

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.

Sellers in areas covered by the law either need to provide documentation that their property complies with defensible space laws, or buyers must 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; AND
- When a Real Estate Transfer Disclosure Statement (TDS) is required.

There are essentially 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 complies 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 comply with this legal obligation, Sellers should use the form Fire Hardening and Defensible Space Disclosure and Addendum (C.A.R. Form FHDS). In this form, the parties must agree how documentation of defensible space compliance will be obtained. The FHDS form lays out six options for the parties to indicate how they will be complying with this law.

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

Per the Residential Purchase Agreement, the seller needs to provide the FHDS within 7 days after Acceptance. If the buyer and seller cannot agree on who will be responsible for defensible space compliance by the contingency removal date, the seller may deliver a Notice to Buyer to Perform and cancel the contract (RPA 11G2).