendum must be included if:

- The property is located in a high or very high fire hazard severity zone, and
- The property has one to four residential units; a common interest development unit such as a condominium; or a manufactured home

**Q7. Are there exemptions?**

**A7.** Yes. All of the standard exemptions under the TDS law apply. The most common include sales involving probate, REOs, foreclosures, bankruptcies and some types of trusts. See our Q&A "Transfer Disclosure Statement Exemptions" for a comprehensive list.

**Q8. Does C.A.R. have a form for establishing how the parties will comply with the defensible space documentation requirement?**

**A8.** Yes. It's called the Fire Hardening and Defensible Space Advisory, Disclosure, and Addendum (C.A.R. Form FHDS), and it can be used for transactions expected to close on or after July 1, 2021.

**Q9. Is the defensible space addendum required for leases?**

**A9.** Typically, no. The only time that the home hardening disclosure would be required for a lease is when there is:

- 1) A lease with an option to purchase or
- 2) A ground lease coupled with improvements.

**Q10. What information is contained in the defensible space addendum?**

**A10.** The first half of the defensible space addendum contains the fire hardening disclosure information. For more details on that disclosure requirement, see our Q&A "Home Hardening." Specifically, item number three contains the home hardening questions that the seller is obliged to answer.

The second half of the addendum deals with the new defensible space compliance documentation requirements. There is an advisory informing the parties about the requirements of the defensible space laws, and then the parties are given 4 options to choose from in order to establish how they will comply with the law. If the seller will be providing the documentation, there is a space for the seller to also provide the name and contact information for the local agency that provided the documentation originally. This part is found under item number four.

**Q11. What options does the form give the buyer and seller for handing compliance with the law?**

**A11.** There are four options that the parties can choose from, depending on whether or not the city or county where the property is located has enacted a local ordinance requiring homeowners to obtain documentation showing that they are in compliance with the defensible space or vegetation management laws.

- For areas *without* a local ordinance requiring an owner to obtain documentation of compliance with the defensible space or vegetation management laws:
  - Either the buyer must agree to obtain documentation of compliance with the state law and the requirements of any local ordinance (a local ordinance that has defensible space standards but doesn't require documentation of compliance with such standards) within one year after closing escrow, OR
  - If the seller has obtained documentation of such compliance within 6 months prior to closing, 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.
- For areas that *have enacted* a local ordinance requiring an owner to obtain documentation that the property is in compliance with defensible space or vegetation management laws:
  - Either the buyer must agree to comply with the requirements of the local ordinance, OR

- The seller must 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.

**Q12. How can an agent assist the seller or buyer in complying with this law?**

**A12.** The first step would be for the listing agent to assist the seller in determining whether the property is in a high or very high fire hazard severity zone.

**Q13. How can an agent assist the seller in making that determination?**

**A13.** To begin with, it is not altogether clear whether it is within the scope and expertise of an agent or broker to make this determination. But if an agent or broker did want to assist the seller, then there are three possibilities:

- First, the agent may view the Natural Hazard Disclosure Statement ("NHD Statement") to see if either of the boxes pertaining to fire zones have been checked. If either the box for "A VERY HIGH FIRE HAZARD SEVERITY ZONE" or the box for "A WILDLAND AREA THAT MAY CONTAIN SUBSTANTIAL FOREST FIRE RISKS AND HAZARDS" has been checked, then the safest presumption is that the property qualifies, and an agent may recommend that the seller fill out the home hardening disclosure. Note, that relying on the NHD Statement in this way may result in an overbroad disclosure since the box for wildland area forest fire risks include not only high or very high fire severity zones, but also moderate zones.
- Second, the agent may seek the guidance of a reputable NHD reporting company. A representative of such a company may be able to guide the agent by pointing out specifically where within the NHD report it states which type of fire hazard severity zone, if any, that the property is located in.
- Third, Cal Fire has made available a "Fire Hazard Severity Zone Viewer" (FHSZ Viewer) which will allow anyone to input the property address and determine which fire hazard severity zone, if any, that the property is located in. The FHSZ Viewer is available at the following site: <https://egis.fire.ca.gov/FHSZ/>. The seller may be provided with the link, but the agent should not be checking the maps, or drawing conclusions based upon those maps, for the seller.

**Q14. I found a map of the State Responsibility Areas online. It shows all of the fire zones in different colors throughout California. Can I rely on this map?**

**A14.** No. Do not rely on any map which visually presents fire hazard zones. You simply do not know how accurate it is.

**Q15. Once it has been determined that the property for sale is in a high or very high fire hazard severity zone, so that the new law is applicable, what is the next step?**

**A15.** The next step would be for the buyer or seller to determine if there is a local ordinance in place covering the property that requires either the seller or the buyer to obtain documentation of compliance with the defensible space or vegetation management laws.

**Q16. How would the buyer or seller determine that?**

**A16.** Brokers and agents are not charged with poring over laws. Indeed, doing so may constitute the unauthorized practice of law. However, brokers and agents clearly have knowledge of laws affecting real estate. In some cases, these ordinances are well known. Local escrow officers, brokers at large, and local associations may be familiar with these laws. It is this type of industry knowledge that agents and brokers may have at their disposal and may utilize. But if this type of industry knowledge is unavailable, then the way to determine the existence of these local ordinances is to consult an attorney.

**The most important consideration:**

Most importantly, the seller needs to know whether there is a local ordinance requiring the documentation of compliance as a *point of sale* requirement, meaning that it must be obtained in connection with closing escrow on a property. Often a local escrow officer is a good source of information on local point of sale requirements, otherwise the seller may need to contact their own attorney or the city or county directly to confirm that such an ordinance does or does not exist.

**Q17. If it is determined that there is a local ordinance requiring documentation of compliance, what's the next step?**

**A17.** The next step would be to determine if this documentation must be obtained before close of escrow, in which case it would be the seller's responsibility, and Paragraph 4B(4) of the FHDS would be checked, or whether the documentation can be obtained after close of escrow, in which case it would be the buyer's responsibility and Paragraph 4B(3) of the FHDS would be checked.

**Q18. What if it is determined that there is no local ordinance requiring documentation of compliance?**

**A18.** In that case the listing agent should then ask the seller if the seller has, within the previous 6 months, obtained documentation of compliance with the defensible space laws. If the seller has obtained such documentation, the seller should check Paragraph 4B(2) on the FHDS and then deliver such documentation to the buyer within 7 days of acceptance.

**Q19. What if the seller has not obtained such documentation within the last 6 months?**

**A19.** In that case the FHDS form defaults to Paragraph 4B(1) where the buyer agrees to obtain such documentation within 1 year after close. This requirement of the buyer only applies if there is a state or local agency, or other governmental entity, or qualified non-profit entity in the jurisdiction where the property is located that is authorized to inspect the property and provide documentation of compliance ("Authorized Inspector").

**Q20. Assuming the broker and agent are simply unable to determine whether there is a local defensible space or vegetation management law which requires documentation of compliance, and they have advised the seller to seek legal counsel but the seller has not, then which box on the FHDS should be checked under item number 4?**

**A20.** In this case, the safest way to proceed is to not check any box under item 4 and rely on the default provision. If there is any obligation to comply with a local defensible space or vegetation management ordinance, then it will be the buyer's obligation. The worst case scenario of a true point of sale requirement, in which responsibility cannot be shifted from the seller to buyer, is extremely rare. And if such a local law did exist, then brokers and agents who work in the area would almost certainly already be aware of it (and box 4(4) could be checked indicating that the seller will provide proof of compliance prior to close).

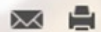
**Q21. How can an agent assist the buyer in determining if there is an authorized inspector available, and if so, scheduling an inspection? Or alternatively, if there's a local ordinance requiring the seller to get an inspection before close, how can an agent assist the seller to determine if there's an authorized inspector and if so to obtain an inspection.**

**A21.** Again, it is not altogether clear whether it is within the scope and expertise of an agent or broker to handle this issue for a client. However, if an agent did want to assist their client in determining if there is an authorized inspector and scheduling an inspection, there are two options:

- If the property is located in a State Responsibility Area (SRA), as indicated on the NHD report, then the seller, if required by a local ordinance to obtain documentation, should contact the local Cal Fire station to schedule a defensible space inspection in preparation to sell their property. If there is no local ordinance requiring a seller to do this then the buyer should contact the local Cal Fire station to schedule an inspection within a year after closing escrow on the property.
- If the property is located in a Very High Fire Hazard Severity Zone within a Local Responsibility Area (LRA), as indicated on the NHD, the seller, if required by local ordinance to obtain documentation, should contact their local fire department to schedule an inspection in compliance with any local ordinance that may be in effect. The inspection may be conducted by the local fire authority or the locality may contract with Cal Fire to have a representative perform the inspection. Many localities have websites set up that can be found by searching online for the name of the city and/or county where the property is located and the phrase "defensible space inspection". See this example from the City of Santa Barbara:



[Home](#) » [...](#) » [Wildland Fire Suppression Assessment District](#) » [Services](#) »  
Defensible Space Inspections



The City of Santa Barbara Fire Department offers voluntary inspections of your property to ensure that your home is protected. During a major wildland fire the majority of homes lost are not engulfed by the fire front. They are lost when fire embers find a weakness in your home and start a small fire that can lead to total loss.

Santa Barbara is known for its extreme fire weather and has a long history of extreme loss during the Sycamore, Painted Cave and Tea and, most recently, the Jesusita fires. In a wind-driven fire, there is no guarantee that your home will survive, but we can strive to make each and every home as safe as possible.

Each and every one of the homeowners that has asked for an inspection has walked away after the inspection with a safer home and more knowledge than before. We again are offering this valuable service to the members of the Wildland Fire Suppression Assessment District.



[Watch a video about the Defensible Evaluation Service](#)

You can schedule a defensible space inspection by contacting the City of Santa Barbara Fire Department at 965-5254 or by filling out our [online request form](#).

## **Q22. Is it advisable for a buyer for a buyer to contact Cal Fire or a local department to conduct inspections prior to closing?**

**A22.** No. The RPA and all other C.A.R. contracts prohibit the buyer from having an inspection by a "government employee."

However, the buyer should be advised to conduct an inspection, but they should rely on an expert other than one who is employed by a government agency. This is necessary for the reason that the buyer's obligation to comply with these laws will arise within one year of closing or earlier, and the buyer should have a very clear idea of exactly what compliance entails and what its estimated cost is.

After closing, then the buyer can contact Cal Fire or any other type of agency that would perform a defensible space compliance inspection.

## **Q23. After closing how does the buyer obtain compliance if there is no authorized inspector?**

**A23.** There are many different entities that may conduct this type of investigation. The law refers to state or local agencies, or other governmental organizations, or other qualified non-profit entities. So even if the local fire company in the LRA says that they do not do such inspections, the seller or buyer should still be advised to look for someone with expertise to provide an inspection. In the event there is no authorized inspector, the buyer should document their efforts, and no inspection to obtain documentation of compliance would be required.

## **Q24. When must the defensible space addendum be provided to the buyer?**

**A24.** Ideally, unless the seller is planning to provide the documentation of compliance themselves, the addendum can and should be included on any seller counter offer. If not included in the counter offer, the buyer may sign the addendum after acceptance.

## **Q25. What happens if defensible space addendum is delivered after acceptance of an offer or counter offer, or not at all?**

**A25.** As discussed above, if the buyer receives the form after acceptance and does not agree to sign it, the seller may be stuck with the responsibility of obtaining the necessary documentation of compliance with the defensible space laws.

Furthermore, the buyer may have a right to cancel based on non-delivery. As stated above, the defensible space form/home hardening disclosure is within the TDS family of disclosures. All disclosures within the TDS law have the same applicability, the same exemptions, and significantly for this question, the same cancellation rights.

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