

## **It s JUST A SIMPLE CONTRACT**

By C. David Herring, Esq.

A long time client has contacted you and wants to sell his house to a friend. The client explains that he can not carry the property any longer. He tells you that the sale must be completed quickly and that all of the terms have been already agreed upon. You are asked to handle the matter as quickly and cheaply as possible. Your client and the buyer have already agreed that the buyer will just pay on the existing mortgage and there doesn t even need to be any title insurance. The client tells you that he only needs a simple deed to complete the transaction.

A simple contract? Contrary to what the client may think or want, the transfer of a single family dwelling is not a simple matter in California. It poses a potential pitfall for the client and for the attorney that attempts to accommodate his client without first reviewing the various code sections which govern such a transaction.

As attorneys, we have all learned the rules pertaining to contracts, but there was little, if any mention of the specific rules which pertain to the transfer of a single family dwelling. (If you forgot some of the basics, check California Civil Code §1091 et. seq.) For the general practitioner, this is an area where an apparently simple transaction can become exceedingly complicated. The rules pertaining to the transfer of a single family dwelling apply to most transfers, no matter the price, relationship of the parties or the equity in the property. The primary code sections which govern this transaction are found in four separate Codes, the Health and Safety Code, the Public Resources Code, the Business and Professions Code, the Government Code and the Civil Code.

In the most basic transaction, the attorney must be aware of the disclosure requirements that apply to each transfer of a single family dwelling. The starting point for a review of these requirements is California Civil Code Article 1.5 commencing with Section 1102. While this article contains the obvious disclosure requirements, complete with a form provided in Section 1102.6, the disclosures contained in the form are not the end of the requirements. There are also the following disclosure requirements for each transfer:

- Health and Safety Code §13113.8- Smoke Detectors disclosure requirement
- Public Resources Code §§2621-2630-Earth Quake Zone disclosure requirement
- Public Resources Code §2696-Seismic Hazard Zone disclosure requirement
- Government Code §8897-Delivery of Homeowner s Guide to Earthquake Safety and hazards disclosure statement.
- Civil Code §1099-Requirement for delivery of Pest Control report.

While the above is not intended to be an exhaustive list, it is the basic starting point for disclosures in practically all real estate transfers. The specific transaction will then determine the additional disclosures required. If the parties want to waive the title insurance, then Civil Code §1057.6 will apply. Is the seller assisting in the financing of the transaction? Then Civil Code

Sections 2956-2967 applies<sup>1</sup>. Is the property a condominium? Then the Business and Professions Code §11018.6 and Civil Code Sections 1133, 1134 and 1368 will apply.

While the client may want only a \$50.00 deed, an attorney cannot properly discharge the duty to the client by acting as a scrivener. Since both the buyer and seller want a transaction that they can rely upon it is important that the statutory requirements are followed at least to eliminate one problem.

This article only lists some of the basic statutory disclosure requirements. There are also many practical aspects of the transaction which an attorney should discuss with the client. Some of these would include the type of inspection of the property which should be obtained or the type of title insurance which should be purchased. What this article should do is help you explain to the client that their request for a simple deed is not in the client's best interest.

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<sup>1</sup> While an attorney representing a party to a real estate transaction is not considered an arranger of credit for the purposes these code sections, an attorney is an arranger of credit if the attorney is one of the parties to the transaction and neither party is represented by a real estate broker!