

DISCLOSUREWATCH

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Can Sellers Sue Agents and Brokerages For Over Disclosing?

Natural Gas Pipelines – The Scary Truth About Disclosing Information That Is Not Required

by Mailana Mavromatis, Esq.

On September 9, 2010, a horrific fireball mercilessly claimed 8 lives and devoured 37 homes in San Bruno, California. The cause of the explosion was a ruptured gas pipeline with a seam weld from 1956.

For what appears to be marketing purposes, some California natural hazard disclosure (“NHD”) companies have used the San Bruno tragedy as part of their efforts to market NHD reports that disclose the location of properties in proximity to gas lines.

After Property I.D.’s extensive research, it has been concluded that:

1. The disclosure of gas pipelines is not required by any statute, regulation, ordinance, or governmental decree.
2. The tragic events in San Bruno did not create a legal requirement of disclosure and no emergency governmental legislation has yet been enacted.
3. The publisher of the maps expressly warns that the maps are not guaranteed for accuracy and completeness.
4. Not all gas pipelines are shown in the available maps.
5. Homeland Security has imposed constraints on the availability of detailed pipeline information for safety purposes.

If requested, Property I.D. can provide

a report showing the proximity to gas lines FREE of charge to all of its clients. However, Property I.D. explains the limitations associated with this report, including that the disclosure is not required by any statute or other governmental directive and that the report is being provided at the specific request of the seller or buyer of the property.



To ensure accuracy and uniformity, it is critical that NHD companies rely on accurate and complete data. **NHD companies making non-required disclosures based on potentially inaccurate and incomplete information may present risks of potential liability to brokers, agents, and their clients.**

As an example, consider a seller that is in escrow on a property that is within ¼ mile of a gas pipeline. An NHD report is provided to the buyer in which this disclosure is made. The property then falls out of escrow because of the buyer’s concern over the proximity of the pipeline. Would the seller, who likely did not receive a similar disclosure when he or she

previously purchased the property, have a claim against the broker and agent for making a disclosure that is not legally required? Is there potential liability for over disclosing?

Another issue to consider is whether the disclosure of certain non-required information could impose an obligation to disclose other non-required information. Environmental hazards (such as contamination) are a serious concern for home buyers and have been for many decades. Although there are many environmental hazards that could possibly affect the desirability and value of property, the California Legislature has refused to mandate environmental hazards as statutorily required disclosures. Having made a non-required disclosure such as proximity to gas lines, could a broker and agent be charged with the obligation to make other non-required disclosures, such as environmental hazards, and then be subject to potential liability for failing to do so?

Again, what is the potential consequence of making non-required disclosures based on information that is not guaranteed for accuracy and completeness? Are brokers and agents, as well as their clients, exposed to potential liability for over disclosure? A responsible NHD provider will ensure that it complies with the law while also ensuring that it protects brokerages and agents from lawsuits by buyers and sellers.



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