

Defensible Space

Defensible space is the “buffer zone” that homeowners create between a structure on the property and any flammable grass, trees, shrubs, or wildland area that surround it. There are state and local laws that require certain property owners to maintain defensible space on their property.

Beginning July 1st, 2021, these sellers 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 a Real Estate Transfer Disclosure Statement (TDS) is required.

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 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 laws:
 - Either the buyer must agree to comply with the requirements of the local ordinance, if the ordinance allows the buyer to do so, OR
 - 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.

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). The FHDS form lays out the 4 potential ways of complying with this law so that the parties may indicate which method of compliance applies to their transaction.

This requirement is part of the same law that requires sellers to provide the TDS. Consequently, the new defensible space compliance law has the same exemptions and cancellation rights as the TDS law in general.

For transactions closing escrow on or after July 1st, 2021, the FHDS form should be included with the offer or a Seller Counter Offer to ensure that the parties are in agreement about how defensible space compliance will be handled.