



1-1-1995

# Property

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## Recommended Citation

University of the Pacific; McGeorge School of Law, *Property*, 26 PAC. L. J. 669 (1995).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol26/iss2/32>

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# Property

## Property; manufactured homes and mobilehomes—design and seismic requirements

Health and Safety Code § 18613.4 (new); § 18613.1 (amended).  
SB 750 (Roberti); 1994 STAT. Ch. 240  
(Effective July 21, 1994)

Existing law, known as the Mobilehome Parks Act, generally regulates the operation of mobile home parks.<sup>1</sup> Under existing law, manufactured homes<sup>2</sup> or mobilehomes<sup>3</sup> installed in mobilehome parks may be installed on foundations, and are required to be installed according to specific vertical support load requirements.<sup>4</sup> Any violation of the Act is a misdemeanor.<sup>5</sup>

Chapter 240 requires that all manufactured homes or mobilehomes when initially installed or subsequently reinstalled on a different lot<sup>6</sup> be installed to resist specified horizontal wind pressures or the design wind load, whichever is greater.<sup>7</sup> Chapter 240 provides tie down specifications for the installation of mobilehomes in accordance with the new requirements.<sup>8</sup> Chapter 240 also

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1. CAL. HEALTH & SAFETY CODE §§ 18200-18700 (West 1992 & Supp. 1994); *see id.* § 18214 (West Supp. 1994) (defining mobile home park).

2. *See id.* § 18007 (West 1984) (defining manufactured home).

3. *See id.* § 18008 (West Supp. 1994) (defining mobilehome).

4. CAL. HEALTH & SAFETY § 18551.1(b)-(c) (West Supp. 1994); *see id.* § 18551(a)-(e) (West 1992) (setting forth provisions relating to manufactured homes or mobilehome foundation systems, their regulations, and permit procedures); CAL. UNIF. BLDG. CODE §§ 2304-2305 (1991) (setting forth the roof and floor load requirements for specified building structures); *id.* § 2311 (1991) (setting forth the wind design requirements for specified building structures); *id.* § 2330(a)-(b) (1991) (setting forth the seismic and wind requirements for specified building structures); *see also* CAL. HEALTH & SAFETY CODE § 18551(a) (West 1992) (authorizing the Department of Housing and Community Development to establish regulations regarding the installation of a manufactured home or mobilehome upon a foundation system); *id.* § 18551(b) (West 1992) (requiring an owner or contractor to obtain a permit from the Department prior to installing a manufactured home or mobilehome upon a foundation system).

5. CAL. HEALTH & SAFETY CODE § 18700 (West 1992); *see id.* (providing that any violation of the act is a misdemeanor, punishable by a fine of up to \$400, or imprisonment of up to 30 days, or both).

6. *See id.* § 18210 (West 1992) (defining lot).

7. *Id.* § 18613.4(a) (enacted by Chapter 240); *see id.* (requiring a mobilehome or manufactured home to be installed to resist a horizontal wind pressure of 15 pounds per square foot or the design wind load of the home, whichever is greater); *cf.* ALA. CODE § 24-5-32(a) (1992) (requiring all new and used manufactured homes to be tied down during installation to properly installed ground anchors so as to be able to resist specified wind loads); DEL. CODE ANN. tit. 25, § 7014(1)(f) (1989) (requiring all lease agreements between a landlord and a tenant in a mobile home park to contain a provision requiring the mobile home to be maintained structurally so as to withstand winds of up to 50 miles per hour); FLA. STAT. ANN. § 320.8325(1) (West 1990), MO. ANN. STAT. § 700.076(1) (Vernon 1988) (requiring the owner of a mobile home or park trailer, but not those permanently attached to a permanent structure, to secure it to the ground by the use of anchors and tie-downs so as to resist wind overturning and sliding).

8. CAL. HEALTH & SAFETY CODE § 18613.4(b)-(c) (enacted by Chapter 240); *see id.* § 18613.4(b) (enacted by Chapter 240) (providing the requirements for installation of manufactured homes or mobilehomes that come with manufacturer's installation instructions); *id.* § 18613.4(c) (enacted by Chapter 240) (providing the requirements of installation of manufactured homes or mobilehomes for which no manufacturer's installation instructions are available); *cf.* ALASKA STAT. § 34.03.130 (1990) (allowing a mobile home park

provides that all manufactured homes or mobilehomes may be installed or reinstalled according to plans and specifications signed by a licensed architect or engineer that meet the provisions imposed by Chapter 240.<sup>9</sup> Finally, Chapter 240 requires the Department of Housing and Community Development<sup>10</sup> to develop standards for mechanical connections of a manufactured home or mobilehome and its footings.<sup>11</sup> These provisions become effective sixty days after the enactment of Chapter 240.<sup>12</sup>

Existing law provides that the requirements regarding the installation of manufactured homes or mobile homes may not exceed the requirements as specified by law.<sup>13</sup> Chapter 240 provides that the requirements regarding the installation of manufactured homes or mobile homes may not exceed the wind requirements of Chapter 240.<sup>14</sup>

#### INTERPRETIVE COMMENT

By enacting Chapter 240, the Legislature is responding to the significant damage to mobile homes that resulted from the Loma Prieta and Northridge Earthquakes.<sup>15</sup> Due to the fact that existing law allows mobilehomes to be

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operator to determine by rule or regulation the style or quality of tie-downs to be purchased and installed by the tenant); GA. CODE ANN. § 8-2-165 (Supp. 1994) (requiring manufactured homes or mobile homes to be installed in compliance with the manufacturer's installation instructions, specifically including correctly installed tie-downs and anchors); KAN. STAT. ANN. § 75-1230(a)-(d) (1989) (prescribing minimum numbers of tie downs and over-the-top tie downs to be placed on each side of a mobile home depending on its length and width, and describing the proper installation locations for tie downs to be placed); PA. CONS. STAT. ANN. § 398.5 (1994) (authorizing a mobile home park owner or operator to designate the type of material or manner of installation for mobile home tie-down equipment in order to insure the safety and good appearance of the mobile home park).

9. CAL. HEALTH & SAFETY CODE § 18613.4(d) (enacted by Chapter 240).

10. See *id.* § 50406 (West Supp. 1994) (setting forth the powers and duties of the Department of Housing and Community Development); see also *id.* § 18253 (West 1992) (declaring that the specific requirements relating to construction, maintenance, occupancy, use, and design of parks are best developed by the Department of Housing and Community Development, and that placing this responsibility with the Department will allow for modifications of specific requirements in a rapid fashion and in a manner responsive to the needs of park residents and owners).

11. *Id.* § 18613.4(h) (enacted by Chapter 240).

12. *Id.* § 18613.4(j) (enacted by Chapter 240).

13. *Id.* § 18613.1 (amended by Chapter 240); see *id.* § 18613 (West Supp. 1994) (setting forth the standards, requirements, and fees necessary for an owner or contractor to meet in order to obtain a permit to install or reinstall a manufactured home or mobile home).

14. *Id.* § 18613.1 (amended by Chapter 240).

15. See ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF SB 750, at 3 (Apr. 13, 1994) (stating that more than 4400 mobilehomes fell off their foundations, 900 shifted from their supports, and 184 mobilehomes burned down as a result of the Northridge earthquake); Joanna M. Miller, *County's Mobile Home Damage in Quake is Called Predictable*, L.A. TIMES, Feb. 5, 1994, at 4 (reporting that in Simi Valley alone, the January 17 earthquake caused 622 out of the city's 849 mobile homes to be severely damaged, many of which were left with their triangle jacks poking through the floor like spikes); Kurt Pitzer, *Earthquake: The Long Road Back, New Mobile Home Rules Considered*, L.A. TIMES, Feb. 1, 1994, at 1 (stating that nearly 10% of all mobile homes in Los Angeles County were declared uninhabitable as a result of the Northridge earthquake, most of which had tumbled all the way off their support systems onto the ground); see also John Pacenti, *New Standards Worry Mobile Home Makers*, FRESNO BEE, Jan. 23, 1994,

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installed on a foundation consisting of stacked cinder or concrete blocks or on top of a series of steel piers that provide vertical support but offer little horizontal support, the horizontal movement caused by earthquakes and wind can cause a mobile home to fall off of its foundation.<sup>16</sup> Stricter wind design requirements will therefore provide greater earthquake protection for manufactured homes and mobilehomes.<sup>17</sup>

Darren K. Cottriel

## Property; real estate licenses—duty of inspection

Civil Code §§ 2079, 2079.3 (amended).  
SB 1509 (Leonard); 1994 STAT. Ch. 339

Existing law sets forth the duty of a licensed real estate broker<sup>1</sup> to a prospective purchaser, of a residential property comprised of one to four units, to carry out a visual inspection of the property and to disclose all facts which materially<sup>2</sup> alter the value or desirability of that property.<sup>3</sup> However, this duty is

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at E11 (discussing the new federal requirements and standards for mobile homes in the hurricane-prone areas, and stating that Hurricane Andrew destroyed 97% of all mobile homes in the hurricane zone of Dade County, Florida).

16. ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF SB 750, at 3 (Apr. 13, 1994); *see id.* (stating that mobilehome foundations in California, prior to Chapter 240's enactment, are not required to meet any side-to-side or horizontal movement that may be caused by wind or seismic forces). *See generally* Miller, *supra* note 15 (quoting Paul Kranhold, Assistant Director of the California Department of Housing and Community Development, as saying that the fact that many of the mobile home residents are on fixed incomes is the primary reason the state does not impose requirements for earthquake bracing).

17. *See* ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF SB 750, at 3 (Apr. 13, 1994) (stating that according to experts, the notion of wind-load requirements exceeding seismic load requirements is a structural engineer's rule-of-thumb, which means that a mobilehome installed to meet its existing wind-load requirements will in most cases also comply with seismic requirements).

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1. *See* CAL. BUS. & PROF. CODE § 10131 (West 1987) (defining real estate broker).
  2. *See* BLACK'S LAW DICTIONARY 976 (6th. ed. 1990) (defining material as important, more or less necessary, and having influence or effect); *see also* Revitz v. Terrell, 572 So. 2d 996, 998 (Fla. 1990) (stating that since the broker did not inform the purchaser that the "unelevated" house was in the middle of a flood plane, and the purchaser incurred dramatically larger insurance premiums than what had been expected, this materially impacted the value of the property).
  3. CAL. CIV. CODE § 2079 (amended by Chapter 339); *see* Prichard v. Reitz, 178 Cal. App. 3d 465, 468-69, 223 Cal. Rptr. 734, 736-37 (1986) (stating a fraud cause of action existed, in that the broker knew that the foundation was faulty and could not support a structure, but nevertheless represented the foundation as sound, thus, violating the broker's duty to disclose); Easton v. Strassburger, 152 Cal. App. 3d 90, 102, 199 Cal. Rptr. 383, 387-91 (1984) (holding that a real estate broker has an affirmative duty to carry out a reasonable inspection of the property, and to disclose to prospective purchasers all facts concerning the property which materially affect the value or desirability of the site that such an investigation would reveal). The Legislature enacted California Civil Code § 2079 specifically to codify this case's holding. CAL. CIV. CODE § 2079

contingent upon the broker having a written contract with the seller to find or obtain a buyer, as specified.<sup>4</sup> Furthermore, existing law specifies that this inspection of the property does not apply to areas that are normally and reasonably inaccessible to such an inspection.<sup>5</sup>

Chapter 339 provides that it is now the duty of licensed real estate brokers and salespersons to comply with the inspection and disclosure provisions, and any regulations imposing standards of professional conduct that are adopted pursuant to a specified provision of law.<sup>6</sup> Additionally, Chapter 339 specifies that the duty of inspection does not include an affirmative inspection of areas which are off the property site, or a search of public records or permits concerning the title or use of the property.<sup>7</sup> Chapter 339's provisions are not intended to change the existing duty of a broker or salesperson to disclose facts, materially affecting the value or desirability of the property, which are within the knowledge of the real estate licensee.<sup>8</sup>

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(amended by Chapter 339). The case held that if the broker did not disclose the defects to the buyer, the buyer would be authorized to sue the broker for negligence. *Id.*; see *Cooper v. Jevne*, 56 Cal. App. 3d 860, 866, 128 Cal. Rptr. 724, 727 (1976) (stating California's law requiring real estate brokers to disclose all facts materially affecting the value or desirability of the property of which the real estate broker, or agent, is aware, and of which the broker or agent knows or should know, or within the reach of, the attention of the diligent purchaser); see also Joel M. King, Comment, *Broker Liability After Easton v. Strassburger: Let the Buyer Be Aware*, 25 SANTA CLARA L. REV. 651, 651, 664 (1985) (supporting the proposition that a real estate broker has an affirmative duty to carry out a reasonable inspection of the property, and to disclose to prospective purchasers all facts concerning the property which materially affect the value or desirability of the site which such an investigation would reveal); Dawn K. McGee, Note, *Potential Liability for Misrepresentations in Residential Real Estate Transactions: Let the Broker Beware*, 16 FORDHAM URB. L.J. 127 (1987) (discussing a broker's liability for misrepresenting or failing to investigate the condition of the property); Linda S. Whitton, Note, *Realtor Liability For Innocent Misrepresentation and Undiscovered Defects: Balancing the Equities Between Broker and Buyer*, 20 VAL. U. L. REV. 255, 271 (1985) (supporting the proposition that a real estate broker has an affirmative duty to carry out a reasonable inspection of the property, and to disclose to prospective purchasers all facts concerning the property which materially affect the value or desirability of the site that such an investigation would reveal); Note, *Imposing Tort Liability on Real Estate Brokers Selling Defective Housing*, 99 HARV. L. REV. 1861, 1874-75 (1986) (supporting the premise of a real estate broker having an affirmative duty to carry out a reasonable inspection of the property, and to disclose to prospective purchasers all facts concerning the property which materially affect the value or desirability of the site which such an investigation would reveal).

4. CAL. CIV. CODE § 2079 (amended by Chapter 339).

5. *Id.* § 2079.3 (amended by Chapter 339). See generally Paul Meyer, *Illinois Real Estate Brokers: The Duties of Disclosure and Accuracy*, 23 LOY. U. CHI. L.J. 241, 249 n.45 (1992) (discussing a broker's liability for misrepresenting or failing to investigate the condition of the property); Paula C. Murray, *The Real Estate Broker and the Buyer: Negligence and the Duty to Investigate*, 32 VILL. L. REV. 939, 984-85 (1987) (examining a broker's liability for misrepresenting or failing to investigate the condition of the property).

6. CAL. CIV. CODE § 2079 (amended by Chapter 339); see *id.* (extending the duty to salespersons, by no longer placing it exclusively on the brokers); *id.* § 2079(b) (amended by Chapter 339) (stating that licensed real estate brokers and salespeople must comply with any additional regulations concerning professional conduct imposed via California Business and Professions Code §§ 10080, 10176, and 10177).

7. *Id.* § 2709.3 (amended by Chapter 339).

8. See 1994 Cal. Legis. Serv. ch. 339, sec 3, at 1777 (stating that the provision of disclosure applies to notification of nuisances or other conditions of nearby property that may affect the value of the property).

INTERPRETIVE COMMENT

Chapter 339 is intended to clarify the duties of a licensed real estate broker and licensee in a residential real property sale.<sup>9</sup> Chapter 339 is also aimed at giving further protection to the purchaser.<sup>10</sup> This is seen through Chapter 339's extension of the duty of inspection and disclosure to real estate salespeople as well; no longer is the duty placed exclusively on brokers.<sup>11</sup> By clarifying the roles and duties of each party in the transaction, it is felt that the respective parties will be placed in superior positions concerning the knowledge and character of the property.<sup>12</sup> The California Association of Realtors praises Chapter 339 as a necessary cleanup measure to clarify the duties placed upon a real estate licensee participating in a real property sale.<sup>13</sup>

*Christian A. Ameri*

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9. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1509, at 2 (Apr. 11, 1994); *see id.* (stating that SB 1509 clearly spells out the bounds of the broker's duties, and thus provides the broker, seller, and purchaser with an accurate image of what is being represented, and what has been contracted for).

10. *See* Salahutdin v. Valley of Cal., Inc., 24 Cal. App. 4th 555, 561-63, 29 Cal. Rptr.2d 463, 466-67 (1994) (holding that a real estate broker committed constructive fraud when he knew that the size of the property and the ability to subdivide the property were critical to the buyer's decision to purchase, and yet did nothing to independently confirm the accuracy of the information, pertaining to the boundary of the property, on the vendor's multiple listing information sheet); Smith v. Rickard, 205 Cal. App. 3d 1354, 1363-64, 254 Cal. Rptr. 633, 638-39 (1988) (stating that a real estate broker for the seller of a piece of property containing a residence and avocado groves had no duty to inspect that portion of the property which comprised the avocado groves in order to disclose facts that would affect the value or desirability of the property, because California Civil Code § 2079 is only applicable to brokers selling residential properties of four or fewer dwellings, and not to commercial real estate transactions). Thus, any defect which the inspection would have disclosed, would have only affected the value of the avocado groves, the commercial portion of the property. *Id.*; *see* SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1509, at 2 (Apr. 11, 1994) (suggesting that now that the broker's duty is clearly defined, and purchasers are more fully informed).

11. CAL. CIV. CODE § 2079 (amended by Chapter 339); SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1509, at 1 (Apr. 11, 1994).

12. *See* SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1509, at 1 (Apr. 11, 1994) (suggesting the benefit from having both parties better informed as to the responsibilities of the broker).

13. *Id.* at 2.

